

March 17, 2014

The Honorable Dennis Watkins
Trumbull County Prosecuting Attorney
4th Floor Administration Building
160 High Street N.W.
Warren, Ohio 44481-1092

SYLLABUS:

2014-012

The positions of member of the governing board of an educational service center and member of a board of education of a local school district that is served by the educational service center are incompatible.



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OPINION NO. 2014-012

The Honorable Dennis Watkins
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Dear Prosecutor Watkins:

You have requested an opinion about the compatibility of the positions of member of the governing board of an educational service center and member of a board of education of a local school district that is served by the educational service center.¹ For the reasons that follow, we find the positions incompatible.

Conflict of Interest Rule

A seven question compatibility test is used to determine whether a person may serve simultaneously in multiple public positions. 2012 Op. Att’y Gen. No. 2012-008, at 2-53. Pursuant to this test, a person may not hold two public positions simultaneously if he will be subject to impermissible conflicts of interest. *Id.* Impermissible conflicts of interest exist when the duties of the positions subject a person who holds the positions concurrently to divided loyalties, conflicting duties, or the temptation to act other than in the public’s best interest. *Id.*

Whether impermissible conflicts of interest occur between two public positions is ascertained by reviewing the powers and duties of the respective positions. *Id.* If the review reveals possible conflicts of interest, the immediacy of the conflicts must be considered to determine whether the conflicts may be mitigated or eliminated so as to allow the person to hold both positions at the same time. *Id.*

¹ Your request asks whether a person may serve simultaneously as a member of a local school district board of education and a member of the governing board of an educational service center in the same county. Your office has clarified that the local school district is served by the educational service center.

Powers, Duties, and Responsibilities of the Respective Positions

We first will consider the powers, duties, and responsibilities of a member of the board of education of a local school district. A board of education of a local school district is responsible for governing the public schools in the district and handling the district's fiscal and budgetary matters. *See* R.C. Chapter 3313 (setting forth powers and duties of boards of education); R.C. Chapter 5705 (tax levy law); *Sewell v. Bd. of Educ.*, 29 Ohio St. 89 (1876) (syllabus, paragraph 1) (“[b]oards of education are authorized by law to adopt and enforce necessary rules and regulations for the government of the schools under their management and control”); 2011 Op. Att’y Gen. No. 2011-043, at 2-353. The duties of such a board include, *inter alia*, providing a free education to youths in the district, R.C. 3313.48, establishing rules for the government of the district, R.C. 3313.20, managing and controlling the public schools located within the district, R.C. 3313.47, and entering into contracts on behalf of the district, R.C. 3313.17. The board of education of a local school district also is the district's taxing authority for purposes of R.C. Chapter 5705, Ohio's uniform tax levy law. R.C. 5705.01(C). As a taxing authority, the board of education must prepare the district's annual tax budget, R.C. 5705.28, and levy taxes and assessments on real property within the district, R.C. 133.56; R.C. 5705.03; R.C. 5705.07; R.C. 5705.194; R.C. 5705.21; R.C. 5705.212; R.C. 5705.213.

We now consider the powers, duties, and responsibilities of a member of the governing board of an educational service center. Educational service centers are the successors to county school districts. *See, e.g.*, 2010 Op. Att’y Gen. No. 2010-028, at 2-202 n.1. Generally, an educational service center serves the local school districts within the county. *See* R.C. 3311.05(A). Educational service centers also may combine to include several counties and may provide services by agreement to city or exempted village school districts. R.C. 3311.053; R.C. 3313.843. An educational service center is administered by a governing board, the successor to a county board of education. *See* R.C. 3313.01; R.C. 3311.055; 2010 Op. Att’y Gen. No. 2010-028, at 2-202 n.1. Although not defined as a school district in R.C. 3311.01, an educational service center is considered a school district whenever the term “school board” or “board of education” is used “without expressly referring to boards governing city, local, exempted village, or joint vocational school districts, or some specific combination thereof.” R.C. 3311.055. Therefore, “the governing board of an educational service center has many of the same powers and duties as the board of education of a school district.” 2005 Op. Att’y Gen. No. 2005-033, at 2-346.

An educational service center provides various types of services and support for local school districts within its service area. *See, e.g.*, R.C. 3315.07 (provides supplies and equipment for local school districts); R.C. 3315.09 (enters into contracts for special instruction); R.C. 3319.01 and R.C. 3319.02 (conducts searches and recruits candidates for superintendent and assistant superintendent positions); R.C. 3321.14 (provides attendance officer); R.C. 3327.10 (certifies bus drivers). The governing board of an educational service center also is responsible for establishing rules for the government of the educational service center, R.C. 3313.20, and entering into contracts on behalf of the educational service center, R.C. 3313.17.

In addition, the governing board of an educational service center may act as a taxing authority for purposes of R.C. Chapter 5705. An educational service center is not a “subdivision” or “taxing

authority” as defined by R.C. 5705.01 and therefore has no power to levy taxes. *See* R.C. 5705.01(A) and (C); 2010 Op. Att’y Gen. No. 2010-028, at 2-204. The governing board of an educational service center may, however, create a county school financing district for the purpose of levying taxes under R.C. Chapter 5705. R.C. 3311.05(B); R.C. 3311.50; 2010 Op. Att’y Gen. No. 2010-028, at 2-204. A county school financing district is a “subdivision” for purposes of R.C. Chapter 5705. R.C. 5705.01(A); 2010 Op. Att’y Gen. No. 2010-028, at 2-204. The governing board of the educational service center is the “taxing authority” of the county school financing district and may therefore levy taxes under R.C. Chapter 5705. R.C. 3311.50(B); R.C. 5705.01(C); 2010 Op. Att’y Gen. No. 2010-028, at 2-204. The members of the educational service center governing board perform the duties of the financing district. *See* R.C. 3311.50(B); 2010 Op. Att’y Gen. No. 2010-028, at 2-204. Accordingly, the governing board of an educational service center that has created a county school financing district must prepare the district’s annual tax budget, R.C. 5705.28, and levy taxes and assessments on real property within the district, R.C. 5705.03; R.C. 5705.07; R.C. 5705.215.

1960 Op. Att’y Gen. No. 1491, p. 432: Member of a County Board of Education and Member of a Board of Education of a Local School District in the Same County are Incompatible

You explain in your request letter that the Attorney General has found the positions of member of a county board of education and member of a local board of education in the same county incompatible. 1960 Op. Att’y Gen. No. 1491, p. 432. An educational service center is the successor to a county school district, and the governing board of the educational service center is the successor to a county board of education. *See* 2010 Op. Att’y Gen. No. 2010-028, at 2-202 n.1. The 1960 opinion found these positions incompatible based on the provisions of R.C. 3313.85. At that time, R.C. 3313.85 authorized a county board of education “to act as the local board and perform all duties imposed [on the local board] in event the local board fails to perform such duties or fails to fill a vacancy in its membership within the period limited.” 1960 Op. Att’y Gen. No. 1491, p. 432 at 435. The opinion reasoned that “[t]he effect of this statute is to give the county board a certain measure of control over a local board and in disputed cases as to the alleged failure of the local board to perform its duties, a conflict might arise in which a person who is a member of both boards would find himself on both sides of a dispute.” *Id.*

Shortly after the issuance of the 1960 opinion, the Ohio Supreme Court also held that “[d]uties, as prescribed by statute, of membership on a local school district board of education and on a county board of education in the same county at the same time by one individual are such under the Ohio statutes as to render such dual membership incompatible.” *State ex rel. Hover v. Wolven*, 175 Ohio St. 114, 191 N.E.2d 723 (1963) (syllabus, paragraph 1). Like the 1960 Attorney General opinion, the Ohio Supreme Court relied, in part, on the provisions of R.C. 3313.85. *State ex rel. Hover v. Wolven*, 175 Ohio St. at 116-17. The court also pointed to the provisions of R.C. 3311.08 (authorizing board of education of a local school district to become exempt from the supervision of the county board of education by giving notice to the county board of education), R.C. 3311.22 (county board of education may transfer part or all of local school district to another school district), and R.C. 3311.26 (county board of education may propose creation of a new local school district from

one or more existing school districts), in determining that conflicts of interest exist and render the positions incompatible. *State ex rel. Hover v. Wolven*, 175 Ohio St. at 116.

You note that there have been numerous amendments modifying the statutes that were relied upon in the 1960 Attorney General opinion and by the Ohio Supreme Court in *State ex rel. Hover v. Wolven*. R.C. 3313.85 no longer permits an educational service center to perform the duties of a local school district or fill a vacancy in the board of education of a local school district. Rather, R.C. 3313.85 now provides only that the probate court of the county in which the local school district is located must fill a vacancy in the board of education of the local school district if the board of education fails to fill that vacancy within thirty days. Additionally, R.C. 3311.26, another statute relied on by the Ohio Supreme Court in *State ex rel. Hover v. Wolven*, no longer permits a governing board of an educational service center to propose the creation of a new local school district from one or more existing school districts.

In addition, R.C. 3311.08 and R.C. 3311.22 have been amended since the issuance of the court's decision in *State ex rel. Hover v. Wolven*. You indicate that you are not sure whether the amendments to these statutes "ultimately eliminate any compatibility problems."

In light of the statutory amendments, you ask that we reconsider the advice in the 1960 opinion. As discussed below, it is our opinion that a number of conflicts of interest remain and render the positions incompatible.

Conflicts of Interest between the Positions of Member of the Governing Board of an Educational Service Center and Member of a Board of Education of a Local School District that is Served by the Educational Service Center

A review of the power, duties, and responsibilities of the positions of member of the governing board of an educational service center and member of a board of education of a local school district that is served by the educational service center reveals that a person serving simultaneously in both positions is subject to numerous conflicts of interest. Two of the conflicts identified and relied upon in *State ex rel. Hover v. Wolven* have not been eliminated by statutory amendments. With respect to R.C. 3311.08, the Ohio Supreme Court explained:

[R.C. 3301.08] authorizes a local board to be exempt from the supervision of the county board by giving notice to the county board of education. In the exercise of judgment there, [a person who serves on both boards] would be in a difficult position. Would or should he vote to remove the local board from the supervision of the county board of which he was also a member?

State ex rel. Hover v. Wolven, 175 Ohio St. at 116. The amendments to R.C. 3311.08 have not changed the conflict thus identified by the court. R.C. 3311.08 still permits a board of education of a local school district to become exempt from the supervision of an educational service center. The board of education of the local school district may vote on this matter and notify the educational service center. R.C. 3311.08(B).

The Ohio Supreme Court also pointed to a conflict of interest created by R.C. 3311.22. “[R.C. 3311.22], in part provides that under certain circumstances the county board may transfer a part or all of a local school district to an adjoining school district.” *State ex rel. Hover v. Wolven*, 175 Ohio St. at 116. The court explained that “[t]he statutes make the local board subordinate to the county board.... The county board may even terminate the existence of the local board.” *Id.* at 118. Under the current version of R.C. 3311.22, the governing board of an educational service center retains the authority, referred to in *State ex rel. Hover v. Wolven*, to transfer part or all of a local school district to another local school district. This authority includes the ability to abolish a local school district by transferring the entire district to one or more other local school districts. R.C. 3311.22. Accordingly, two of the conflicts of interest identified and relied upon by the court in *State ex rel. Hover v. Wolven* remain under the current versions of R.C. 3311.08 and R.C. 3311.22.

Similar conflicts of interest arise under R.C. 3311.38(B) and R.C. 3311.231. R.C. 3311.38(B) permits the State Board of Education to transfer all or any part of a local school district in certain circumstances. To make a transfer under this provision, the governing board of the educational service center must approve the transfer. R.C. 3311.38(B). R.C. 3311.231 permits the governing board of an educational service center to transfer all or part of a local school district within its territory to an adjoining educational service center or to an adjoining city or exempted village school district. Under both of these statutes, a member of the governing board of an educational service center is in a position in which he may have to deliberate, discuss, or vote upon matters that affect the local school district for which he serves as a member of the board of education.

The authority given to the governing board of an educational service center by the statutes identified above, including R.C. 3311.08 and R.C. 3311.22 discussed in *State ex rel. Hover v. Wolven* as well as R.C. 3311.38(B) and R.C. 3311.231, subjects a member of the governing board of an educational service center who also serves as a member of a local school district board of education that is served by the educational service center to impermissible conflicts of interest. In his capacity as a member of the board of education of a local school district, the person must act in an objective and disinterested manner to determine whether to vote to remove the local school district from the supervision of the educational service center, and create instead an exempted village school district. *See* R.C. 3311.08. An individual serving on both boards may be tempted, because of his position on the governing board of the educational service center, to keep the local school district under the supervision of the educational service center. In his capacity as a member of the governing board of an educational service center, the person must act in an objective and disinterested manner to determine whether to alter or abolish the territory of a local school district or whether to transfer a local school district to another educational service center or to a city or exempted village school district. *See* R.C. 3311.22; R.C. 3311.231; R.C. 3311.38(B). An individual holding both positions may be tempted, because of his position on the board of education of the local school district, to preserve the territory of the local school district or to keep the local school district within the territory of the current educational service center. This presents a situation in which a person who serves as a member of the governing board of an educational service center and a member of a board of education of a local school district that is served by the educational service center might be subject to divided loyalties and influences that may prevent his decisions from being completely objective and disinterested. *See* 2003 Op. Att’y Gen. No. 2003-010, at 2-73.

Additional conflicts of interest may arise because the governing board of an educational service center and the board of education of a local school district that is served by the educational service center may enter into contracts or agreements with each other. *E.g.*, R.C. 3315.09 (contract for obtaining instruction in special, technical, professional, or other advanced studies); R.C. 3319.01 (board of education of local school district may contract with governing board of educational service center to conduct searches and recruitment of candidates for superintendent position); R.C. 3319.02 (board of education of local school district may contract with governing board of educational service center to conduct searches and recruitment of candidates for assistant superintendent, principal, assistant principal, and other administrator positions); R.C. 3319.07 (board of education of local school district may contract with governing board of educational service center to conduct searches and recruitment of candidates for teacher positions); R.C. 3313.42 (contract for provision of administrative services by educational service center to local school district); R.C. 3313.841 (contract for sharing of the services of supervisory teachers, special instruction teachers, and special education teachers); R.C. 3313.843 (agreement for educational service center to provide services to local school district, including, for example, supervisory teachers, in-service and continuing education programs); R.C. 3313.845 (agreement for educational service center to provide additional services to local school district); *see also* 2003 Op. Att’y Gen. No. 2003-010, at 2-71 to 2-72.

Agreements or contracts between the governing board of an educational service center and the board of education of a local school district also may affect the funding of the local school district and the educational service center. For example, a local school district is required to reimburse an educational service center for services provided pursuant to an agreement under R.C. 3313.843. According to that provision, the Ohio Department of Education:

shall deduct from each school district that enters into an agreement with an educational service center under this section, and pay to the service center, an amount equal to six dollars and fifty cents times the school district’s total student count. The district board of education, or the district superintendent acting on behalf of the district board, may agree to pay an amount in excess of six dollars and fifty cents per student in total student count. If a majority of the boards of education, or superintendents acting on behalf of the boards, of the districts that entered into an agreement under this section approve an amount in excess of six dollars and fifty cents per student in total student count, each district shall pay the excess amount to the service center.

R.C. 3313.843(H). Similarly, a local school district must provide funding to the educational service center for the services provided by the educational service center pursuant to an agreement under R.C. 3313.845 or R.C. 3313.849. Therefore, determinations about whether to enter into a contract or agreement between the governing board of an educational service center and the board of education of a local school district that is served by the educational service center affect both the funding of the local school district and the funding of the educational service center.

A person who serves as a member of the governing board of an educational service center and a member of a board of education of a local school district that is served by the educational service center may be required to discuss, deliberate, negotiate, or vote on both sides of a contact or

agreement between the local school district and the educational service center. By participating on both sides of a contract or agreement, a person who serves as a member of the governing board of an educational service center and a member of a board of education of a local school district that is served by the educational service center would be exposed to conflicting loyalties and the possible temptation to act in a manner not in the best interest of the public. *See* 2006 Op. Att’y Gen. No. 2006-003, at 2-29; 2002 Op. Att’y Gen. No. 2002-039, at 2-251; *see also* 2003 Op. Att’y Gen. No. 2003-010, at 2-72 (“[s]uch a predisposition of loyalty could prevent the member [of the board of education of a local school district] from performing his duties and exercising his discretion in a completely objective and disinterested manner”). The Attorney General has advised that, “in simple terms, a person may not hold positions of trust on two public entities that contract with each other.” 2002 Op. Att’y Gen. No. 2002-039, at 2-252.

In addition to the foregoing, conflicts of interest may arise if the governing board of an educational service center creates a county school financing district located in the same county as the local school district. The governing board of an educational service center that has created a county school financing district is a taxing authority for purposes of R.C. Chapter 5705. R.C. 3311.50(B); R.C. 5705.01(C). Similarly, the board of education of a local school district is the designated taxing authority of the local school district. R.C. 5705.01(C). Members of different taxing authorities within the same county are situated in adverse positions because of the budget and tax provisions of R.C. Chapter 5705. *See* 1990 Op. Att’y Gen. No. 90-083, at 2-355; *see also* 2012 Op. Att’y Gen. No. 2012-008, at 2-54; 2003 Op. Att’y Gen. No. 2003-010, at 2-74.

An educational service center that has created a county school financing district and a local school district situated within the same county must share in the amount of tax revenue generated within the ten-mill limitation.² Consequently, the amount of inside millage available to a local school district is directly contingent upon, and related to, the amount of inside millage sought by a county school financing district and other overlapping taxing units. *See, e.g.,* 2011 Op. Att’y Gen. No. 2011-048, at 2-383; 2011 Op. Att’y Gen. No. 2011-029, at 2-238.

Because the amount of tax revenue generated within the ten-mill limitation is finite, the process by which such revenue is allocated creates competition between the governmental entities that are entitled to share in the distribution of the revenue. The competition is extremely intense, especially when the amount of tax revenue generated within the ten-mill limitation diminishes in times of economic distress, and makes governmental entities adversaries of each other.

² Article XII, § 2 of the Ohio Constitution provides that real property in Ohio may not be taxed in excess of one percent of its true value in money for state and local purposes unless approved by the voters or as provided for by a municipal charter. R.C. 5705.02 states further that “[t]he aggregate amount of taxes that may be levied on any taxable property in any subdivision or other taxing unit shall not in any one year exceed ten mills on each dollar of tax valuation of such subdivision or other taxing unit, except for taxes specifically authorized to be levied in excess thereof.”

For this reason, Ohio's Attorneys General have, for more than 80 years, uniformly advised that a person is subject to a major, recurring conflict of interest when the person annually must directly participate in the competition for tax revenue generated within the ten-mill limitation on behalf of two governmental entities.

2011 Op. Att'y Gen. No. 2011-048, at 2-383. Our opinions thus conclude that a conflict of interest occurs "if a person is required to take a position on behalf of one entity to the potential detriment of the other, including the competition for tax moneys within the ten-mill limit and the preparation of tax budgets for two different governmental entities." 2011 Op. Att'y Gen. No. 2011-029, at 2-238.

A board of education of a local school district and a governing board of an educational service center that has created a county school financing district must prepare, adopt, and submit an annual budget to the county budget commission. R.C. 3311.05; R.C. 3311.50; R.C. 5705.01(C); R.C. 5705.28-32. After the budgets are submitted, the county budget commission revises and adjusts the estimates of balances and receipts from all sources for each fund within the tax budgets and, if necessary, adjusts tax levies of various government entities. *See* 2011 Op. Att'y Gen. No. 2011-048, at 2-384; 2011 Op. Att'y Gen. No. 2011-029, at 2-238. Adjustments to the tax budget of a local school district situated within the same county as a county financing district or to the tax budget of the county financing district will affect the amount of tax revenue generated within the ten-mill limitation that is available to the county financing district or local school district, respectively. *See* 2011 Op. Att'y Gen. No. 2011-048, at 2-384. As a result, a person who serves on the board of education of a local school district and the governing board of an educational service center that has established a county school financing district in the same county may have conflicting duties and loyalties that prevent him from making completely objective, disinterested decisions when preparing the competing tax budgets. *See* 2011 Op. Att'y Gen. No. 2011-048, at 2-384; 2011 Op. Att'y Gen. No. 2011-029, at 2-238.

Additionally, a conflict of interest may arise because of the competition for tax revenue in excess of the ten-mill limitation. As taxing authorities, both a board of education of a local school district and a governing board of an educational service center that has created a county school financing district may place a levy on the ballot for tax revenues in excess of the ten-mill limitation. *See* R.C. 5705.194; R.C. 5705.199; R.C. 5705.215. The Attorney General has recognized that "the possibility of having competing tax levies on the same ballot is a critical factor for a taxing authority in determining when, or if, to place a request for additional taxes before the electorate." 2012 Op. Att'y Gen. No. 2012-008, at 2-56; 2011 Op. Att'y Gen. No. 2011-048, at 2-386. For example, if the board of education of the local school district has authorized placement of a tax levy issue on the ballot for additional funds, the person as a member of the governing board of the educational service center may be reluctant to advocate in favor of placing a levy for the educational service center on the ballot for fear that the local school district levy might be rejected in favor of the educational service center levy. *See* 2012 Op. Att'y Gen. No. 2012-008, at 2-56 to 2-57. Accordingly, a person who serves simultaneously as a member of both boards might be subject to divided loyalties and influences that may prevent his decisions about the need for additional funding from being completely objective and disinterested. *See* 2012 Op. Att'y Gen. No. 2012-008, at 2-57.

Immediacy of the Conflicts of Interest

Having identified numerous potential conflicts between the positions of member of the governing board of an educational service center and member of a board of education of a local school district that is served by the educational service center, we must consider the immediacy of the conflicts. If the conflicts of interest may be eliminated or avoided, or are considered remote and speculative, the conflicts will not render the positions incompatible. *See, e.g.*, 2008 Op. Att’y Gen. No. 2008-024, at 2-257. Factors that must be considered include the probability of the conflicts arising, the ability of the person to remove himself from any conflicts that may arise, whether the person exercises decision-making authority in each position, and whether the conflicts relate to the primary functions of each position or to financial or budgetary matters. 2011 Op. Att’y Gen. No. 2011-048, at 2-382. Examining these factors, we conclude that the numerous conflicts cannot be sufficiently avoided or eliminated and therefore render the positions of member of the governing board of an educational service center and member of a board of education of a local school district that is served by the educational service center incompatible.

First, the conflicts are not remote and speculative. The primary role of an educational service center is to provide a variety of services to the local school districts served by the educational service center. A person who serves on the governing board of an educational service center and the board of education of a local school district that is served by the educational service center is continually making decisions that either directly or indirectly affect the operation or funding of the educational service center or local school district. It is not, therefore, merely a remote possibility that a person serving as a member of the governing board of an educational service center and a member of a board of education of a local school district that is served by the educational service center would be on both sides of any contracts between the local school district and the educational service center.

Likewise, if the educational service center has created a county school financing district, the conflicts of interest arising from the competition for tax moneys generated within, and in excess of, the ten-mill limitation are not remote and speculative. Discussions, deliberations, and votes about a tax budget and other fiscal matters related to the tax budget are regularly undertaken by the members of a board of education of a local school district and governing board of an educational service center. The conflict over competition for funds and possible budget decisions could arise each year, as the budgets and funding are matters that both a board of education of a local school district and an educational service center that has created a county school financing district must consider on an annual basis. In addition, many other types of decisions made throughout the year affect the tax budgets. The conflict of interest related to the competition for tax moneys generated within, or in excess of, the ten-mill limitation thus occurs whenever a board of education of a local school district or governing board of an educational service considers a matter that affects the tax budget. *See* 2011 Op. Att’y Gen. No. 2011-048, at 2-385.

The conflicts also involve the primary functions of both a governing board of an educational service center and a board of education of a local school district. Because an educational service center’s primary purpose is to provide services to local school districts, decisions about contracts and agreements between the educational service center and the local school district are essential functions

of the educational service center's governing board. Members of a board of education of a local school district and of a governing board of an educational service center that has created a county school financing district also are required by law to prepare budgets, making it a primary function of each position. Taxes levied pursuant to R.C. Chapter 5705 are "[a]n important source of funding for school districts." 2010 Op. Att'y Gen. No. 2010-028, at 2-204. The preparation of a tax budget is an essential, nondelegable responsibility of a board of education of a local school district and the governing board of an educational service center that has created a county school financing district. *See, e.g.*, 2011 Op. Att'y Gen. No. 2011-048, at 2-385.

Further, all the potential conflicts identified present situations in which the positions must exercise independent decision-making authority. Members of a governing board are required to discuss, deliberate, and vote on whether to transfer all or part of a local school district to the territory of another school district, including when such a transfer is proposed by the State Board of Education, and whether to transfer all or part of a local school district to another educational service center. R.C. 3311.22; R.C. 3311.231; R.C. 3311.38(B). Members of a board of education of a local school district are required to discuss, deliberate, and vote on whether to become exempt from the educational service center's supervision. R.C. 3311.08(B). Members of both boards must discuss, deliberate, and vote on contracts or agreements between the educational service center and the local school district. *See, e.g.*, R.C. 3313.843; R.C. 3313.845. Finally, the preparation of a tax budget and the handling of other fiscal matters require members of a board of education of a local school district and of a governing board of an educational service center that has created a county school financing district to exercise independent decision-making authority that is essential to each position and cannot be delegated to another individual. *See, e.g.*, 2012 Op. Att'y Gen. No. 2012-008, at 2-55; 2011 Op. Att'y Gen. No. 2011-048, at 2-385.

The number and nature of these conflicts of interest make it impractical for a person to hold both positions simultaneously. The conflicts could only be avoided if the person serving as a member of the governing board of an educational service center abstained from all discussions and decisions that affect the local school district, including contracts with the educational service center and tax and budget matters of the educational service center. As a member of the board of education of the local school district, the person would again be required to abstain from discussions and decisions that would affect the educational service center, including tax and budget matters and operations of the local school district that may affect contracts between the school district and the educational service center. Because of the number and nature of the potential conflicts, a member of the governing board of an educational service center and a member of a board of education of a local school district that is served by the educational service center would continually be abstaining in his role on both boards. If the person is continually removing himself from potential conflicts of interest, he may not be serving in the best interests of the educational service center or local school district. In addition, the person may not perform in a competent manner the duties he is required by law to perform on behalf of the educational service center or local school district. It also is conceivable that the situation could reach the point where the governing board of the educational service center and the board of education of the local school district are spending an inordinate amount of time determining whether the person has a conflict of interest in particular matters. We therefore believe that it is impractical for the person holding both positions simultaneously to continually abstain. Therefore, the potential conflicts of

interest prohibit a person from serving simultaneously as a member of the governing board of an educational service center and member of a board of education of a local school district that is served by the educational service center.

This conclusion is supported by the Ohio Supreme Court's decision in *State ex rel. Hover v. Wolven*. 175 Ohio St. 114. As previously noted, two of the conflicts of interest relied on by the court in concluding that the positions of member of a local school district board of education and member of a county board of education in the same county still exist under the current statutes. See R.C. 3311.08; R.C. 3311.22. Because these conflicts have not been eliminated by statutory amendment, and because of the numerous other conflicts identified in this opinion, we continue to follow the court's decision in *State ex rel. Hover v. Wolven*.

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that the positions of member of the governing board of an educational service center and member of a board of education of a local school district that is served by the educational service center are incompatible.

Very respectfully yours,

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

MICHAEL DEWINE
Ohio Attorney General