

OPINION NO. 2007-037

Syllabus:

1. A person may serve simultaneously as a township trustee and mineral resources inspector in the classified service of the Ohio

Department of Natural Resources, provided that the township does not engage in coal or surface mining operations and the position of township trustee is normally filled by nonpartisan election. (1988 Op. Att'y Gen. No. 88-017, questioned.)

2. A mineral resources inspector for the Ohio Department of Natural Resources who also serves as a township trustee may not participate in inspections or investigations that entail a consideration of the effect that mining and reclamation operations have on land owned or leased by, and roads under the jurisdiction of, the township.

To: Sean D. Logan, Director, Ohio Department of Natural Resources, Columbus, Ohio

By: Marc Dann, Attorney General, October 23, 2007

You have requested an opinion whether the positions of township trustee and mineral resources inspector in the classified service of the Ohio Department of Natural Resources (ODNR) are compatible. For the reasons that follow, these two positions are compatible, provided that the township does not engage in coal or surface mining operations and the position of township trustee is normally filled by nonpartisan election. In addition, the person as a mineral resources inspector for ODNR may not participate in inspections or investigations that entail a consideration of the effect that mining and reclamation operations have on land owned or leased by, and roads under the jurisdiction of, the township.

Compatibility Test

The following seven questions are used to determine whether two public positions are compatible:

1. Is either of the positions a classified employment within the terms of R.C. 124.57?
2. Does a constitutional provision or the empowering statutes of either position limit employment in another public position or the holding of another public office?
3. Is one position subordinate to, or in any way a check upon, the other?
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 which are controlling?
7. Is there a federal, state, or local departmental regulation applicable?

2006 Op. Att’y Gen. No. 2006-047 at 2-447. *See generally* [2006-2007 Monthly Record] Ohio Admin. Code 123:1-46-02(F), at p. 4039 (“[s]ervice in an appointed or elected position is prohibited when such position is subordinate to or in any way a check upon a position concurrently occupied by a classified or unclassified employee, or when it is physically impossible for one person to discharge the duties of both positions, or if some specific constitutional or statutory bar exists prohibiting a person from serving [in] both positions”).

Questions six and seven of the compatibility test concern the applicability of charter provisions, resolutions, or ordinances, and federal, state, and local regulations. No federal or state regulation or local charter provision prohibits a person from serving simultaneously as a township trustee and mineral resources inspector for ODNR. *See generally* note seven, *infra* (discussing the application of 5 U.S.C. § 1502(a)(3) to the situation presented in your letter). Whether an applicable local resolution, ordinance, or departmental regulation prohibits a person from holding the two positions at the same time is a question for township and ODNR officials to answer. For the purpose of this opinion, it is assumed that no local resolution, ordinance, or departmental regulation prohibits the dual service in question.¹

Discussion of R.C. 124.57

Question one of the compatibility test asks whether either of the positions is a classified employment within the terms of R.C. 124.57, which prohibits officers and employees in the classified service of the state and civil service townships from taking part in a variety of activities that occur as part of the regular political process

¹ A collective bargaining agreement entered into by the state and employees of the Ohio Department of Natural Resources (ODNR) pursuant to R.C. Chapter 4117 may have a provision that might prohibit an employee of ODNR in a given instance from holding another public position. *See generally* R.C. 4117.03(A)(4) (state employees are authorized to bargain collectively with the state “to determine wages, hours, terms and other conditions of employment and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement, and enter into collective bargaining agreements”); R.C. 4117.08(A) (“[a]ll matters pertaining to wages, hours, or terms and other conditions of employment and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement are subject to collective bargaining between the public employer and the exclusive representative, except as otherwise specified in this section and [R.C. 4117.03(E)]”); R.C. 4117.10(A) (“[a]n agreement between a public employer and an exclusive representative entered into pursuant to [R.C. Chapter 4117] governs the wages, hours, and terms and conditions of public employment covered by the agreement”). Whether the provisions of a collective bargaining agreement apply in a given instance so as to prohibit an employee of ODNR from holding the office of township trustee must be determined on a case-by-case basis by the parties to the agreement. *See generally* 1991 Op. Att’y Gen. No. 91-065 at 2-311 (it is not within the authority of the Attorney General “to render an opinion as to the meaning of language in a specific collective bargaining agreement”).

and are partisan in nature.² This statute has been construed as prohibiting an officer or employee in the classified service of the state or a civil service township from being elected to a public office in a partisan election or accepting a party-sponsored appointment to a public office that is normally filled by partisan election.³ See rule 123:1-46-02(C); 2001 Op. Att’y Gen. No. 2001-034 at 2-202. R.C. 124.57 does not, however, prohibit such a classified officer or employee from being elected to a public office in a nonpartisan election or accepting appointment to a public office that is normally filled by nonpartisan election. 2001 Op. Att’y Gen. No. 2001-034 at 2-203; see rule 123:1-46-02(C). R.C. 124.57 thus “does the following: it prohibits an officer or employee in the classified service from seeking election or appointment to, or holding, a partisan political office, or engaging in other partisan political activities, and it prevents a partisan political officeholder from serving simultaneously as an officer or employee in the classified service.” 2003 Op. Att’y Gen. No. 2003-041 at 2-336; see rule 123:1-46-02(C).

We must determine whether the person as a township trustee or mineral resources inspector for ODNR is subject to the restrictions set forth in R.C. 124.57. The office of township trustee is in the unclassified service because, *inter alia*, it is an elected position. See R.C. 124.11(A)(1); R.C. 505.01. See generally also 2003 Op. Att’y Gen. No. 2003-041 at 2-337 and 2-338 (since R.C. 124.57 only applies to officers and employees in the service of civil service townships,⁴ R.C. 124.57 does not apply to a township trustee in the service of a township that is not a civil service township, and since the classified service of a civil service township is limited to

² The relevant portions of R.C. 124.57 read as follows:

No officer or employee in the classified service of the state ... or the civil service townships of the state shall directly or indirectly, orally or by letter, solicit or receive, or be in any manner concerned in soliciting or receiving, any assessment, subscription, or contribution for any political party or for any candidate for public office; ... nor shall any officer or employee in the classified service of the state ... or the civil service townships of the state be an officer in any political organization or take part in politics other than to vote as the officer or employee pleases and to express freely political opinions. (Emphasis added.)

³ The terms of a collective bargaining agreement may permit an officer or employee in the classified service of the state to participate in partisan politics. See 1991 Op. Att’y Gen. No. 91-065 (syllabus, paragraph one).

⁴ For purposes of R.C. Chapter 124, the term “[c]ivil service township” means any township with a population of ten thousand or more persons residing within the township and outside any municipal corporation, which has a police or fire department of ten or more full-time paid employees, and which has a civil service commission established under [R.C. 124.40(B)].” R.C. 124.01(G). See generally R.C. 124.40(B) (“[t]he board of trustees of a township that has a population of ten thousand or more persons residing within the township and outside any municipal corporation and that has a police or fire department of ten or more full-time paid employees may appoint three persons to constitute the township civil service commission”).

persons employed by civil service township police and fire departments, *see* R.C. 124.40(B), R.C. 124.57 does not apply to a township trustee in the service of a civil service township). Hence, R.C. 124.57 does not apply to the office of township trustee. *See generally* rule 123:1-46-02(E) (“[e]mployees in the unclassified service, who serve at the pleasure of the appointing authority and are not subject to competitive examination, are not prohibited from engaging in political activity unless specifically precluded by federal or state constitutional or statutory provisions”).

You have informed us that the position of mineral resources inspector for ODNR is in the classified service of the state.⁵ *See generally* R.C. 124.11(B) (the classified service of the state comprises all positions “not specifically included in the unclassified service” of the state). You have also informed us that the office of township trustee is normally filled by nonpartisan election.⁶ As explained above, R.C. 124.57 does not prohibit a person in the classified service of the state from serving in a position that is normally filled by nonpartisan election. Accordingly, the prohibition of R.C. 124.57 does not operate to prevent a person from holding simultaneously the positions of township trustee and mineral resources inspector in the classified service of ODNR when the position of township trustee is normally filled by nonpartisan election.⁷

⁵ Positions specifically included in the unclassified service are set forth in R.C. 124.11(A) and various other statutes throughout the Revised Code. Under R.C. 124.11(A), “[s]ome of these positions are identified by title; others are identified more generally by specifying particular characteristics that will render a position unclassified.” 1998 Op. Att’y Gen. No. 98-020 at 2-105 n.3. *Compare* R.C. 124.11(A)(4) (“[t]he members of county or district licensing boards or commissions and boards of revision, and not more than five deputy county auditors”) with R.C. 124.11(A)(9) (“[t]he deputies and assistants of state agencies authorized to act for and on behalf of the agency, or holding a fiduciary or administrative relation to that agency”).

⁶ Candidates for township trustee are nominated by petition, rather than in a primary election, unless a majority of the township electors petition for a primary election. R.C. 3513.01; R.C. 3513.253. Candidates for election to trustee in a township in which primary elections are not held for nomination of candidates by political parties appear on a nonpartisan ballot. R.C. 3505.04; *see also* R.C. 3513.01.

⁷ 5 U.S.C. § 1502(a)(3) provides that “[a] State or local officer or employee may not ... be a candidate for elective office.” 5 U.S.C. § 1501(4), in turn, defines a “[s]tate or local officer or employee” as

an individual employed by a State or local agency whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or Federal agency, but does not include ... an individual who exercises no functions in connection with that activity[.]

Constitutional Provisions and Statutes Prohibiting the Holding of Another Public Position

Question two of the compatibility test asks whether a constitutional provision or the empowering statutes of either position prohibit a person from serving simultaneously as a township trustee and mineral resources inspector for ODNR. R.C. 1513.04, which prohibits certain activities by employees of ODNR who perform a function or duty under R.C. Chapter 1513 or 1514, sets forth an instance under which a person may not hold the positions of township trustee and mineral resources inspector for ODNR at the same time.

R.C. 1513.04(C) provides that no employee of ODNR “performing any function or duty under [R.C. Chapter 1513 or 1514] shall ... [b]e employed as an attorney, agent, or in any other capacity by any person engaged in coal or surface mining operations.” Moreover, an employee of ODNR who violates R.C. 1513.04(C) “shall be removed from office or dismissed from employment.” R.C. 1513.04.

Pursuant to R.C. 1513.03, R.C. 1513.09, and R.C. 1514.50, a mineral resources inspector for ODNR is responsible for enforcing the coal mining laws and the surface mining laws set forth in R.C. Chapters 1513 and 1514. Also, for purposes of R.C. 1513.04, the term “person” includes, among others, “any political subdivision ... of this state.” R.C. 1513.01(M). Thus, insofar as a township is a political subdivision of this state, *see* 2002 Op. Att’y Gen. No. 2002-038 at 2-244; *see also* 1972 Op. Att’y Gen. No. 72-035, a person is prohibited by R.C. 1513.04 from serving simultaneously as a mineral resources inspector for ODNR and trustee of a township that engages in coal or surface mining operations.⁸

A review of the powers, duties, and responsibilities of a board of township

Thus, pursuant to 5 U.S.C. § 1502(a)(3), if a mineral resources inspector for ODNR is employed principally “in connection with an activity which is financed in whole or in part by loans or grants made by the United States or Federal agency,” and exercises some function in connection with that activity, the mineral resources inspector may not be a candidate for elective office.

5 U.S.C. § 1503, however, provides that 5 U.S.C. § 1502(a)(3) does not prohibit a state or local officer or employee from being a candidate in a nonpartisan election. You have informed us that the office of township trustee is normally filled by nonpartisan election. *See* note six, *supra*. Accordingly, 5 U.S.C. § 1502(a)(3) does not prohibit a mineral resources inspector for ODNR from being a candidate for the office of township trustee when the office is normally filled by nonpartisan election.

⁸ A township trustee is an officer, rather than an employee. *See generally* Ohio Const. art. X, § 2 (“[t]he general assembly shall provide by general law for the election of such township officers as may be necessary”); R.C. 505.01 (election of township trustees). It thus could be argued that a township trustee who also serves as a mineral resources inspector for ODNR is not “employed” by a person engaged in coal or surface mining operations when the township engages in coal or surface

trustees discloses that situations may arise in which township trustees may participate in mining operations. For example, R.C. 505.11(B) states, if a board of township trustees executes a lease or contract for the mining of coal on township land, the rent or royalty from such lease or contract must be paid into the township treasury:

When, in its opinion, the township would be benefited, the board of township trustees may execute and deliver contracts or leases to mine iron ore, stone, coal, petroleum, gas, salt, and other minerals upon lands owned by the township, to any person complying with the terms prescribed by the board as to consideration, rights of way, and occupancy of ground for necessary purposes.... The consideration for the contracts and leases shall be rental or royalty as is prescribed by the board, and

mining operations. *See generally State ex rel. Milburn v. Pethtel*, 153 Ohio St. 1, 90 N.E.2d 686 (1950) (syllabus, paragraph one) (“[a] public officer, as distinguished from an employee, is one who is invested by law with a portion of the sovereignty of the state and who is authorized to exercise functions either of an executive, legislative, or judicial character”).

It is, however, a codified principle of statutory construction that words are to be construed in the context in which they are used. R.C. 1.42; *see also State v. Dickinson*, 28 Ohio St. 2d 65, 70, 275 N.E.2d 599 (1971) (the same word may have different meanings when it is used in different contexts). R.C. 1513.04(C) states that a mineral resources inspector for ODNR may not “[b]e employed as an ... agent ... by any person engaged in coal or surface mining operations.” (Emphasis added.) By using the words “employed as an agent” in R.C. 1513.04(C), it appears that the General Assembly intended to include within the ambit of R.C. 1513.04’s prohibition a person who is authorized to act for a township that is engaged in coal or surface mining operations. *See generally Black’s Law Dictionary* 68 (8th ed. 2004) (an “agent” is “[o]ne who is authorized to act for or in place of another”); *id.* at 564 (the term “employ” means, *inter alia*, “[t]o use as an agent or substitute in transacting business ... [t]o commission and entrust with the performance of certain acts or functions or with the management of one’s affairs”).

Under Ohio law, a township acts through its board of township trustees. *See State ex rel. Smead v. Trustees of Union Twp.*, 8 Ohio St. 394, 1858 Ohio LEXIS 110 (1858); *see, e.g.*, R.C. 503.01 (the board of township trustees shall hold the township’s real and personal property in trust for the township); R.C. 505.10 (“[t]he board of township trustees may accept, on behalf of the township, the donation by bequest, devise, deed of gift, or otherwise, of any real or personal property for any township use”); R.C. 505.262 (“the board of township trustees ... may adopt a resolution allowing the township to contract for the purchase of equipment, buildings, and sites, or for the construction of buildings, for any lawful township purpose”). A township trustee, therefore, is an agent of the township for purposes of R.C. 1513.04(C), and, as such, a mineral resources inspector for ODNR is prohibited by R.C. 1513.04(C) from serving as a trustee of a township that engages in coal or surface mining operations.

shall be payable, as prescribed in the contract or lease, at least once a year to the township fiscal officer, who shall give a receipt for the amount and deposit it in the township general fund.

This statute thus authorizes a board of township trustees to “execute and deliver contracts or leases to mine iron ore, stone, coal, petroleum, gas, salt, and other minerals upon lands owned by the township, to any person complying with the terms prescribed by the board as to consideration, rights of way, and occupancy of ground for necessary purposes.” If a board of township trustees executes such a contract or lease, the township engages in coal or surface mining operations. *See generally Black’s Law Dictionary* 570 (8th ed. 2004) (the word “engage” means “[t]o employ or involve oneself; to take part in; to embark on”).

When this occurs, R.C. 1513.04 requires ODNR to terminate the employment of a mineral resources inspector who serves the township as a trustee. Consequently, R.C. 1513.04 prohibits a person from serving simultaneously as a mineral resources inspector for ODNR and township trustee when the township engages in coal or surface mining operations.⁹

In light of the foregoing, the second question of the compatibility test may be answered in the negative when the township does not engage in coal or surface mining operations.

Subordination and Control

Question three of the compatibility test asks whether one position is subordinate to, or in any way a check upon, the other. A mineral resources inspector for ODNR is appointed and removed by the Chief of the Division of Mineral Resources Management, *see* R.C. 1513.03, and is subject to the control of, and accountable to, the Chief of the Division of Mineral Resources Management. A township trustee, as an elected township officer, R.C. 505.01, serves and is responsible to the township’s electorate. Thus, neither position is responsible for an appointment to or removal from the other position. In addition, the positions operate independently of each other, and neither is required to assign duties to, or supervise, the other. Accordingly, neither position is subordinate to, or in any way a check upon, the other. *See* 1988 Op. Att’y Gen. No. 88-017 at 2-67 and 2-68.

Physical Ability to Hold and Serve in Both Positions

Question four of the compatibility test asks whether it is physically possible for one person to perform the duties of both positions. This is a factual question that

⁹ 1988 Op. Att’y Gen. No. 88-017 at 2-67 stated that R.C. 1513.04(C) does “not prohibit a reclamation inspector [(now mineral resources inspector)] from serving as a county commissioner.” Because this opinion did not perform a studied analysis of the specific language used by the General Assembly in R.C. 1513.04(C), *see* note eight, *supra*, we question the opinion’s assertion that R.C. 1513.04(C) does not bar a mineral resources inspector from holding the office of county commissioner when the county engages in coal or surface mining operations.

is best addressed by township and ODNR officials who can accurately determine the time constraints and demands imposed upon the person as a township trustee and mineral resources inspector for ODNR.

We caution, however, that a township trustee, as an elected township officer, is required to perform duties imposed by statute and, where the nature of such duties requires the trustee to be present at a particular time or place, or act in a particular manner, the trustee must be able to do so. *See generally* 1965 Op. Att’y Gen. No. 65-70 at 2-146 (“failure to attend to the duties of an office may be sufficient ground for the removal of a township trustee under [R.C. 3.07]”). *See generally also* R.C. 3.17 (“[a]ny member of a board, commission, council, board of trustees of an institution of higher education, or other public body of the state, except a member of the general assembly or a judge of any court in the state, who fails to attend at least three-fifths of the regular and special meetings held by that board, commission, council, board of trustees, or public body during any two-year period forfeits the member’s position on that board, commission, council, board of trustees, or public body”). Also, if a township trustee who is employed as a mineral resources inspector for ODNR is required to perform his duties as a trustee during his regular work hours as a mineral resources inspector, the trustee must take approved vacation or personal leave or leave without pay for the time he is absent from his duties as a mineral resources inspector.

Therefore, in order to serve simultaneously in the positions of township trustee and mineral resources inspector for ODNR, a person must be certain that he will be able to carry out the duties of both positions in a competent and timely manner. 2003 Op. Att’y Gen. No. 2003-041 at 2-339. This means that there may not be a direct conflict between the times when the person is needed to perform duties on behalf of the township and ODNR. *Id.*

Conflicts of Interest

The fifth and final question of the compatibility test asks whether there is a conflict of interest between the two positions.¹⁰ In Ohio a person may not serve simultaneously in two public positions if he will be subject to divided loyalties and conflicting duties or be exposed to the temptation of acting other than in the best interest of the respective public entities he serves. *Id.* at 2-339 and 2-340.

We must review the powers, duties, and responsibilities of a township

¹⁰ Pursuant to R.C. 102.08, the Ohio Ethics Commission, rather than the Attorney General, is authorized to render advisory opinions regarding the application of the ethics and conflict of interest provisions of R.C. Chapter 102 and R.C. 2921.42-.43. In light of R.C. 102.08’s specific statutory grant of authority to the Ohio Ethics Commission, we will refrain from interpreting and applying these provisions by way of a formal opinion. *See* 1987 Op. Att’y Gen. No. 87-033 (syllabus, paragraph three). Any questions concerning the interpretation and application of these provisions in the situation in which a person serves simultaneously as a township trustee and mineral resources inspector for ODNR should therefore be directed to the Ohio Ethics Commission.

trustee and mineral resources inspector for ODNR so as to determine whether there are any conflicts of interest between the positions. This review will enable us to determine whether the person will be subject to conflicts of interest when exercising the powers, duties, and responsibilities in either or both positions. If our review discloses such conflicts, we must next determine the immediacy of the conflicts to see whether the conflicts may be sufficiently avoided or eliminated entirely so as to allow the person to serve simultaneously in both positions. 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. *Id.* at 2-340.

Let us first review the powers, duties, and responsibilities of a township trustee. A board of township trustees is the governing body of a township. In this capacity, the board is delegated by statute various powers and duties related to the government of the township. *See, e.g.*, R.C. Chapter 504 (authorizing the trustees of a township that adopts a limited home rule government to adopt and enforce local police, sanitary, and other similar regulations and to supply water and sewer services); R.C. 505.27 (authorizing a board of township trustees to provide for the collection and disposal of solid wastes); R.C. 505.37 (authorizing a board of township trustees to provide fire protection); R.C. 505.48 (authorizing a board of township trustees to provide police protection); R.C. Chapter 519 (authorizing a board of township trustees to regulate building and land use in the unincorporated territory of the township); R.C. 5535.01(C) (a board of township trustees is responsible for maintaining the roads under its jurisdiction). In addition, the board handles the township's finances and budget, *see, e.g.*, R.C. 135.04(C); R.C. 135.14; R.C. 5705.28; R.C. 5705.34, and is designated as the township's taxing authority for purposes of R.C. Chapters 133 (uniform public securities law) and 5705 (tax levy law), *see* R.C. 133.01(NN)(7); R.C. 5705.01(C).

We will now turn to the powers, duties, and responsibilities of a mineral resources inspector for ODNR. The general powers, duties, and responsibilities of a mineral resources inspector for ODNR are set forth in R.C. 1513.03. This statute provides, in part:

The chief of the division of mineral resources management shall designate certain employees of the division as mineral resources inspectors for the purpose of enforcing the coal mining laws and the surface mining laws. Those inspectors may enter upon and inspect any coal or surface mining operation at any time, and, upon entering the permit area, an inspector shall notify the operator and shall furnish proper identification. After the final maps have been approved, the inspector shall notify the nearest mine office of the operator and advise of the inspection. Inspectors may serve and execute warrants and other processes of law issued in the enforcement of [R.C. Chapters 1513 and 1514] and the rules adopted under them.

The inspectors, while in the normal, lawful, and peaceful pursuit

of their duties, may enter upon, cross over, and remain upon privately owned lands for such purposes, and shall not be subject to arrest for trespass while so engaged or for such cause thereafter.

Accord R.C. 1513.09; R.C. 1514.50.

Additionally, in the job description attached to your letter, the duties and responsibilities of a mineral resources inspector for ODNR are further described as follows:

Independently inspects and documents strip/surface & forfeited mine sites for compliance with mining laws & rules & approved mining/reclamation plans, collects water, spoil, & soil samples &/or prepares samples for testing, investigates complaints (e.g., blasting & dewatering of wells &/or springs; disposition of sediment into adjoining lands; stream pollution; blasting damage to adjoining property), reviews reports & maps of mine sites & prepares summary report, issues notices of violation including violation description, remedial action & abatement dates, monitors violations, inspects reclaimed areas (e.g., evaluates quality of backfilling & grading of mined areas; replacement of topsoil; drainage controls & establishment of vegetation) & makes recommendations for approval/disapproval & inspects abandoned mined lands to ensure continuing reclamation by operator; in order to operate state owned vehicle, must show proof of valid driver's license.

Participates in review of permit applications, renewals & mid-term permit reviews (e.g., reviews proposed mine sites; reviews proposed drainage control plans for compliance; identifies site specific or local geologic/hydrologic factors); assists in development of reclamation plans for forfeited sites.

Reviews annual &/or finals reports & maps for permitted areas & prepares summary document.

Testifies at administrative & judicial proceedings; attends meetings with public, federal & state agencies; investigates & responds to written complaints; makes recommendations to update &/or revise state & federal policies; operates video display terminal/personal computer to enter, edit & verify data; maintains valid driver's license to attend &/or conduct meetings, inspections &/or site reviews.

A review of the powers, duties, and responsibilities of the respective positions discloses a potential conflict of interest between the two positions. A mineral resources inspector for ODNR who serves as a township trustee may be required to participate in inspections or investigations that concern the effect that a mining or reclamation operation has on land owned or leased by, and roads under the jurisdiction of, the township. *See* R.C. 1513.03; R.C. 1513.09; R.C. 1514.50. If a mineral

resources inspector who serves as a township trustee were required to participate in such inspections or investigations, it would be difficult for the person as a mineral resources inspector to set aside his loyalty to the township. *See generally* R.C. 503.01 (a board of township trustees may hold real property in trust for the township); R.C. 5535.01(C) (a “board of township trustees shall maintain all [township] roads within its township”). Such a predisposition of loyalty could prevent the person as a mineral resources inspector from performing his duties and exercising his discretion during an inspection or investigation in a completely objective, disinterested manner. *See generally State ex rel. Baden v. Gibbons*, 17 Ohio Law Abs. 341, 344, 1934 Ohio Misc. LEXIS 1224 (Ct. App. Butler County 1934) (a conflict of interest results when the duties of one position may be administered or discharged in such a way as to result in favoritism and preference being accorded the other position).

We believe, however, that this potential conflict of interest can be sufficiently avoided. A mineral resources inspector for ODNR may not be required to participate in inspections or investigations of mining or reclamation operations that have an impact on land owned or leased by, and roads under the jurisdiction of, the township. For instance, if the mining or reclamation operations are not conducted on land that is adjacent to township lands or roads, it is unlikely that the activities conducted at the mining or reclamation operation will affect township lands or roads. Thus, any inspections or investigations of such mining or reclamation operations generally will not involve a consideration of the effect that the mining or reclamation operation has on land owned or leased by, and roads under the jurisdiction of, the township.

Moreover, if it appears that an inspection or investigation of a mining or reclamation operation will involve a consideration of the effect that the mining or reclamation operation has on land owned or leased by, and roads under the jurisdiction of, the township, a mineral resources inspector could ask to be removed from the inspection or investigation. If the mineral resources inspector is removed from the inspection or investigation, the inspector adheres to the basic principle that a public official not participate in a matter in which his objectivity might be impaired. *See* 2000 Op. Att’y Gen. No. 2000-025 at 2-170. Accordingly, the conflict of interest arising from a mineral resources inspector’s duty to inspect or investigate mining and reclamation operations is avoided when the specific duties of the inspector do not include inspecting or investigating mining or reclamation operations conducted on land that is adjacent to land owned or leased by, and roads under the jurisdiction of, the township or the inspector is able to remove himself from such inspections or investigations.¹¹ *See generally* 1989 Op. Att’y Gen. No. 89-052 at 2-220 (if a person’s duties as a county auditor employee do not involve conducting

¹¹ Whether a mineral resources inspector for ODNR who also serves as a township trustee may be removed from inspections or investigations of mining and reclamation operations that involve the effect that the mining and reclamation operations have on land owned or leased by, and roads under the jurisdiction of, the township is a question of fact that must be determined by the officials at ODNR. *See*

or participating in an audit of a law library association that employs him as a librarian, “then no conflict [of interest] as such exists, and the two positions would not be incompatible in this regard”); 1989 Op. Att’y Gen. No. 89-016 (syllabus) (the positions of investigator for the county coroner and city police chief are compatible, provided the person as an investigator “is not called upon by the coroner to investigate a death within the jurisdiction of the police chief of the city”).

However, such a conflict of interest is not avoided when the mineral resources inspector is required to participate in inspecting or investigating the effect that a mining or reclamation operation has on land owned or leased by, and roads under the jurisdiction of, the township. In such a situation, the conflict renders the positions of mineral resources inspector for ODNR and township trustee incompatible. Accordingly, a person who serves as a mineral resources inspector for ODNR and township trustee is not subject to any impermissible conflicts of interest unless the person participates in inspections or investigations that entail a consideration of the effect that mining and reclamation operations have on land owned or leased by, and roads under the jurisdiction of, the township.

Conclusions

In summary, it is my opinion, and you are hereby advised as follows:

1. A person may serve simultaneously as a township trustee and mineral resources inspector in the classified service of the Ohio Department of Natural Resources, provided that the township does not engage in coal or surface mining operations and the position of township trustee is normally filled by nonpartisan election. (1988 Op. Att’y Gen. No. 88-017, questioned.)
2. A mineral resources inspector for the Ohio Department of Natural Resources who also serves as a township trustee may not participate in inspections or investigations that entail a consideration of the effect that mining and reclamation operations have on land owned or leased by, and roads under the jurisdiction of, the township.

generally 1989 Op. Att’y Gen. No. 89-022 at 2-104 and 2-105 (“whether the job duties of a particular assistant auditor require any involvement with the particular township or municipality where he or she holds the additional position depends upon the organizational structure of the office of the auditor of state”).