

Note from the Attorney General's Office:

2017 Op. Att'y Gen. No. 2017-036 was followed by
2018 Op. Att'y Gen. No. 2018-003.

October 19, 2017

The Honorable D. Vincent Faris
Clermont County Prosecuting Attorney
101 East Main Street
Batavia, Ohio 45103

SYLLABUS:

2017-036

A Clermont County Commissioner who serves simultaneously as a member or Treasurer of the Board of Trustees of the Clermont County Convention and Visitors Bureau is subject to an impermissible conflict of interest arising from the possibility that the Clermont County Board of Commissioners may appropriate general fund moneys of the county to the Clermont County Convention and Visitors Bureau. The conflict of interest cannot be sufficiently avoided or eliminated entirely, and, thus, the positions of Clermont County Commissioner and member or Treasurer of the Board of Trustees of the Clermont County Convention and Visitors Bureau are incompatible.



October 19, 2017

OPINION NO. 2017-036

The Honorable D. Vincent Faris
Clermont County Prosecuting Attorney
101 East Main Street
Batavia, Ohio 45103

Dear Prosecutor Faris:

You have requested an opinion whether a commissioner, auditor, or deputy auditor of Clermont County, or an employee of the Clermont County Department of Community and Economic Development, also may serve as a member or Treasurer of the Board of Trustees of the Clermont County Convention and Visitors Bureau.¹ This opinion addresses whether a Clermont County Commissioner may serve simultaneously as a member or Treasurer of the Board of Trustees of the Clermont County Convention and Visitors Bureau. Whether the Clermont County Auditor, a Clermont County deputy auditor, or an employee of the Clermont County Department of Community and Economic Development may serve simultaneously as a member or Treasurer of the Board of Trustees of the Clermont County Convention and Visitors Bureau is addressed in 2017 Op. Att’y Gen. No. 2017-034, 2017 Op. Att’y Gen. No. 2017-035, and 2017 Op. Att’y Gen. No. 2017-037.

The Clermont County Convention and Visitors Bureau is a private, nonprofit corporation organized under R.C. Chapter 1702. Insofar as the Clermont County Convention and Visitors Bureau is a private entity, this opinion addresses the simultaneous holding of a public office (Clermont County Commissioner) and a private position (member or Treasurer of the Board of Trustees of the Clermont County Convention and Visitors Bureau).² A five-question test is used to determine whether a person may hold simultaneously a public position and a private position. 2012 Op. Att’y Gen. No. 2012-040, at 2-349 to 2-350. Pursuant to this test, a person may not hold

¹ For the purpose of this opinion, a “trustee” of a private, nonprofit corporation is the same as a “director” of the private, nonprofit corporation. *See* R.C. 1702.01(K) (“[d]irectors’ means the persons vested with the authority to conduct the affairs of the corporation irrespective of the name, such as trustees, by which they are designated”). Although R.C. Chapter 1702 uses the term “directors,” we have used the term “trustees” to be consistent with the designation in the Articles of Incorporation and the Bylaws of the Clermont County Convention and Visitors Bureau.

² This opinion does not determine whether the Clermont County Convention and Visitors Bureau constitutes a public office for the purpose of the public records law or open meetings law.

simultaneously a public office and another position if performance of the duties of the positions will subject the person to an impermissible conflict of interest. *Id.* at 2-349. “A public office is a public trust and the prosecution of such a trust must always be consonant with the fiduciary and confidential relationship that the office imposes.” *Halliday v. Norfolk & W. Ry. Co.*, 2d Dist. No. 3767, 62 N.E.2d 716, 719 (Franklin County 1945); *accord* 2016 Op. Att’y Gen. No. 2016-011, at 2-112. 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.’” 1989 Op. Att’y Gen. No. 89-052, at 2-220 (quoting 1985 Op. Att’y Gen. No. 85-100, at 2-427). Furthermore, “a conflict of interest exists when a public servant is subject to divided loyalties and conflicting duties or exposed to the temptation of acting other than in the best interest of the public.” 1998 Op. Att’y Gen. No. 98-033, at 2-188 to 2-189.

Determining whether a conflict of interest exists between multiple positions requires an examination of the powers and duties of each position.³ A board of county commissioners manages and administers the county’s affairs. 2006 Op. Att’y Gen. No. 2006-041, at 2-398; *see generally* R.C. Chapter 307 (general powers and duties of a board of county commissioners). The responsibilities of a board of county commissioners include:

procuring group health or life insurance for county employees, R.C. 305.171, compounding or releasing debts, judgments, fines, or amercements due the county and for the use thereof, R.C. 305.26, providing offices for county officers, R.C. 307.01; R.C. 307.02, entering into contracts on behalf of the county, *see, e.g.*, R.C. 9.60; R.C. 307.15-.153; R.C. 307.671-.674, and providing fire protection, ambulance, emergency medical, and nonemergency patient transport services, *see, e.g.*, R.C. 9.60; R.C. 307.05; R.C. 307.052.

2006 Op. Att’y Gen. No. 2006-041, at 2-398. A board of county commissioners is also responsible for the following fiscal and budgetary matters for the county:

A board of county commissioners is made the taxing authority of the county for purposes of R.C. Chapters 133 (uniform public securities law) and 5705 (tax levy law). *See* R.C. 133.01(NN)(1); R.C. 5705.01(C). In this capacity, county commissioners may issue securities for the purpose of providing funds with which to pay one or more final judgments rendered against the county, R.C. 133.14;

³ Insofar as the Ohio Ethics Commission is authorized to determine the applicability of the ethics and conflict of interest provisions of R.C. Chapter 102 and R.C. 2921.42-43, R.C. 102.08, the Attorney General “refrain[s] from interpreting and applying [those] provisions by way of a formal opinion.” 2011 Op. Att’y Gen. No. 2011-008, at 2-60 n.1. Thus, we recommend that you contact the Ohio Ethics Commission for a determination of whether the provisions of R.C. Chapter 102, R.C. 2921.42, or R.C. 2921.43 apply to the positions addressed in this opinion.

issue securities for the purpose of paying all or any portion of the costs of any permanent improvement that the county is authorized to acquire, improve, or construct, R.C. 133.15; issue general obligation bonds, R.C. 133.18; prepare the county's annual tax budget, R.C. 5705.28; and levy taxes, *see, e.g.*, R.C. 133.25; R.C. 5705.03; R.C. 5705.07; R.C. 5705.19.

2006 Op. Att'y Gen. No. 2006-041, at 2-398.

According to the Articles of Incorporation of the Clermont County Convention and Visitors Bureau, Inc. ("Articles of Incorporation"), the purposes of the Clermont County Convention and Visitors Bureau are:

- To promote conventions and tourism within Clermont County, Ohio,
- To provide a service of advice, direction and assistance to persons desiring to visit or hold conventions in Clermont County, Ohio,
- To promote, foster and encourage the employment and utilization of the commercial, historical, political and natural resources of Clermont County, Ohio,
- To participate in the publicity of events, fairs, festivals, attractions, natural resources, historical sites, and facilities within Clermont County, Ohio,
- To cooperate with the communities, organizations and other entities within Clermont County, Ohio in their activities for the development of events and attractions,
- To prepare, compile, distribute and disseminate information and data of all kinds which may be useful in furthering the purposes of this corporation,
- To print, broadcast, publish, distribute and circulate among the general public advertisements, books, maps, pamphlets, periodicals, papers and magazines in connection with the activities of the corporation,
- To initiate and assist activities in the best interests of Clermont County, Ohio, and
- To purchase, lease or hire real property, services, materials and goods in the furtherance of these purposes[.]

Article II, Section 1 of the Bylaws of the Clermont County Convention and Visitors Bureau, Inc. ("Bylaws") states that "[t]he government and policy-making responsibilities of the Bureau shall be vested in the Board of Trustees ..., which shall control its property, be responsible for its finances, and direct its affairs." Article II, Section 2 of the Bylaws sets forth the following specific powers of the Board of Trustees:

- A. Purchase or otherwise acquire, lease as lessee, invest in, hold use, lease or leaser, encumber, sell, exchange, transfer, and dispose of property of any description or any interest in property of any description;
- B. Make contracts;
- C. Form or acquire the control of domestic or foreign nonprofit corporations or corporations for profit;

- D. Be a partner, member, associate, or participant in other enterprises or ventures, whether profit or nonprofit;
- E. Borrow money, and issue, sell, and pledge its notes, bonds, and other evidences of indebtedness, and secure any of its obligations by mortgage, pledge, or deed of trust, of all or any of its property, and guarantee or secure obligations of any person;
- F. Become a member of another corporation;
- G. Conduct its affairs in this state and elsewhere;
- H. Resist a change or potential change in control of the corporation, if the trustees, by a majority vote of a quorum, determine that the change of [*sic*] potential change is opposed to or not in the best interests of the corporation, upon consideration of any of the matters set forth in division (E) of section 1702.30 of the Revised Code[.]

The Board of Trustees is also “responsible for establishing procedure and formulating policy of the organization.” Bylaws, Art. II, Sec. 5.

The Treasurer of the Board of Trustees of the Clermont County Convention and Visitors Bureau is an officer and member of the Board of Trustees. Article III, Section 2 of the Bylaws states that “[t]he duties of the officers shall be such as their titles, by general usage would indicate, such as required by law, and such as may be assigned to them respectively by the [Board of Trustees] from time to time.” The Treasurer keeps the books and accounts of the Clermont County Convention and Visitors Bureau. The Treasurer is also a member of the Executive Committee, which is responsible for adopting the budget of the Bureau and for approving and ordering disbursements of the Bureau’s moneys or property.⁴

Our review of the powers and duties of these positions reveals a significant potential conflict of interest. As the taxing authority for the county, a board of county commissioners is responsible for preparing and adopting the county’s annual tax budget. R.C. 5705.01(C); R.C. 5705.28(A); 2012 Op. Att’y Gen. No. 2012-008, at 2-53. Every department, board, commission, and district authority that may receive any appropriation of revenue of the county is required to file an estimate of contemplated revenue and expenditures with the board of county commissioners to assist the commissioners in the preparation of the county’s tax budget. R.C. 5705.28(C)(1). The county’s tax budget shall include, *inter alia*, “[a] statement of the necessary current operating expenses for the ensuing year for each department and division of the [county] ... and the fund from which such

⁴ Your letter asks whether a Clermont County Commissioner may hold simultaneously the positions of member or Treasurer of the Board of Trustees of the Clermont County Convention and Visitors Bureau. Because the Treasurer is also a member of the Board of Trustees, the conflicts of interest that exist between the positions of Clermont County Commissioner and member of the Board of Trustees of the Clermont County Convention and Visitors Bureau also confront a member of the Board of Trustees who is also the Treasurer of the Board of Trustees.

expenditures are to be made.” R.C. 5705.29(A)(1). Following submission of the tax budget to the county budget commission, the board of county commissioners shall pass an appropriation measure and may pass supplemental appropriation measures as needed during the fiscal year. R.C. 5705.38(A). “Appropriation measures shall be classified so as to set forth separately the amounts appropriated for each office, department, and division[.]” R.C. 5705.38(C).

As part of the county’s annual appropriation measure, the board of county commissioners may adopt a spending plan (or an amended spending plan for a supplemental appropriation measure). R.C. 5705.392(A). A county’s spending plan “set[s] forth a quarterly schedule of expenses and expenditures of all appropriations for the fiscal year from the county general fund.” *Id.* The schedule established in the spending plan limits the expenses of and expenditures made by the offices, departments, and divisions of the county. *Id.* Every appropriation of county moneys shall be made as provided in R.C. Chapter 5705. R.C. 5705.41(A). Pursuant to R.C. 307.693, “[a] board of county commissioners may appropriate moneys from the general fund to make contributions to convention and visitors’ bureaus operating within the county.” Thus, a Clermont County Commissioner who is also a member or Treasurer of the Board of Trustees of the Clermont County Convention and Visitors Bureau may be required to discuss, deliberate, or vote on appropriations for the Clermont County Convention and Visitors Bureau, as well as, appropriations for other purposes.

The county’s general fund is a finite pool of moneys. When moneys are appropriated for one purpose, less moneys are available for another purpose. In this regard, entities that are entitled to moneys appropriated from the county’s general fund are in opposition to one another. A county commissioner who is also a member or Treasurer of the Board of Trustees of the Clermont County Convention and Visitors Bureau may be unable to impartially determine whether an appropriation to the Bureau is necessary, and if so, the amount of the appropriation that should be made. Moreover, his position as member or Treasurer of the Board of Trustees of the Clermont County Convention and Visitors Bureau may unduly influence the decisions that he makes with respect to appropriations from the general fund to entities or offices other than the Clermont County Convention and Visitors Bureau. To ensure that county moneys are available for appropriations benefiting the Bureau he may be inclined to discourage appropriations for entities or purposes unrelated to the Bureau. Holding both positions simultaneously may make it difficult for the person to be impartial as a county commissioner and to act solely in the interests of the county and the other agencies and offices of county government that benefit from appropriations from the county’s general fund. A county commissioner who also serves an entity that may receive an appropriation of county moneys may find himself subject to divided loyalties when he tries to balance the interests of that entity against the financial needs of the other county entities entitled to share in county general fund moneys. *See* 2014 Op. Att’y Gen. No. 2014-004, at 2-27 (“[w]hen a county commissioner who serves within the same county as an education specialist for the [soil and water conservation district (SWCD)] deliberates, discusses, or votes on county budgetary matters, it may be difficult for the commissioner to exercise his discretion to allocate county moneys in an objective and disinterested manner because of the employment relationship he has with the SWCD”); 2006 Op. Att’y Gen. No. 2006-041, at 2-401 (“[w]hen a county commissioner who serves as a member of the county board of elections deliberates, discusses, or votes in

matters concerning the payment of the expenses of the county board of elections, it may be difficult for the commissioner to exercise her discretion to allocate county moneys in an objective and disinterested manner because of her position as a member of the county board of elections”); 2002 Op. Att’y Gen. No. 2002-022, at 2-145 (“in the execution of his duty as county commissioner to adopt the county’s annual appropriation measure, an individual who was also director of the county’s children services board would be subject to divided loyalties, trying to balance the needs of the county board of which he is director against the competing financial needs of other entities entitled to participate in county funds” (footnote omitted)); 1988 Op. Att’y Gen. No. 88-033, at 2-149 (“[t]he capacity of a trustee to exercise clear judgment on behalf of the township in determining whether the other body should receive the moneys would be drawn into question if the trustee held a position of trust and authority with the other body”); 1985 Op. Att’y Gen. No. 85-029, at 2-107 (“[i]t is apparent that as a trustee of a regional airport authority [that is entitled to an appropriation of county moneys], a person would be interested in obtaining the most possible money from the county. A county commissioner, however, must balance the needs of the airport authority against, other, competing financial demands faced by the county”). Such divided loyalties and the potential to be partial in decisions made with respect to fiscal and budgetary matters of the county clearly constitutes a conflict of interest.

Finding the existence of a potential conflict of interest between two positions does not necessarily mean that a person is prohibited from holding both positions. 1998 Op. Att’y Gen. No. 98-033, at 2-189. Rather, whether a potential conflict of interest renders two positions incompatible depends upon the immediacy of the conflict and whether it may be sufficiently avoided or eliminated entirely. *Id.* As stated in 2006 Op. Att’y Gen. No. 2006-010, at 2-86 to 2-87:

The pertinent factors used in making this determination include, but are not limited to, the probability of the conflict, the ability of the person to remove himself from the conflict (should it arise), whether the person exercises decision-making authority in both positions, and whether the conflict relates to the primary functions of each position, or to financial or budgetary matters.

Upon examination of those factors, we conclude that the conflict of interest may not be sufficiently avoided or eliminated entirely. First, the potential conflict of interest is not remote or speculative and is likely to arise on an annual basis. We understand that, to date, the sole source of public moneys contributed to the Clermont County Convention and Visitors Bureau is a hotel lodging excise tax levied pursuant to R.C. 5739.09, rather than an appropriation from the county general fund pursuant to R.C. 307.693. However, a county commissioner is required annually to prepare and adopt a tax budget and appropriation measure, which requires that he make decisions about the appropriation of general fund moneys of the county. Numerous decisions made by a county commissioner throughout a fiscal year affect the expenditure of county general fund moneys. A person who is a Clermont County Commissioner and a member or Treasurer of the Board of Trustees of the Clermont County Convention and Visitors Bureau exercises decision-making authority regarding budgetary and fiscal matters in both positions. And, the preparation of a tax budget and appropriation measure is a primary function and essential duty of the office of county commissioner

that requires independent decision-making that cannot be delegated to another person. 2012 Op. Att’y Gen. No. 2012-008, at 2-55; *see also* 2011 Op. Att’y Gen. No. 2011-048, at 2-385.

Furthermore, insofar as the adoption of a tax budget and appropriation measures are matters that occur on an annual basis and many of the regular duties and responsibilities of a county commissioner may affect the allocation of general fund moneys, it is impractical for a county commissioner to remove himself from the conflict of interest by continually recusing from the county’s fiscal and budgetary matters. *See* 2014 Op. Att’y Gen. No. 2014-004, at 2-28; 2012 Op. Att’y Gen. No. 2012-008, at 2-55; 2006 Op. Att’y Gen. No. 2006-041, at 2-405; 1988 Op. Att’y Gen. No. 88-011, at 2-43. Therefore, we conclude that a Clermont County Commissioner who serves simultaneously as a member or Treasurer of the Board of Trustees of the Clermont County Convention and Visitors Bureau is subject to an impermissible conflict of interest attributable to the county commissioner’s duties under R.C. 307.693 and R.C. Chapter 5705. The conflict of interest cannot be sufficiently avoided or eliminated entirely, and, thus, the positions are incompatible. *See generally* 1985 Op. Att’y Gen. No. 85-029, at 2-107 (“[i]t is well established that where one public position has the power to appropriate funds to a second position, one person may not serve in both positions”); 1985 Op. Att’y Gen. No. 85-006, at 2-19 (“[w]here ... a statute gives a member of a particular body the authority to participate directly in a determination as to whether that public body or a different public body is to obtain the benefit of certain funds, I believe that it must be concluded, as a matter of law, that an individual may not serve in positions of trust and authority with respect to both bodies”).

Because we have concluded that the conflict of interest attributable to the county commissioner’s duties under R.C. 307.693 and R.C. Chapter 5705 renders the positions of Clermont County Commissioner and member or Treasurer of the Clermont County Convention and Visitors Bureau incompatible, it is unnecessary for us to examine the existence or immediacy of the other conflicts of interest. Nevertheless, we are aware of, and mention briefly, other potential conflicts of interest involving the positions.

First, R.C. 5739.09(A)(1) authorizes a board of county commissioners to levy a hotel lodging excise tax of up to three percent upon transactions by which lodging by a hotel is provided to transient guests. Revenue from the excise tax that remains after returning a uniform percentage to applicable municipal corporations and townships “shall be deposited in a separate fund and shall be spent solely to make contributions to the convention and visitors’ bureau operating within the county.” R.C. 5739.09(A)(1). Several divisions of R.C. 5739.09 authorize boards of county commissioners in certain counties and under certain circumstances to levy additional hotel lodging excise taxes or to increase the rate at which a hotel lodging excise tax is levied. In particular, R.C. 5739.09(A)(12)(b) authorizes an eligible county⁵ to increase the rate

⁵ For the purpose of R.C. 5739.09(A)(12), an “eligible county” is “a county that has a population greater than one hundred ninety thousand and less than two hundred thousand according to the 2010 federal decennial census and that levies an excise tax under [R.C. 5739.09(A)(1)] at a rate of three per cent.” R.C. 5739.09(A)(12)(a)(1).

of a hotel lodging excise tax that has been levied pursuant to R.C. 5739.09(A)(1) by one percent. The revenue generated by the increase in rate “shall be used for the purposes of paying the costs of constructing, improving, and maintaining a professional sports facility in the county and paying expenses considered necessary by the convention and visitors’ bureau operating in the county to promote travel and tourism with respect to that professional sports facility.” R.C. 5739.09(A)(12)(b). “The tax shall take effect only after the convention and visitors’ bureau enters into a contract for the construction, improvement, or maintenance of a professional sports facility that is or will be located on property acquired, in whole or in part, with revenue from the increased rate[.]” *Id.*

A Clermont County Commissioner who also serves as a member or Treasurer of the Board of Trustees of the Clermont County Convention and Visitors Bureau may be required to discuss, deliberate, or vote on whether to increase the rate at which the hotel lodging excise tax is levied in Clermont County. He may find it difficult to be completely objective when deciding whether to increase the rate at which the hotel lodging excise tax is levied when the revenue resulting from the increase in rate shall be used for paying costs that the Bureau deems necessary. Accordingly, holding the position of member or Treasurer of the Board of Trustees of the Clermont County Convention and Visitors Bureau simultaneously with the office of Clermont County Commissioner may influence the decisions that person makes as a county commissioner. Such divided loyalties and the possibility that his position as member of the Board of Trustees may influence the performance of his responsibilities as a county commissioner present a potential conflict of interest.

Another potential conflict of interest concerns the Clermont County Board of Commissioners’ authority to enter into an agreement with the Clermont County Convention and Visitors Bureau. As part of managing and administering the affairs of the county, a board of county commissioners has the authority to enter into contracts on behalf of the county. 2006 Op. Att’y Gen. No. 2006-041, at 2-398; *see also* 2013 Op. Att’y Gen. No. 2013-017 (syllabus, paragraph 3) (“[a] board of county commissioners may enter into only those contracts for which the board has statutory authority, either granted expressly or necessarily by implication”). A board of county commissioners may enter into agreements directly with a convention and visitors’ bureau. *See, e.g.*, R.C. 307.695(B) (authorizes a board of county commissioners and a convention and visitors’ bureau operating in the county to agree that the convention and visitors’ bureau will construct and equip a convention center in the county and the board of county commissioners will levy a hotel lodging excise tax under R.C. 5739.09(C)); R.C. 307.695(E) (a board of county commissioners may lease real property to the convention and visitors’ bureau to be used for the convention center).

A county commissioner “has a fiduciary duty as an agent of the people of the county.” 1984 Op. Att’y Gen. No. 84-097, at 2-331. A member or Treasurer of the Board of Trustees of the Clermont County Convention and Visitors Bureau owes a fiduciary duty to the Bureau and shall act in the best interests of the Bureau. R.C. 1702.30(B); 1984 Op. Att’y Gen. No. 84-097, at 2-331 (“[t]he trustee of a non-profit corporation, as an agent of the corporate members, bears a ... responsibility to faithfully execute the trust which the law and the corporate articles and regulations impose”). Although the interests of the county and the interests of a convention and

visitors' bureau operating in the same county may align, participating on both sides of an agreement exposes the person to divided loyalties and the possibility that his responsibilities as a member or Treasurer of the Board of Trustees of the Clermont County Convention and Visitors Bureau will interfere with the performance of his duties as Clermont County Commissioner. In addition, a Clermont County Commissioner who is also a member or Treasurer of the Board of Trustees of the Clermont County Convention and Visitors Bureau may find it difficult to maintain impartiality when negotiating contracts in which, by virtue of his position as member or Treasurer of the Board of Trustees of the Clermont County Convention and Visitors Bureau, he is directly or indirectly concerned. Being concerned, directly or indirectly, in a contract of the county, as a result of being a member or Treasurer of the Board of Trustees of the Clermont County Convention and Visitors Bureau, may result in a temptation to act other than purely in the interest of the county when negotiating a contract that involves or may affect the interests or activities of the Clermont County Convention and Visitors Bureau.

Finally, it is important to consider R.C. 305.27, which prohibits a county commissioner from "be[ing] concerned, directly or indirectly, in any contract for work to be done or material to be furnished for the county." *See generally* 1984 Op. Att'y Gen. No. 84-097, at 2-327 (adopting the following definition of "concern" for the purpose of R.C. 305.27: "[t]o pertain, relate, or belong to; be of interest or importance to; have connection with; to have reference to; to involve; to affect the interest of" (quoting *Black's Law Dictionary* 262 (5th ed. 1979))). If the Clermont County Commissioner, by virtue of being a member or Treasurer of the Board of Trustees of the Clermont County Convention and Visitors Bureau is concerned, directly or indirectly, in a contract for work to be done or material to be furnished to Clermont County in violation of R.C. 305.27, he is prohibited from simultaneously holding the positions.⁶ Refraining from participation in any discussions, deliberations, negotiations, or votes regarding contracts in which a county commissioner is directly or indirectly concerned does not negate the county commissioner's prohibited concern in a contract, once that contract is executed. *See* 2016 Op. Att'y Gen. No. 2016-

⁶ In 1991 Op. Att'y Gen. No. 91-007, at 2-37 to 2-38, the Attorney General adopted four criteria established by the Ohio Ethics Commission that shall be met in order to conclude that a public official, who also serves as an officer, board member, or member of a private organization, does not have a prohibited personal interest in a contract between the public entity and the private organization in violation of R.C. 305.27. As applied to a county commissioner and a nonprofit corporation, those four criteria are:

- (1) the county has created or participated in the nonprofit corporation;
- (2) the board of county commissioners formally designates the offices in question to represent the county;
- (3) the county commissioners are formally instructed to represent the county and its interests; and
- (4) there is no other conflict of interest on the part of a particular county commissioner.

034, at 2-405 (“[t]he person’s abstention from any discussions, negotiations, decision-making, or votes regarding the contract prior to its execution does not affect the application of R.C. 511.13 [(prohibiting a township trustee from having an interest in a township contract)] and R.C. 731.12 [(prohibiting a member of a village legislative authority from having an interest in a contract of the village)] once a contract has been reached”); 2008 Op. Att’y Gen. No. 2008-002, at 2-12 to 2-13 (“a prohibition against having an interest in a contract ‘establishes a standard that cannot be met simply by abstaining from participating in particular matters’” (quoting 2000 Op. Att’y Gen. No. 2000-025, at 2-91)). Therefore, the positions of Clermont County Commissioner and member or Treasurer of the Board of Trustees of the Clermont County Convention and Visitors Bureau are incompatible upon execution of a contract in which the Clermont County Commissioner is directly or indirectly concerned in violation of R.C. 305.27.

Based upon the foregoing, it is my opinion, and you are hereby advised that a Clermont County Commissioner who serves simultaneously as a member or Treasurer of the Board of Trustees of the Clermont County Convention and Visitors Bureau is subject to an impermissible conflict of interest arising from the possibility that the Clermont County Board of Commissioners may appropriate general fund moneys of the county to the Clermont County Convention and Visitors Bureau. The conflict of interest cannot be sufficiently avoided or eliminated entirely, and, thus, the positions of Clermont County Commissioner and member or Treasurer of the Board of Trustees of the Clermont County Convention and Visitors Bureau 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