

**OPINION NO. 89-056****Syllabus:**

A township trustee, who is appointed or elected to that position in a non-partisan election, may also be employed as a veterans service officer.

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**To: Andrew Hutyera, Harrison County Prosecuting Attorney, Cadiz, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, July 26, 1989**

I have before me your request for my opinion as to whether the positions of township trustee and veterans service officer are compatible. The information you provided indicates that the township is located within the county served by the veterans service officer.

The powers and duties of township trustees are set forth in R.C. Chapter 505 and related provisions. Township trustees are vested by statute with various powers and duties related to the government of the township. *See, e.g.*, R.C. 505.10 (may accept and sell property); R.C. 505.15 (may provide and operate airports); R.C. 505.17 (may regulate vehicle parking); R.C. 505.26 (may provide office space, township hall, parks); R.C. 505.262 (may issue notes to finance purchases and construction); R.C. 505.27 (may contract for solid waste disposal); R.C. 505.34 (may compound or release a debt due the township); R.C. 505.37 (may provide for fire protection); R.C. 505.70 (may participate in and give financial assistance in

establishing and operating federal programs). In contrast, the veterans service commission is empowered to provide financial assistance to needy veterans and their families and to operate a veterans service office. See R.C. 5901.01 through R.C. 5901.15; see also *State ex rel. Semetko v. Bd. of Comms.*, 30 Ohio App. 2d 130, 134, 283 N.E.2d 648, 651 (Lucas County 1971) ("[i]t is evident from the logical progression of R.C. 5901.05-5901.10 that the purpose of the legislation was to insure a reasonable and just amount of welfare benefits for indigent veterans"). In discharging its duty to provide financial assistance and a veterans service office, the veterans service commission is statutorily authorized to "employ one or more county veterans service officers...." R.C. 5901.07. The veterans service officer shall advise and assist designated persons "in presenting claims or obtaining rights or benefits under any law of the United States or of this state." *Id.*

In 1979 Op. Att'y Gen. No. 79-111, my predecessor established a seven-question analysis for determining the compatibility of different public positions. In determining whether two public positions are compatible, it is necessary to answer the following seven questions:

1. Is either of the positions a classified employment within the terms of R.C. 124.57?
2. Do the empowering statutes of either position limit the outside employment permissible?
3. Is one office 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 a conflict of interest between the two positions?
6. Are there local charter provisions or ordinances which are controlling?
7. Is there a federal, state, or local departmental regulation applicable?

*Id.* at 2-367 to 2-368.

Question number four considers whether it is physically possible for an individual to discharge the duties of both positions. This inquiry must take into consideration the time demands that each position will make upon the individual involved. Thus, it is a factual question, which can best be answered by the concerned parties.

The sixth and seventh questions are of local concern and I assume, for purposes of this opinion, that there are no departmental regulations, charter provisions, or ordinances which would limit or prevent the holding of outside employment by a veterans service officer or township trustee.

Question number one asks whether either of the positions is a classified employment within the terms of R.C. 124.57, which prohibits classified employees or officers from engaging in partisan political activity other than to vote and express their political views. See 1978 Op. Att'y Gen. No. 78-022 at 2-52 ("R.C. 124.57 prohibits a classified civil servant from engaging in partisan politics. It does not prohibit non-partisan political activity and specifically protects freedom of expression and the right to vote"). A township trustee, as an elected officer, is an unclassified position. See R.C. 124.11(A)(1); R.C. 505.01. Under R.C. 124.11(B), however, a veterans service officer is in the classified service. See 1958 Op. Att'y Gen. No. 1648, p. 54 ("[t]his office has consistently held that a county veterans' service officer is in the classified civil service"). My predecessors and I have consistently stated that classified employees may be candidates in nonpartisan elections. 1983 Op. Att'y Gen. No. 83-033; 1982 Op. Att'y Gen. No. 82-085; Op. No. 78-022; 1974 Op. Att'y Gen. No. 74-034. Candidates for township trustee are nominated by petition, rather than in a primary election, unless a majority of the

township electors files a petition with the board of elections requesting a primary. R.C. 3513.01; R.C. 3513.253. Candidates nominated by petition seek election on a nonpartisan ballot. R.C. 3505.04. Thus, the prohibition in R.C. 124.57 would not prevent an individual from serving as township trustee and veterans service officer, if such person were elected in a nonpartisan election or appointed to the position of township trustee. Op. No. 78-022 (syllabus) ("R.C. 124.57 does not prohibit a classified civil servant from being appointed to the office of township trustee pursuant to R.C. 503.24, or from seeking that office in a non-partisan election").

The second question asks whether the empowering statutes of either position limit outside employment. R.C. 505.01, which is the empowering statute for township trustees, contains no limitations on the outside employment of township trustees. The position of veterans service officer is provided for in R.C. 5901.07,

The veterans service commission shall employ one or more county veterans service officers, who shall be veterans. The duties of these officers shall be to advise and assist persons in the armed forces of the United States, veterans, and the spouses, children, parents, and dependents of veterans in presenting claims or obtaining rights or benefits under any law of the United States or of this state.

The commission shall employ each service officer on a part or full time basis and fix his compensation. No county commissioner or member of the veterans service commission shall be employed as service officer.

Although R.C. 5901.07 places some limitations on additional employment by veterans service officers, such limitation does not apply to holding the position of township trustee. Therefore, neither R.C. 505.01 nor R.C. 5901.07 limit the outside employment with which you are concerned.

Question number three asks whether one position is subordinate to, or a check upon, the other. See Op. No. 79-111. As an elected official, see R.C. 505.01, a township trustee is accountable to the people who elected him. A veterans service officer is employed by the veterans service commission. See R.C. 5901.07; 1975 Op. Att'y Gen. No. 75-040 at 2-156 ("everything about the employment situation of the Service Officer is directly controlled by the Soldiers Relief Commission [now Veterans Service Commission]<sup>1</sup>). (Footnote added.) See *generally Pistole v. Wittshire*, 22 Ohio Op. 2d 464, 467, 189 N.E.2d 654, 657-58 (Scioto County 1961) (a township trustee is responsible to the people who elected him and a deputy sheriff is responsible to the sheriff who appointed him; neither position is subordinate to, or a check upon, the other). Furthermore, I have been unable to locate any area in which either position would be subordinate to the other. Therefore, I conclude that neither position is subordinate to or a check upon the other.

Question number five concerns the possibility of a conflict of interest between the two positions. An individual 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. 1985 Op. Att'y Gen. No. 85-042; Op. No. 79-111. Thus, I must determine whether an individual acting as both township trustee and veterans service officer would be subject to such conflicting interests.

The board of township trustees is authorized, pursuant to R.C. 505.70(A) to:

participate in, give financial assistance to, and cooperate with other agencies or organizations, either private or governmental, in establishing and operating any federal program enacted by the congress of the United States, and for such purpose may adopt any procedures and take any action not prohibited by the constitution of Ohio and not in conflict with the laws of this state.

<sup>1</sup> Am. Sub. H.B. 626, 117th Gen. A. (1988) (eff. Sept. 14, 1988) ("change the name of soldiers' relief commissions to veterans service commissions...").

A conflict of interest might arise if the veterans service officer, pursuant to R.C. 5901.07, were to advise and assist an individual in presenting a claim for benefits from a federal program in which the board of township trustees was participating or giving financial assistance.

The fact that there is the potential for a conflict of interest, however, does not necessarily render the positions incompatible. Rather, a further examination into the immediacy of the conflict must be undertaken. "[W]here possible conflicts are remote and speculative, the common law incompatibility or conflict of interest rules are not violated." Op. No. 79-111 at 2-372. The conflict presented by this situation is remote and speculative in that it depends on the existence of several factors, including whether the board of township trustees participates in or gives financial assistance to a federal program or whether the award of benefits to a veteran has an adverse impact on other township funds or programs. Additionally, the veterans service officer is not in a supervisory or decision-making position. See Op. No. 75-040 at 2-156 ("the duties encompass only advising and assisting designated members of the public. The Service Officer has no authority to dispose of public property, to incur financial obligations on the part of the county, nor to take action on matters of business or political dealings between individuals and public agencies"). Furthermore, the veterans service officer has no control over budgetary matters or decisions by the veterans service commission. See R.C. 5901.11 (the veterans service commission shall prepare and submit a budget to the board of county commissioners after determining the amount necessary for financial assistance of indigent individuals and for the operation of the veterans service office); Op. No. 75-040 at 2-156 ("[i]t is the Commission which employs the Service Officer's staff, and it is the Commission which recommends to the county commissioners what office space, supplies and office and incidental expenses should be provided for the Service Officer"). I therefore conclude that the above potential conflict does not render these positions incompatible.

Therefore, it is my opinion, and you are hereby advised, that a township trustee, who is appointed or elected to that position in a non-partisan election, may also be employed as a veterans service officer.