

OPINION NO. 81-072**Syllabus:**

If the township in question does not select candidates for township trustee by means of a primary election, if it is physically possible for one person to hold both positions, and if such dual employment is not barred by local ordinances or charter provisions, the positions of township trustee and United States postal employee are compatible.

To: Frederick D. Pepple, Auglaize County Pros. Atty., Wapakoneta, Ohio
By: William J. Brown, Attorney General, November 25, 1981

I have before me your request for my opinion concerning the compatibility of the positions of township trustee and full-time United States postal employee.

In 1979 Op. Att'y Gen. No. 79-111, I set forth the seven questions which form the basis for the traditional compatibility analysis. Those seven questions read as follows:

1. Is either of the positions a classified employment within the terms of R.C. 124.57?
2. Do the empowering statutes of either position limit the outside employment permissible?
3. Is one office subordinate to, or in any way a check upon, the other?
4. Is it physically [im]possible for one person to discharge the duties of both positions?
5. Is there a conflict of interest between the two positions?

6. Are there local charter provisions or ordinances which are controlling?
7. Is there a federal, state, or local departmental regulation applicable?

If, after examining the positions at issue, the answers to all seven questions are in the negative, the positions are compatible. If, however, even one question must be answered in the affirmative, the positions are incompatible.

The first of the seven questions deals with the prohibition contained in R.C. 124.57 against a classified employee taking part in political activity. However, neither the office of township trustee nor the position of postal employee is a classified employment for the purposes of R.C. 124.57. Thus, the first question must be answered in the negative.

For ease of discussion, I will address the second and seventh questions together. I am not aware of any state statutes or state and local regulations which would apply to the situation presented by your letter. However, as a federal employee, a postal worker would be subject to the federal statutes and regulations concerning his participation in political activity. Pursuant to 39 C.F.R. §447.51,¹ a postal worker is subject to the restrictions on political activity contained in 5 U.S.C. §7324 and to the regulations passed pursuant to that section. 5 U.S.C. §7324 prohibits an employee from "[taking] an active part in political management or in political campaigns." This prohibition also appears in 5 C.F.R. §733.122(a), which states that a federal employee "may not take an active part in political management or in a political campaign." 5 C.F.R. §733.122 indicates that the type of political activity which is prohibited is that of a partisan political nature. 5 C.F.R. §733.124 expressly states: "Section 733.122 does not prohibit activity in political management or in a political campaign by an employee in connection with . . . [a] nonpartisan election." Thus, the ban against political activity by a federal postal employee does not extend to nonpartisan elections. See also 5 C.F.R. §733.111(a)(10) ("Each employee retains the right to . . . [t]ake an active part, as a candidate or in support of a candidate, in a nonpartisan election."); 39 C.F.R. §447.62 ("[a postal] employee may seek, accept, or hold a nonpartisan State or local office. . .").

A nonpartisan election is defined in 5 C.F.R. 733.101(e) and in 39 C.F.R. §477.62 as "[a]n election at which none of the candidates [is] to be nominated or elected as representing a political party. . . ." Candidates for the office of township trustee are nominated by means of a nominating petition, rather than through a primary election, unless "a majority of the electors of such township have petitioned for a primary election." R.C. 3513.253. It is my understanding, based on a conversation between a member of my staff and the Auglaize County board of elections, that the electors of the township in question have not so petitioned. The position of township trustee about which you have asked is, therefore, secured by means of a nonpartisan election within the meaning of 5 C.F.R. 733.101(e) and 39 C.F.R. §477.62. Consequently, the holding of that position by a postal worker does not violate the ban against partisan political activity by federal employees. I am not aware of any other federal statute or regulation which is relevant to the situation described in your letter. It is apparent, therefore, that the second and seventh questions may also be answered in the negative.

Having examined the statutes governing both positions, I am unable to ascertain any manner in which the duties of a township trustee are connected with those of a postal employee. It is clear, therefore, that one position is not subordinate to or a check upon the other. In like manner, there can be no conflict

¹39 C.F.R. §447.51 was enacted pursuant to 39 U.S.C. §401, which grants to the postal service the authority "to adopt, amend and repeal such rules and regulations as it deems necessary to accomplish the objectives of [Title 39]."

of interest between the two positions due to the fact that the duties of one position are not in any way reflected in the responsibilities of the other. Thus, neither the third question nor the fifth question serves as a bar to the dual employment at issue.

The subject of physical impossibility, dealt with in the fourth question, and the applicability of local charter provisions or ordinances, the subject of the sixth question, are issues which have traditionally been left to the discretion of local officials. A resolution of these questions must, of course, be arrived at before a final conclusion with regard to your factual situation can be made. However, for the purposes of this opinion, I assume that questions four and six, concerning physical impossibility and local law, do not prevent one person from serving as both a township trustee and a postal employee.

As the foregoing discussion clearly indicates, none of the seven questions set forth in Op. No. 79-111 has received an affirmative response.

Therefore, it is my opinion, and you are advised, that if the township in question does not select candidates for township trustee by means of a primary election, if it is physically possible for one person to hold both positions, and if such dual employment is not barred by local ordinances or charter provisions, the positions of township trustee and United States postal employee are compatible.