

March 14, 2022

The Honorable Thomas J. Smith  
Morrow County Prosecuting Attorney  
60 East High Street  
Mt. Gilead, Ohio 43338

SYLLABUS:

2022-005

A person may not serve simultaneously  
as a county commissioner and as the  
treasurer of a local school district within  
the same county.



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OPINION NO. 2022-005

The Honorable Thomas J. Smith  
Morrow County Prosecuting Attorney  
60 East High Street  
Mt. Gilead, Ohio 43338

Dear Prosecutor Smith:

You have requested an opinion on the compatibility of someone simultaneously holding two-public positions. I have framed your question as follows:

May a person simultaneously serve as a county commissioner and as the treasurer of a local school district located within the same county?

For the reasons that follow, I find that a person may not serve simultaneously as a county commissioner and treasurer of a local school district located in the same county.

I

“An issue of compatibility arises whenever one person wishes to hold simultaneously two or more positions of public service.” *E.g.*, 2022 Op. Att’y Gen. No. 003, Slip Op. at 3. A seven-question test was developed in 1979 for addressing issues of compatibility between two or more positions of public service. The questions ask:

1. Is either position in the classified service for purposes of R.C. 124.57?
2. Does a constitutional provision or statute prohibit a person from serving in both positions at the same time?
3. Is one position subordinate to, or, in any way, a check upon the other position?
4. Is it physically possible for one person to discharge the duties of both positions?
5. Is there an impermissible conflict of interest between the two positions?
6. Are there local charter provisions, resolutions, or ordinances that are controlling?
7. Is there a federal, state, or local departmental regulation applicable?

2022 Op. Att’y Gen. No. 2022-003, Slip Op. at 3 - 4; 2021 Op. Att’y Gen. No. 2021-005, Slip Op. at 2; 2-19 to 2-20; *see* 1979 Op. Att’y Gen. No. 79-111, at 2-367 to 2-368.

For two public positions to be compatible, all seven questions must be answered in favor of compatibility. 2022 Op. Att’y Gen. No. 2022-003, Slip Op. at 4; 2021 Op. Att’y Gen. No. 2021-005, Slip Op. at 2; 2-20. Here, question five—conflicts of interest—is controlling.

## II

Question five deals with impermissible conflicts of interest. “A person may not serve simultaneously in two positions when an impermissible conflict of interest exists between the positions.” 2021 Op. Att’y Gen. No. 2021-029, Slip Op. at 2; 2-105, quoting 2021 Op. Att’y Gen. No. 2021-027, Slip Op. at 2; 2-97. “A conflict of interest exists ‘when an individual’s responsibilities in one position are such as to influence the performance of his duties in the other position, thereby subjecting him to influences which may prevent his decisions from being completely objective.’” 2021 Op. Att’y Gen. No. 2021-029, Slip Op. at 2 - 3; 2-105, quoting 2021 Op. Att’y Gen. No. 2021-027, Slip Op. at 2; 2-97.

The treasurer is appointed by the board of education, R.C. 3313.22, and is responsible for various school district fiscal duties. *See generally* R.C. Chapter 3313. “R.C. 3313.31 makes the treasurer the chief fiscal officer of the school district and requires the treasurer to direct and assign employees directly engaged in the day-to-day fiscal operations of the school district.” 2010 Op. Att’y Gen. No. 2010-020, at 2-134; *see* R.C. 5705.01(D); *see also* R.C. 133.01(L)(3).

“County commissioners are responsible for governing the county.” 2004 Op. Att’y Gen. No. 2004-051, at 2-439; 2003 Op. Att’y Gen. No. 2003-006, at 2-33; *see generally* R.C. Chapter 307. The board of county commissioners is designated the taxing authority for the county. R.C. 5705.01(C); R.C. 133.01(NN)(1). And among its many duties, the board of county

commissioners may enter into contracts with the legislative authority of certain entities. R.C. 307.15.

Since the local school district and the board of county commissioners at issue sit within the same county, multiple conflicts of interests exist.

A

The first conflict of interest regards competition over money generated within the ten-mill limitation. This is because a board of county commissioners and a board of education for a local school district are competing taxing authorities. *See* R.C. 5705.01(C); *see also* R.C. 133.01(NN)(1) and (3). Specifically, “[a]ccording to R.C. 5705.28, 5705.30, and R.C. 5705.31, these taxing authorities are responsible for adopting and submitting a tax budget to the county auditor who then submits it to the board of county commissioners.” 2021 Op. Att’y Gen. No. 2021-029, Slip Op. at 3; 2-106. “The determination of the budget commission directly affects the potential revenue of each subdivision.” *Id.*, quoting 1990 Op. Att’y Gen. No. 90-083, at 2-355.

The board of county commissioners, as the taxing authority for the county, is required to participate in the preparation and adoption of the county’s tax budget. 2004 Op. Att’y Gen. No. 2004-051, at 2-441. The board of education, as the taxing authority for the local school district, is also required to adopt a proposed tax budget and submit it, through the county auditor, to the county budget commission. *See* 1988 Op. Att’y Gen. No. 88-011, at 2-41. Such direct competition creates a

conflict of interest between the two taxing authorities. *See id.*, at 2-41 to 2-42.

As the fiscal officer, the treasurer is not statutorily required to prepare the school district's annual tax budget or present it to the county budget commission. *See generally* R.C. 3313.14; R.C. 3313.18; R.C. 3313.26; R.C. 3313.261; R.C. 3313.29; R.C. 3313.31; R.C. 3313.32; R.C. 3313.33; R.C. 3313.51; R.C. 5705.08; R.C. 5705.30; R.C. 5705.341; R.C. 5705.36; R.C. 5705.37. In addition, the treasurer is not part of the taxing authority for the local school district. *Compare* R.C.5705.01(D) *with* R.C. 5705.01(C); *compare* R.C. 133.01(L)(3) *with* R.C. 133.01(NN)(1) and (3). Nevertheless, a conflict of interest associated with competition over funding within the ten-mill limitation exists because a person serving in both positions would suffer from divided loyalties, despite the fact that both positions are not designated taxing authorities. *See* 2003 Op. Att'y Gen. No. 2003-010, at 2-74 (a board of education member who also serves as school principal in a joint vocational school district is subject to conflicting interests when he participates in the preparation of the local school district's annual budget because the local school district competes with the joint vocational school district for tax money generated within the ten-mill limitation). Thus, this conflict of interest is only avoidable if the treasurer does not partake in the preparation of the tax budget, or the explanation of the tax budget to the county budget commission. *See* 2004 Op. Att'y Gen. No. 2004-025, 2-227; *see also* 2003 Op. Att'y Gen. No. 2003-006, at 2-36. So, a treasurer of a local school district also serving as a county commissioner in the same county has limits regarding what the

treasurer can assist the school district with. The same is true for the person in his role as a county commissioner. For, as a county commissioner, the person would have to remove himself from any discussion or review of the school district's budget.

## B

The second conflict of interest is the competition over moneys generated in excess of the ten-mill limitation. As two overlapping subdivisions, the board of education and the board of county commissioners are permitted to place levies on the ballot for taxes in excess of the ten-mill limitation. *See* 2021 Op. Att'y Gen. No. 2021-029, Slip Op. at 4; 2-106; *see also* 2004 Op. Att'y Gen. No. 2004-025, at 2-227; *see also* R.C. 5705.07; *see also* R.C. 5705.19, *et seq.*; *see also* R.C. 5705.21, *et seq.* "Also, both taxing authorities may submit to the electors the question of whether to issue any general obligation bond under R.C. Chapter 133." 2021 Op. Att'y Gen. No. 2021-029, Slip Op. at 4; 2-106; *See* R.C. 133.01(NN)(1) and (3); *see also* R.C. 133.18. If the board of county commissioners and the board of education chose to place levies or bonds on the ballot at the same time, a person serving both taxing authorities would suffer from divided loyalties. *See* 2021 Op. Att'y Gen. No. 2021-029, Slip Op. at 4; 2-106.

As the fiscal officer, the treasurer of a local school district is not required to determine if or when to place a local school district's levy or bond issue on the ballot. Such determination is left to the taxing authority. R.C. 133.01(NN)(3); R.C. 5705.01(C). Nevertheless, if the board of county commissioners and the board of

education both placed levies on the ballot or submitted bond issues to the electors, the county commissioner who also serves as the treasurer for the local school district would suffer from divided loyalties. *See* 2003 Op. Att’y Gen. No. 2003-010, at 2-75. To avoid such division of loyalty, the person, when serving as a county commissioner, would have to refrain from any matters regarding the placing of levies or bond issues on the ballot. *See* 2021 Op. Att’y Gen. No. 029, Slip Op. at 4; 2-106; *see also e.g.*, 2004 Op. Att’y Gen. No. 2004-051, at 2-443 to 2-444.

### C

A third conflict of interest may arise because the board of county commissioners, or county agencies such as children services agencies, can enter into contracts with the board of education for a local school district. *See* R.C. 307.15(A)(1); R.C. 3313.59; R.C. 3313.33. If the same person is involved with contracting for both sides of a contract, the ability of the parties to negotiate at arm’s length is compromised, and is an impermissible conflict of interest. *See* 2004 Op. Att’y Gen. No. 2004-025, at 2-229; *see also* 2003 Op. Att’y Gen. No. 2003-010, at 2-72 (a person who serves as member of a local school district and as school principal in a joint vocational school district may be “influenced not to perform his duties and exercise his discretion with respect to matters involving the joint vocational school district in a completely objective manner for fear of reprisals by the joint vocational school district board of education”).



When a county commissioner has a conflict of interest brought about by the county contracting with an entity, the conflicted county commissioner may remove himself from partaking in the contracting process. *See, e.g.*, 2004 Op. Att’y Gen. No. 2004-051, at 2-445 (“a county commissioner who is employed by the city will be able to remove himself from any deliberations, discussions, negotiations, or votes on the contract”). Indeed, removal is the only way to avoid the conflict. Thus, this conflict can only be avoidable when: (1) the person, serving as a county commissioner, does not take part in voting on, deliberating, negotiating, discussing, or approving the contract or other matters that involve the served local school district; and (2) the person, serving as the treasurer of a local school district, is not called upon to take part in deliberating, negotiating, discussing, or approving contracts with the served board of county commissioners. If the board of education calls on the treasurer to deliberate, negotiate, discuss, or approve a contract with the served board of county commissioners, a person serving as the treasurer of a local school district and as a county commissioner would suffer from divided loyalties. *See* 2003 Op. Att’y Gen. No. 2003-006, at 2-37. Such division of loyalty would create an impermissible conflict of interest, *id.*, and would impair the school district and the county of the benefit of the individual selected for both positions.

#### D

A fourth conflict of interest may arise if the board of county commissioners chooses to grant a tax exemption for property. *See, e.g.*, R.C. 3735.65-.671; R.C.

5709.63-.631; R.C. 5709.78; R.C. 5709.88. When the board of county commissioners grants a tax exemption, a local school district sitting in the county may receive decreased money as a result. A person serving as a county commissioner and treasurer of a local school district would suffer from divided loyalty when considering tax exemptions because what is good for the county as a whole might not be good for the served local school district. In addition, tax-exemption procedures often require input from the impacted school district. *See* R.C. 5709.78(C); R.C. 5709.63(C); R.C. 3735.671; R.C. 5709.82.

A person serving simultaneously as a county commissioner and treasurer of a local school district would suffer from divided loyalty, and thus a conflict of interest, every time the board of county commissioners considers a tax exemption. To avoid such a conflict, the county commissioner who also serves as a treasurer of a local school district must refrain from partaking in any actions related to tax exemptions. If the conflicted commissioner partook in discussions related to tax exemptions, the conflicted commissioner would suffer from divided loyalties and an impermissible conflict of interest. Moreover, as school district treasurer, the person could not advocate before the board of county commissioners regarding any tax abatements.

## E

Finally, a conflict of interest exists regarding the county board of revision. The county board of revision decides whether to adjust property assessments, which determines how much property tax a property owner

pays. *See generally* R.C. Chapter 5715; *see also* 2010 Op. Att’y Gen. No. 2010-031, at 2-224 to 2-225. Because local school districts receive tax revenue from property taxes within the county, the district may gain or lose revenue based on the decision of the board of revision. The board of revision, and its hearing boards, include a member of the board of county commissioners or a member’s appointee. R.C. 5715.02. School districts can file complaints with the board of revision, and can appear before the board when impacted by a complaint. R.C. 5715.19.

Therefore, if the person, as a county commissioner (or the commissioner’s appointee) serves on the county board of revision, he would have a conflict of interest each time the board addressed a matter impacting the school district. *See* 2010 Op. Att’y Gen. No. 2010-031, at 2-224 to 2-225. This conflict exists when the property is located within the school district’s territory, but also when it is located *outside* the district’s territory. Because taxing units within a county share tax revenue inside the ten-mill limit, revisions impacting any property within the county could potentially impact the revenue of the school district. *See id.* This conflict could be avoided if the county commissioner, or his appointee, never serves on the board of revision or a hearing board. Continually abstaining from such service, however, would deprive the county and its citizens of even further service of the county commissioner.

\*

Due to the number of conflicting interests resulting from someone serving simultaneously as a county

commissioner and treasurer of a local school district within the same county, a person serving in both roles would often be required to abstain from partaking in the inherent duties of both positions. While occasionally arising conflicts may be avoided by the person abstaining from a particular matter, *see* 2004 Op. Att’y Gen. No. 2004-025, 2-228; 2003 Op. Att’y Gen. No. 2003-006, 2-37, multiple and repeating conflicts of interests render two positions incompatible. *E.g.*, 2021 Op. Att’y Gen. No. 2021-018, Slip Op. at 4; 2-66 (“since the conflict of interest here is clear and of repeating occurrence, I find that the conflict cannot be avoided or sufficiently mitigated”); *see also* 2014 Op Att’y Gen. No. 2014-004, Slip Op. at 6; 2-28 (“insofar as the conflicts of interest involve financial and budgetary matters, which are a primary function of a board of county commissioners, it is impractical for a county commissioner to continually abstain from such matters”); *see also* 2003 Op. Att’y Gen. No. 2003-010, at 2-76. Here, I conclude that the conflicts are collectively too extensive and repeating to allow the individual to perform the duties of both positions. In sum, because the conflicts of interests are multiple and repeating, question five is answered not in favor of compatibility.

Because not all seven questions were answered in favor of compatibility, I conclude that the two positions are not compatible.

Conclusion

Accordingly, it is my opinion, and you are hereby advised that:

A person may not serve simultaneously as a county commissioner and as the treasurer of a local school district within the same county.

Respectfully,

A handwritten signature in blue ink that reads "Dave Yost". The signature is written in a cursive, flowing style.

DAVE YOST  
Ohio Attorney General