

## OPINION NO. 85-074

## Syllabus:

An individual may not serve as both township trustee and county zoning inspector within the same county if the county zoning plan includes territory within the unincorporated area of the township.

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To: Stephen A. Schumaker, Clark County Prosecuting Attorney, Springfield,  
Ohio

By: Anthony J. Celebrezze, Jr., Attorney General, November 7, 1985

I have before me your request for my opinion concerning whether the positions of township trustee and county zoning inspector are compatible.

1979 Op. Att'y Gen. No. 79-111 sets forth seven criteria for determining whether two public positions are incompatible. Two positions are considered incompatible if, inter alia, an individual serving in both positions would be subject to a conflict of interest. See 1985 Op. Att'y Gen. No. 85-021, at 2-82 ("[o]ne person may not simultaneously hold two public positions if he would be subject to divided loyalties and conflicting duties or exposed to the temptation of acting other than in the best interest of the public"); Op. No. 79-111, at 2-371 ("where the holding of dual public positions would preclude the unbiased discharge of public duties, both positions may not be held simultaneously"). In order to determine whether there is a conflict of interest between the two public positions about which you ask, it is necessary for me to examine the manner in which county and township zoning plans are enacted and enforced, and the duties of both a township trustee and county zoning inspector with regard to zoning.

R.C. 303.02 authorizes a board of county commissioners to act by resolution, in accordance with a comprehensive plan, to

regulate, among other things, the location, height, and size of buildings and structures and the uses of land in the unincorporated territory of the county or any part thereof. R.C. 303.03-.11 establish the procedure whereby a board of county commissioners may adopt by resolution a proposed plan of zoning. Pursuant to R.C. 303.11, if the zoning resolution is adopted by the board of county commissioners, the board shall submit the proposed plan of zoning to the electors residing in the unincorporated area of the county included in the proposed plan of zoning for their approval or rejection. R.C. 303.11 further provides: "No zoning regulations shall be put into effect in any township, unless a majority of the vote cast on the issue in that township is in favor of the proposed plan of zoning." See R.C. 303.12 (amendments to zoning resolution).

Pursuant to R.C. 303.16:

For the purpose of enforcing the zoning regulations, the board of county commissioners may provide for a system of zoning certificates, and for this purpose may establish and fill the position of county zoning inspector, together with such assistants as the board considers necessary, fix the compensation for such positions, and make disbursements for them. In any county in which a county building inspector has been appointed in accordance with section 307.38 of the Revised Code, the board of county commissioners may designate such official to serve, in addition, as the county zoning inspector for the purposes of sections 303.01 to 303.25 of the Revised Code.

See R.C. 303.17("[n]o person shall locate, erect, construct, reconstruct, enlarge, or structurally alter any building or structure within the territory included in a zoning resolution without obtaining a zoning certificate, if required under [R.C. 303.16]"). Thus, pursuant to R.C. 303.16, a county zoning inspector is empowered to enforce county zoning regulations, adopted in accordance with the county zoning plan.

A board of township trustees has the same power as is granted to a board of county commissioners by R.C. 303.02 to zone within the unincorporated territory of the township, or any part thereof. R.C. 519.02. R.C. 519.03-.11 prescribe the procedure whereby a board of township trustees may initiate and adopt a proposed plan of zoning. Pursuant to R.C. 519.11, a board of township trustees, upon its adoption of a zoning resolution, shall submit the proposed plan to the electors residing in the unincorporated area of the township included in the proposed zoning plan. "No zoning regulations shall be put into effect unless a majority of the vote cast on the issue is in favor of the proposed plan of zoning." Id. See R.C. 519.12 (amendments to zoning resolution).

R.C. 303.02 provides that county zoning may be implemented in the unincorporated territory of the county or any part thereof. R.C. 519.02 provides that township zoning may be implemented in the unincorporated territory of the township or any part thereof. Thus, there may be unincorporated territory within a county which both a board of county commissioners and a board of township trustees desire to zone. In response to this potential situation, the legislature has provided as follows.

If county zoning regulations have been approved prior to the adoption of a zoning resolution by a board of township trustees and the township plan includes any area covered by the county plan, the county zoning plan takes precedence over the zoning resolution adopted by the township trustees, "unless a majority of the voters in such zoned area of the township voting on the issue have voted to have the county rural zoning plan replaced with the township plan of zoning." R.C. 519.22.<sup>1</sup>

From the foregoing, it may be summarized that a county zoning plan adopted under R.C. Chapter 303, which a county zoning inspector is under a duty to enforce, applies to territory located within the unincorporated area of a township which is covered by the county plan unless the board of trustees of the township adopts a proposed plan of zoning and a majority of the voters in the zoned area of the township voting on the question vote to replace the county plan with the township plan. While a board of township trustees does not have the ultimate power to implement a zoning plan in an area covered by a county plan, the board does have the authority to initiate a township zoning plan and submit such plan to the voters. The ability of the township trustees to initiate changes which modify the county zoning plan directly affects the duties of a county zoning inspector by modifying the area over which the zoning inspector has authority. As a result, an individual who is serving as both township trustee and zoning inspector may be subject to divided loyalties. In 1985 Op. Att'y Gen. No. 85-052, I concluded that the positions of member of a township zoning commission and township zoning inspector are incompatible since the commission member must recommend the township zoning plan and the inspector must enforce the provisions of the plan. Op. No. 85-052 states at \_\_\_\_\_:

The content of the plan will directly affect the duties of the one who enforces it. Changes in the zoning resolution may very well change the extent and nature of inspections that are necessary, the workload of the inspector and his staff, and even the need for the township to have a system of zoning certificates and inspections.

Similarly, a township trustee may, in the manner described above, initiate and propose recommendations to the township zoning plan, which could affect the existing county zoning plan, and thus affect the duties of the county zoning

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<sup>1</sup> Conversely, when township zoning regulations have been approved prior to the adoption of a county zoning resolution by the board of county commissioners and the county plan includes any area covered by the township zoning plan, the township zoning plan takes precedence over the zoning resolution adopted by the board of county commissioners, "unless a majority of the voters in such zoned area of the township voting on the issue have voted to have the township plan of zoning replaced with the plan of county rural zoning." R.C. 303.22. See R.C. 303.11 ("[n]o [county] zoning regulations shall be put into effect in any township, unless a majority of the vote cast on the issue [whether the county zoning resolution shall be adopted] in that township is in favor of the proposed plan of zoning"). See also 1964 Op. Att'y Gen. No. 64-1299; 1962 Op. Att'y Gen. No. 2963, p. 316.

inspector. It thus appears that a conflict exists between the two positions because a township trustee is in the position of taking action which may affect his duties as a county zoning inspector.

If the township is governed by the county zoning plan, a conflict of interest could also arise between the positions of township trustee and county zoning inspector. The township must attempt to comply with all applicable county zoning regulations. See Brownfield v. State, 63 Ohio St. 2d 282, 407 N.E.2d 1365 (1980). As part of his duty to enforce the county zoning plan, the zoning inspector may be required to determine whether to issue a zoning certificate to the township. See R.C. 303.16; R.C. 303.17. Further, a zoning inspector may be required to initiate legal action against a township for a violation or proposed violation of the zoning plan pursuant to R.C. 303.24. The existence of such potential conflicts necessitates a finding of incompatibility.

In conclusion, it is my opinion, and you are advised, that an individual may not serve as both township trustee and county zoning inspector within the same county if the county zoning plan includes territory within the unincorporated area of the township.