

August 16, 2016

The Honorable Keller J. Blackburn
Athens County Prosecuting Attorney
1 South Court Street
Athens, Ohio 45701

SYLLABUS:

2016-027

1. A person may serve simultaneously as executive director of a children services board that is a public children services agency for a county and member of a village legislative authority provided that no contract exists between the children services board and the village, and, as executive director of the children services board, she does not participate in any deliberations or discussions or provide guidance to the children services board concerning prospective agreements with the village. A person serving simultaneously as executive director of a children services board and member of the village legislative authority shall not, as a member of the village legislative authority, participate in any deliberations, discussions, negotiations, or votes concerning prospective agreements with the children services board, or participate in any deliberations, discussions, or votes on tax levies or bond issues for additional funding for the village if the county has placed a tax levy on the ballot pursuant to R.C. 5705.24 to fund the operations of the children services board or pay the salary of the board's executive director. If the salary of the executive director of the children services board is paid completely, directly or indirectly, by federal loans or grants, and the executive director is a "State or local ... employee" as defined in 5 U.S.C.A. § 1501(4) and 5 C.F.R. § 151.101(d), the executive director may serve as a member of the village legislative authority only if she seeks election to the office of member of a village legislative authority in a nonpartisan election.
2. A person may serve simultaneously as executive director of a children services board that is a public children services agency for a county and member of a board of township trustees provided that no contract exists between the children services board and the township, and, as executive director of the children services board, she does not participate in any

deliberations or discussions or provide guidance to the children services board concerning prospective agreements with the township. A person serving simultaneously as executive director of a children services board and member of the board of township trustees shall not, as a member of the board of township trustees, participate in any deliberations, discussions, negotiations, or votes concerning prospective agreements with the children services board, or participate in any deliberations, discussions, or votes on tax levies or bond issues for additional funding for the township if the county has placed a tax levy on the ballot pursuant to R.C. 5705.24 to fund the operations of the children services board or pay the salary of the board's executive director. If the salary of the executive director of the children services board is paid completely, directly or indirectly, by federal loans or grants, and the executive director is a "State or local ... employee" as defined in 5 U.S.C.A. § 1501(4) and 5 C.F.R. § 151.101(d), the executive director may serve as a member of a board of township trustees only if she seeks election to the office of member of a board of township trustees in a nonpartisan election.



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OPINION NO. 2016-027

The Honorable Keller J. Blackburn
Athens County Prosecuting Attorney
1 South Court Street
Athens, Ohio 45701

Dear Prosecutor Blackburn:

We have received your request whether the position of executive director of a children services board that is a public children services agency for a county is compatible with service as a member of a village legislative authority or board of township trustees within the same county.¹ Whether two public offices or positions are compatible depends upon the answers to the following seven questions:

1. Is either position in the classified civil service of the state, a county, a city, a city school district, or a civil service township as defined in R.C. 124.57?
2. Do any constitutional provisions or the governing statutes of either position prohibit or otherwise limit employment in another public position or the holding of another public office?
3. Is one of the positions subordinate to, or in any way a check upon, the other?
4. Is it physically possible for one person to perform the duties of both positions?
5. Is there a conflict of interest between the two positions?

¹ Each county in the state of Ohio is required to have a public children services agency (“PCSA”) that “assume[s] the powers and duties of the children services function ... for a county.” R.C. 5153.01(A); *see also* R.C. 5153.02. A PCSA may be a county children services board, a county department of job and family services, or an entity designated under R.C. 307.981. R.C. 5153.02(A)-(C). The Athens County Children Services Board is the PCSA for Athens County. For ease of discussion, we will refer to a children services board that serves as a county’s PCSA under R.C. 5153.02 simply as a children services board/PCSA.

6. Are there any controlling local charter provisions, resolutions, or ordinances?
7. Does a federal, state, or local departmental regulation prevent a person from holding both positions?

See 2014 Op. Att’y Gen. No. 2014-045, at 2-391 (“[a] seven-question compatibility test is used to determine whether a person may serve simultaneously in multiple public positions”); 2004 Op. Att’y Gen. No. 2004-019, at 2-153 to 2-154 (setting forth the seven-part compatibility test); 1979 Op. Att’y Gen. No. 79-111, at 2-367 to 2-368 (the seven-part compatibility test applies to the simultaneous holding of a public office and a public employment by the same person). All of these questions “must yield answers in favor of compatibility in order to conclude that two positions are compatible.” 2013 Op. Att’y Gen. No. 2013-008, at 2-78.

Question One: Classified Civil Service

The first question of the compatibility analysis asks whether either of the two positions in question is in the classified civil service of “the state, the several counties, cities, and city school districts of the state, or the civil service townships of the state” within the meaning of R.C. 124.57.² R.C. 124.57(A); *see also* 2006 Op. Att’y Gen. No. 2006-041, at 2-394. R.C. 124.57(A) states that an officer or employee in the classified civil service of “the state, the several counties, cities, ... city school districts ... or the civil service townships of the state,” shall not “be an officer in any political organization or take part in politics other than to vote ... and to express freely political opinions.” R.C. 124.57(A) “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.” 2006 Op. Att’y Gen. No. 2006-041, at 2-394 to 2-395 (quoting 2003 Op. Att’y Gen. No. 2003-041, at 2-336).

The classified civil service comprises “all persons in the employ of the ... several counties” unless specifically excluded from the classified civil service or specifically included in the unclassified civil service. R.C. 124.11(B); *see also* R.C. 124.11(A)(32) (“[t]he unclassified service shall comprise ... [e]mployees placed in the unclassified service by another section of the Revised Code”). An executive director of a children services board/PCSA is excluded from the classified civil service under R.C. 5153.06 and R.C. 5153.10. R.C. 5153.06, which authorizes a county children services board to enter into a written contract with its executive director, states

² The civil service in Ohio is divided into the classified and unclassified service. R.C. 124.11; *see also* Ohio Const. art. XV, § 10. An individual employed in the classified civil service possesses a statutory claim of qualified entitlement to continued employment, *see* R.C. 124.23, R.C. 124.34, whereas an individual employed in the unclassified civil service may be dismissed without cause, provided that the dismissal is not otherwise unlawful. *See* 1996 Op. Att’y Gen. No. 96-040, at 2-154.

that “[t]he executive director shall not be in the classified civil service.” R.C. 5153.10 similarly states that “[e]ach public children services agency shall designate an executive officer known as the ‘executive director,’ who shall not be in the classified civil service.” Therefore, R.C. 124.57 does not prohibit a person holding the position of executive director of a children services board/PCSA from participating in partisan political activity.

The prohibition in R.C. 124.57 also does not apply to a member of a village legislative authority or board of township trustees. R.C. 124.57(A) restricts partisan political activity for employees in the classified civil service “of the state, the several counties, cities, and city school districts ..., or the civil service townships of the state.” The statute does not prohibit an officer of a village or a township that is not a civil service township from participating in partisan political activity.³ See 2013 Op. Att’y Gen. No. 2013-034, at 2-344; 2003 Op. Att’y Gen. No. 2003-041, at 2-337 (“[R.C. 124.57] does not apply ... to officers and employees in the service of a township that is not a civil service township”). R.C. 124.57(A) also does not prohibit partisan political activity for a trustee of a township that is a civil service township. 2011 Op. Att’y Gen. No. 2011-034, at 2-266 (“[a]s an elected public officeholder, a township trustee is not in the classified service”). R.C. 124.11(A)(1) explicitly excludes “officers elected by popular vote” from the classified civil service. A township trustee is an officer elected by vote in a general election. See R.C. 505.01. Accordingly, the first question of the compatibility analysis may be answered in favor of compatibility.

Question Two: Constitutional or Statutory Provisions that Prohibit or Limit Employment in another Public Position or Holding of another Public Office

The second question of the compatibility analysis asks whether there are any constitutional provisions or statutes applicable to either position that prohibit or otherwise limit employment in another public position or the holding of another public office. See 2A Ohio Admin. Code 123:1-46-02(E) (“[e]mployees in the unclassified service of the state, are not prohibited from engaging in political activity unless specifically precluded by federal or state constitutional or statutory provisions”). A member of a village legislative authority is prohibited by R.C. 731.12 from holding “any other public office.” Therefore, if a person designated an executive director of a children services board/PCSA holds a public office, the executive director may not, under R.C. 731.12, serve simultaneously as a member of a village legislative authority.⁴

³ “‘Civil 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).

⁴ A village that adopts a charter pursuant to Article XVIII, § 7 of the Ohio Constitution may include a provision in the charter that establishes qualifications for serving as a member of the village legislative authority that differ from those in R.C. 731.12.

The term “public office” is not defined for the purpose of R.C. 731.12 or more generally for purposes of R.C. Chapter 731 (organization of municipal government) or R.C. Title 7 (municipal corporations). See *State ex rel. Scarl v. Small*, 103 Ohio App. 214, 215, 145 N.E.2d 200 (Portage County 1956) (“[n]either the Constitution of Ohio nor the Code defines ‘public office’”). “The usual criteria considered in determining whether a position is a public office are durability of tenure, oath, bond, emoluments, independence of the functions exercised by the appointee, and character of the duties imposed upon the appointee.” 2011 Op. Att’y Gen. No. 2011-021, at 2-173 (citing *State ex rel. Landis v. Bd. of Comm’rs of Butler Cnty.*, 95 Ohio St. 157, 159-60, 115 N.E. 919 (1917)); see also 2013 Op. Att’y Gen. No. 2013-008, at 2-78. The following characteristics are the most decisive in determining whether a position is a public office: (1) the position requires the individual to exercise independent public duties, a part of the sovereignty of the state; (2) the exercise of these duties are by virtue of the individual’s election or appointment to the position in question; and (3) the individual is not subject to the direction and control of a superior officer in the exercise of these duties. See 2011 Op. Att’y Gen. No. 2011-021, at 2-174; 1963 Op. Att’y Gen. No. 3548, p. 58, at 61.

An examination of the statutes that govern the employment, duties, and responsibilities of an executive director of a county children services board/PCSA leads us to conclude that this position is not a public office.⁵ An executive director of a children services board/PCSA is designated by the children services board/PCSA pursuant to R.C. 5153.10. Provisions in R.C. Chapter 5153 confer upon the executive director duties and responsibilities with respect to the provision of child services, including, but not limited to, requesting background checks for a person applying to be responsible for the care of a child, R.C. 5153.111(A)(1), determining the training needs of each public children services agency caseworker, R.C. 5153.126, representing children in court proceedings as set forth in R.C. 5153.18, and serving on a county child fatality review board, R.C. 307.622, or county family and children first council, R.C. 121.37(B)(1)(e).

R.C. 5153.11 also requires an executive director of a children services board/PCSA to administer the work of the board. A county children services board/PCSA is required to investigate child abuse allegations, R.C. 5153.16(A)(1), provide specified social services, R.C. 5153.16(A)(4), (5), acquire and operate a county children’s home, R.C. 5153.16(A)(10), and administer federal funds provided for county children services, R.C. 5153.16(A)(14). A county children services board/PCSA also may contract with private and government service providers

⁵ Although an executive director of a children services board/PCSA is required to give bond for the faithful performance of the duties of her position, R.C. 5153.13, the requirement to give bond is not a factor that conclusively renders a position a public office. See 2006 Op. Att’y Gen. No. 2006-012, at 2-100 (“while an oath, bond and compensation are usually elements in determining whether a position is a public office they are not always necessary.... The chief and most-decisive characteristic of a public office is determined by the quality of the duties with which the appointee is invested, and by the fact that such *duties* are *conferred upon the appointee by law*” (quoting *State ex rel. Landis v. Bd. of Comm’rs of Butler Cnty.*, 95 Ohio St. 157, 159, 115 N.E. 919 (1917))).

to assist the board with its duties,⁶ R.C. 5153.16(C)(2)(a)(i)-(v), accept gifts of funds or property for child care services, R.C. 5153.30, invest funds donated or transferred to the board pursuant to R.C. 5153.31 or R.C. 5153.32, R.C. 5153.33, and acquire property and equipment necessary for conducting the work of the board, R.C. 5153.34.

An executive director of a county children services board/PCSA does not exercise independent, sovereign authority in administering the duties and powers conferred upon the board. *See generally* 2001 Op. Att’y Gen. No. 2001-036, at 2-217 (sovereign functions include continuing, independent, political, or governmental functions). An executive director of a children services board/PCSA is “*subject to the rules of the*” board in administering the board’s work. R.C. 5153.11 (emphasis added); *see also* R.C. 5153.10 (conferring upon a children services board/PCSA the authority to “adopt rules of general application, not inconsistent with the law or with the rules adopted by the director of job and family services”); R.C. 5153.166 (authorizing the director of job and family services to promulgate rules with respect to children services). Furthermore, R.C. 5153.06 authorizes a county children services board to enter into a written contract with the executive director that specifies the terms and conditions of the director’s “employment,” including the process by which the executive director may be removed. R.C. 5153.06; *see also* 2002 Op. Att’y Gen. No. 2002-022, at 2-142 (“[u]nder both R.C. 5153.10 and R.C. 5153.06, the selection and retention of the executive director is within the discretion of the children services board”). As recognized by one Ohio appellate court, “[i]f the individual is an employee, as indicated by an employment contract or by being subject to the direction and control of someone else, then the person does not hold a public office.” *See State ex rel. Grenig v. Cuyahoga Cnty. Bd. of Mental Retardation*, 93 Ohio App. 3d 98, 100, 637 N.E.2d 954 (Cuyahoga County 1994).

Based upon the nature and characteristics of the position of executive director of a children services board/PCSA, we conclude that an executive director of a children services board/PCSA is not a public office for the purpose of R.C. 731.12. *Cf. State ex rel. Jones v. Summit Cnty. Children Servs. Bd.*, App. No. 19915, 2001 WL 96048, at *3 (Summit County Jan. 24, 2001) (a children services board/PCSA is a “public office” within the meaning of R.C. 149.43, but the executive director of a children services board/PCSA is not a “public office”).

R.C. 731.12 also prohibits a member of a village legislative authority from having an interest in any contract with the village. R.C. 511.13 imposes the same prohibition upon a member of a board of township trustees, stating that “[n]o member of the board of township trustees ... shall be interested in any contract entered into by such board.”⁷ An impermissible

⁶ If the PCSA is the county department of job and family services or an entity designated pursuant to R.C. 307.981, the power to contract under R.C. 5153.16(C)(2)(a) rests with the board of county commissioners. *See* R.C. 5153.16(C)(2)(c).

⁷ R.C. 5153.34 prohibits an executive director of a children services board/PCSA from being “*personally* interested in any contract made by the” children services board/PCSA.

interest in a contract with a village or township exists within the meaning of R.C. 731.12 and R.C. 511.13 when a person serving as a member of a village legislative authority or board of township trustees is employed by an entity that has entered into a contract with the township or village. *See* 2008 Op. Att’y Gen. No. 2008-002 (syllabus, paragraph 2) (“[a] trustee ... of a township who is employed by an entity with which the township enters into a contract has an interest in the contract for purposes of R.C. 511.13, regardless of whether it can be demonstrated that the trustee ... has a direct pecuniary or personal interest in the contract”). *Cf.* 1973 Op. Att’y Gen. No. 73-043, at 2-167 to 2-168. The 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 and R.C. 731.12 once a contract has been reached. *See* 2008 Op. Att’y Gen. No. 2008-002, at 2-12 to 2-13. When the township or village in which the person serves as a member of the board of township trustees or member of the village legislative authority enters into a contract with an entity in which the person also is employed, the person has an impermissible interest in the contract within the meaning of R.C. 511.13 or R.C. 731.12 notwithstanding whether she abstained from discussing, negotiating, making decisions about, or voting on the contract prior to its execution. *Id.* Thus, an executive director of a children services board/PCSA that serves simultaneously as a member of a village legislative authority or board of township trustees has a prohibited interest in a contract with the village or township, as proscribed by R.C. 731.12 and R.C. 511.13, if the children services board/PCSA enters into a contract with the village or township.

We understand that in this instance, the children services board/PCSA has not entered into a contract with a village or township in which the executive director of the children services board/PCSA also serves as a member of the village legislative authority or board of township trustees. Nevertheless, if, at a later date, the children services board/PCSA enters into a contract with a village or township in which the executive director of the children services board/PCSA serves as a member of the village legislative authority or board of township trustees, the person serving simultaneously in those positions will find herself in violation of R.C. 731.12 or R.C. 511.13. *See* R.C. 731.12 (“[n]o member of the legislative authority [of a village] shall ... be interested in any contract with the village.... Any member who ceases to possess any of such qualifications ... shall forfeit the member’s office”); 2007 Op. Att’y Gen. No. 2007-044, at 2-

(Emphasis added.) R.C. 731.12 and R.C. 511.13 prohibit a member of a village legislative authority and board of township trustees from having any interest in a contract with the village and township, regardless of whether the interest is personal in nature. If a children services board/PCSA enters into a contract with a village or a township, R.C. 731.12 or R.C. 511.13 render the position of executive director of the children services board/PCSA incompatible with the office of member of the village legislative authority or board of township trustees. It is therefore not necessary in the context of this opinion to determine whether an executive director of a children services board/PCSA is personally interested in a contract within the meaning of R.C. 5153.34 when the children services board/PCSA enters into a contract with a village or township in which the executive director is a member of the village legislative authority or board of township trustees.

440 to 2-441 (“if a person enters into an ongoing multi-year contract to supply a township with garage storage facilities ... and is subsequently elected to the office of township trustee, the person is prohibited by R.C. 511.13 from serving as township trustee and continuing to have an interest in that ... contract.... Although some statutes that prohibit interests in public contracts specify the consequences that follow if public officials have an interest in contracts of the public bodies they serve, R.C. 511.13 does not specify the consequences of having an interest in a contract in violation of R.C. 511.13. Because no consequences are prescribed by statute, the trustees, county prosecuting attorney, and courts may have some discretion in determining how to address” a situation in which a township trustee has an interest in a contract in violation of R.C. 511.13).

No other constitutional or statutory provisions limit the outside employment of a member of a village legislative authority, a member of a board of township trustees, or an executive director of a children services board/PCSA. Therefore, the second question of the compatibility analysis may be answered in favor of compatibility.

Question Three: Subordination and Control

The third question of the compatibility analysis asks whether one of the positions is subordinate to, or in any way a check upon, the other. A member of a village legislative authority and member of a board of township trustees are elected public officeholders. R.C. 505.01; R.C. 731.09. As elected officials, a member of a village legislative authority and member of a board of township trustees are responsible to their respective electorates, and perform the duties imposed upon them by Ohio law. *See* 2014 Op. Att’y Gen. No. 2014-032, at 2-279 (“[a] township trustee, as an elected official, is responsible to the township’s electorate”); 1989 Op. Att’y Gen. No. 89-069, at 2-317 (“[a] village council member as an elected official, R.C. 731.09, is directly responsible to the people who elected him”).

An executive director of a children services board/PCSA is designated by the children services board/PCSA and subject to termination by the board as an at will employee. *See* R.C. 5153.06; R.C. 5153.10; 2002 Op. Att’y Gen. No. 2002-022, at 2-142. The executive director is subject to the rules of the children services board/PCSA in the administration of her duties and responsibilities. R.C. 5153.11. The members of a children services board/PCSA are appointed by the board of county commissioners pursuant to R.C. 5153.03. R.C. 5153.03 does not require a board of county commissioners to appoint a member of a village legislative authority or board of township trustees to a children services board/PCSA.

An executive director of a children services board/PCSA is appointed or elected by a different authority or body than a member of a village legislative authority or member of a board of township trustees. An executive director of a children services board/PCSA operates independently of a member of a village legislative authority or board of township trustees. An executive director of a children services board/PCSA is not accountable or subordinate to a member of a village legislative authority or board of township trustees, nor is a member of a village legislative authority or board of township trustees accountable or subordinate to an

executive director of a children services board/PCSA. An executive director of a children services board/PCSA is not responsible for assigning duties to, or supervising the activities of, a member of a village legislative authority or board of township trustees. A member of a village legislative authority or board of township trustees is not responsible for assigning duties to, or supervising the activities of, an executive director of a children services board/PCSA. Accordingly, question three of the compatibility analysis may be answered in favor of compatibility.

Question Four: Physical Possibility

The fourth question of the compatibility analysis asks whether it is physically possible for one person to perform the duties of both positions. “Whether an individual is physically able to adequately perform the duties of both positions is a question of fact which is best answered by the parties involved.” 1993 Op. Att’y Gen. No. 93-016, at 2-89. In 2004 Op. Att’y Gen. No. 2004-019, at 2-157 to 2-158, we offered the following guidance for determining whether a person is physically able to perform the duties of both positions:

[I]n order to serve simultaneously [in both positions], a person must be certain that he will be able to carry out the duties of both positions in a competent and timely manner. This means that there should not be a direct conflict between the times when the person is needed to perform duties on behalf [of both positions].

Without any evidence to the contrary, we will presume for the purpose of this opinion that one person is physically able to perform simultaneously the duties of an executive director of a children services board/PCSA and the duties of a member of a village legislative authority or board of township trustees.

Question Five: Conflict of Interest

The fifth question of the compatibility analysis asks whether there is a conflict of interest between the two positions. A person may not hold two public positions simultaneously if a conflict of interest exists. 2012 Op. Att’y Gen. No. 2012-040, at 2-351. A conflict of interest exists if the duties and responsibilities of one position are of such a nature as to influence the duties and responsibilities of the other position, “‘thereby subjecting [the person] to influences which may prevent [the person’s] decisions from being completely objective.’”⁸ 2006 Op. Att’y Gen. No. 2006-041, at 2-397 (quoting 1980 Op. Att’y Gen. No. 80-035, at 2-149); *see also* 1993

⁸ 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. For a determination of whether those provisions apply to the positions at issue in this opinion, we recommend that you contact the Ohio Ethics Commission. *Id.*

Op. Att’y Gen. No. 93-016, at 2-89; 1979 Op. Att’y Gen. No. 79-111, at 2-371. As explained in 1979 Op. Att’y Gen. No. 79-111:

[O]ne in the public service “owes an undivided duty to the public. It is contrary to public policy for a public officer to be in a position which would subject him to conflicting duties or expose him to the temptation of acting in any manner other than the best interest of the public.”

1979 Op. Att’y Gen. No. 79-111, at 2-371 (quoting 1970 Op. Att’y Gen. No. 70-168, at 2-336). Whether a person who serves simultaneously as an executive director of a children services board/PCSA and a member of a village legislative authority or board of township trustees is subject to a conflict of interest requires an examination of the duties and responsibilities of each position. *See* 2004 Op. Att’y Gen. No. 2004-044, at 2-380.

An executive director of a children services board/PCSA possesses duties and powers related to the provision of children services and is responsible for administering the work of the children services board/PCSA. *See* R.C. Chapter 5153 (county children services); 1995 Op. Att’y Gen. No. 95-027, at 2-134 (“[a] county children services board is an agency of the county, created pursuant to R.C. Chapter 5153 for the purpose of carrying out various responsibilities with respect to children who are in need of public care or protective services”). The provisions in R.C. Chapter 5153 confer upon a county children services board/PCSA numerous, varied duties and responsibilities related to the provision of public or protective services for children. A county children services board/PCSA is responsible for, among other things, administering federal funds allocated to county children services, R.C. 5153.16(A)(14), and acquiring and operating a county children’s home, R.C. 5153.16(A)(10). A county children services board/PCSA may enter into contracts with private and government service providers to assist the board with its duties, R.C. 5153.16(C)(2)(a)(i)-(v), and may acquire necessary property and equipment, R.C. 5153.34.

A member of a village legislative authority or board of township trustees is responsible for the management and governance of the village or township. *See generally* R.C. Title 7 (municipal corporations); R.C. Title 5 (townships); 1994 Op. Att’y Gen. No. 94-013, at 2-60 (“[t]ownship trustees are statutorily vested with various powers and duties associated with the government of the township”); 1991 Op. Att’y Gen. No. 91-036, at 2-191 (“[i]n general, members of the legislative authority of a village perform duties related to the government of the village”). A village legislative authority or a board of township trustees may enter into agreements on behalf of the village or township, *see, e.g.*, R.C. 9.60; R.C. 307.15; R.C. 505.37; R.C. 505.50; R.C. 701.07; R.C. 715.02; R.C. 717.01(A), (V); R.C. 731.14; R.C. 5549.04, acquire and dispose of real and personal property, *see, e.g.*, R.C. 505.10; R.C. 505.26; R.C. 719.01; R.C. 721.01; R.C. 723.121; R.C. 743.01, and construct and maintain buildings for village or township purposes *see, e.g.*, R.C. 505.26; R.C. 717.01(B), (F), (K), (O), (S)(1), (AA); R.C. 715.30; R.C. 715.16(A). The legislative authority of a village or a board of township trustees has

the authority to pass ordinances or resolutions,⁹ *see, e.g.*, R.C. 504.04; R.C. 505.371; R.C. 519.02; R.C. 731.17; R.C. 755.14, and to levy taxes upon the real and personal property in the village or township for the benefit of the village or township electorate, *see* R.C. 5705.01(C); R.C. 5705.03(A). As the taxing authority for the village or township, the village legislative authority or board of township trustees is responsible for adopting the village's or township's tax budget and submitting the tax budget to the county budget commission in accordance with the pertinent provisions of R.C. Chapter 5705. R.C. 5705.01(C); R.C. 5705.28(A).

A review of the powers and duties of an executive director of a children services board/PCSA, member of a village legislative authority, and member of a board of township trustees discloses several potential conflicts of interest. First, a conflict of interest may arise for a person serving simultaneously as executive director of a children services board/PCSA and member of a village legislative authority or board of township trustees if the children services board/PCSA seeks to enter into an agreement with the village or township. Pursuant to R.C. 5153.16(A)(9) and R.C. 5153.162, a children services board/PCSA is authorized to enter into agreements with a village or other political subdivision of the county with respect to the operation, acquisition, or maintenance of a children's home, training school, or other child care institution. Such an agreement may require a village or other political subdivision to "contribute funds for the maintenance and operation of children's training schools by a [children services board/PCSA] and ... 'expend moneys from their general funds for maintaining and operating the joint children's training school.'" 2011 Op. Att'y Gen. No. 2011-008, at 2-61 (quoting R.C. 5153.162). It also is possible that a village or township may be interested in purchasing property from, or selling supplies or services to, a children services board/PCSA. A county children services board/PCSA is authorized to sell real property that it owns and to purchase property and equipment that may be necessary for the proper conduct of the board's work.¹⁰ *See* R.C. 5153.34 (a children services board/PCSA "may acquire such property and equipment and purchase such supplies and services as are necessary for the proper conduct of its work"); 1981 Op. Att'y Gen. No. 81-106 (syllabus) ("[a] county children services board may directly sell surplus real property, which it owns and for which it has no use, if the board reasonably determines that such sale is in the public interest"). A village or a township may purchase real property for various village or township purposes, and may sell or lease real or personal property when no longer needed for those purposes. *See, e.g.*, R.C. 505.10; R.C. 715.01; R.C. 717.01(A), (V); R.C. 721.01.

It is the duty of the executive director of the children services board/PCSA, under R.C. 5153.11, to administer agreements entered into by the children services board/PCSA. An executive director of a children services board/PCSA that serves simultaneously as member of a

⁹ A municipal corporation may enact ordinances and adopt resolutions, but a board of township trustees may only adopt resolutions.

¹⁰ A children services board/PCSA may accept bequests, donations, and gifts of property pursuant to R.C. 5153.30. *See* 1981 Op. Att'y Gen. No. 81-106, at 2-403.

village legislative authority or board of township trustees may find it difficult to maintain objectivity in deliberating, discussing, negotiating, or making decisions about an agreement between the children services board/PCSA and the village or township in which she serves. *Cf.* 2011 Op. Att’y Gen. No. 2011-008, at 2-62 (addressing a similar conflict of interest confronting the director of a county department of job and family services and a member of the legislative authority of a city governed by a charter adopted pursuant to Ohio Const. art. XVIII, § 7).

The mere existence of a conflict of interest, however, does not automatically render two positions incompatible. When “the possibility of conflict is remote and speculative” and can be mitigated or avoided, “the conflict of interest rule is not violated.” 1993 Op. Att’y Gen. No. 93-016, at 2-91; *see also* 2004 Op. Att’y Gen. No. 2004-019, at 2-158 (“[w]here it can be demonstrated that the conflicts may be sufficiently avoided or eliminated entirely, the person may serve in both positions”). Whether a conflict of interest is remote and speculative requires the consideration of several factors including “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.” 2004 Op. Att’y Gen. No. 2004-019, at 2-158 to 2-159.

Upon a consideration of those factors, we conclude that the foregoing conflict of interest is remote and speculative and can be sufficiently mitigated or avoided. No statute requires a children services board/PCSA or a village legislative authority or a board of township trustees to enter into contracts under R.C. 5153.16(A)(9) or to contract with each other for the sale and purchase of real or personal property. Thus, the possibility that a village or township will enter into any such agreements with a children services board/PCSA is merely speculative. *Cf.* 2011 Op. Att’y Gen. No. 2011-008, at 2-62 (“it is only speculative whether a city and a county department of job and family services will enter into any such agreements”).

An executive director of a children services board/PCSA does not have final decision-making authority with respect to an agreement entered into between the children services board/PCSA and a village or a township. The decision to enter into such an agreement rests with the children services board/PCSA and is not contingent upon the approval of the executive director. *See generally* R.C. 5153.03 (a children services board/PCSA is composed of at least five members); R.C. 5153.04 (“[a] majority of the members of [a children services board/PCSA] shall constitute a quorum, and the action of a majority of the members present shall constitute the action of the board”). Further, an agreement entered into by a children services board/PCSA under R.C. 5153.16(A)(9) is “[s]ubject to the approval of the board of county commissioners and the state department of job and family services.” R.C. 5153.16(A)(9). The board of county commissioners and the Ohio Department of Job and Family Services serve as a check upon the actions taken by an executive director of a children services board/PCSA in administering an agreement entered into under this statute, thereby preventing “any undue influence that the director who also serves as a [member of the legislative authority of the village or other political subdivision] might exert.” 2011 Op. Att’y Gen. No. 2011-008, at 2-63.

Although an executive director of a children services board/PCSA does not have final authority to enter into contracts on behalf of the board, the executive director normally may provide guidance or assistance to the board with respect to prospective contracts. An executive director of a children services board/PCSA should not provide guidance or assistance to the children services board when the board is contemplating a contract with a village or a township in which the executive director also serves as a member of the village legislative authority or board of township trustees.

Further, a member of a village legislative authority or board of township trustees who also serves as the executive director of the children services board/PCSA is able, as a member of the village legislative authority or board of township trustees, to refrain from participating in any deliberations, discussions, negotiations, or votes concerning an agreement between the village or township and children services board/PCSA. *See* 2011 Op. Att’y Gen. No. 2011-008, at 2-62 to 2-63 (recognizing that a city council member who serves as director of a county department of job and family services will be able to refrain from participating in deliberations, discussions, negotiations, or votes concerning an agreement between the city and department). A village legislative authority or board of township trustees is capable of functioning and performing the duties conferred upon it by statute when one of its members abstains from a matter. *See* R.C. 505.01 (a board of township trustees is composed of three members); R.C. 731.09 (the legislative authority of a village is composed of six or five members); *State ex rel. Saxon v. Kienzle*, 4 Ohio St. 2d 47, 48, 212 N.E.2d 604 (1965) (“[i]n the absence of a statute to the contrary, any action by a board requires that a quorum participate therein, and that a majority of the quorum concur”); 2001 Op. Att’y Gen. No. 2001-036, at 2-220 (recognizing that when presented with a conflict of interest, a member of a village legislative authority may remove himself from any deliberations, discussions, negotiations, or votes related to the conflict); 1999 Op. Att’y Gen. No. 99-004 (two trustees constitute a quorum that is qualified to take action on behalf of the board of township trustees). Accordingly, if a person serving simultaneously as executive director of a children services board/PCSA and member of a village legislative authority or board of township trustees is able to exercise final decision-making authority on both sides of an agreement between the children services board/PCSA and the village or township, the conflict of interest can be avoided by the person’s abstention from discussing, deliberating, negotiating, and voting on the agreement. Finally, there is a presumption that public officers and employees perform their duties in a regular and lawful manner in the absence of any evidence to the contrary. *See State ex rel. Speeth v. Carney*, 163 Ohio St. 159, 126 N.E.2d 449 (1955) (syllabus, paragraph 10) (“[i]n the absence of evidence to the contrary, public officials, administrative officers, and public authorities, within the limits of the jurisdiction conferred upon them by law, will be presumed to have properly performed their duties in a regular and lawful manner and not to have acted illegally or unlawfully”). Therefore, this conflict of interest does not render the position of

executive director of a children services board/PCSA incompatible with the office of member of a village legislative authority or board of township trustees.¹¹

A second conflict of interest exists with respect to competition for tax dollars in excess of the ten-mill limitation.¹² A children services board/PCSA is funded, in part, by taxes levied by the board of county commissioners. *See* R.C. 5153.35 (“[t]he boards of county commissioners shall levy taxes and make appropriations sufficient to enable the [PCSA] to perform its functions and duties under [R.C. Chapter 5153]”); *see also* R.C. 5153.16(A)(14) (requiring a county children services board to administer federal funds provided to the board under the “Social Security Act”). A board of county commissioners is required to provide appropriations from the county general fund for the support of children services and care and placement of children. R.C. 5153.35; *see also* 2005 Op. Att’y Gen. No. 2005-044 at 2-478 to 2-479. Pursuant to R.C. 5705.24, the board of county commissioners may also submit to the voters the issue of levying a tax in excess of the ten-mill limitation to supplement such funding. 2005 Op. Att’y Gen. No. 2005-044, at 2-478 (“R.C. 5705.24 authorizes a board of county commissioners, after providing the normal and customary general fund appropriations for the support of children services and the care and placement of children, to submit to the voters the issue of levying a tax in excess of the 10-mill limitation to supplement funding for these purposes”). Revenues derived from a tax levy under R.C. 5705.24 may be used for the payment of the salary of the executive director of a children services board/PCSA. 1997 Op. Att’y Gen. No. 97-001 (syllabus).

A village legislative authority or board of township trustees, as the taxing authority of a village or a township, is authorized to place levies on the ballot for taxes in excess of the ten-mill limitation and to submit bond issues to electors when the amount of money generated by taxes levied within the ten-mill limitation will be insufficient to fund the purposes of the village or

¹¹ We caution, however, that in the event a children services board/PCSA enters into a contract with a village or township in which the executive director of the children services board/PCSA serves as a member of the village legislative authority or board of township trustees, the position of executive director of a children services board/PCSA is incompatible with the office of member of a village legislative authority or board of township trustees under R.C. 511.13 and R.C. 731.12. *See* R.C. 511.13 (“[n]o member of the board of township trustees ... shall be interested in any contract entered into by such board”); R.C. 731.12 (“[n]o member of the [village] legislative authority shall ... be interested in any contract with the village”).

¹² The total amount of state and local taxes levied on real property may not exceed ten mills on each dollar of the property’s true value in money, except for those taxes that have been specifically authorized to be levied in excess thereof. Ohio Const. art. XII, § 2; R.C. 5705.02; *see also* 2005 Op. Att’y Gen. No. 2005-043, at 2-449 (“[t]axes levied by various taxing units may include both taxes within the 10-mill limitation (unvoted taxes) and taxes outside the 10-mill limitation (taxes authorized by the voters)”). A mill is a tenth part of one cent. *Black’s Law Dictionary* 1008 (7th ed. 1999). This rule is known as the “ten-mill limitation.” *See* R.C. 5705.02.

township. R.C. 133.18; R.C. 5705.01(C); R.C. 5705.07; R.C. 5705.19. If the board of county commissioners has placed a tax levy on the ballot pursuant to R.C. 5705.24 to fund the operations of the county children services board/PCSA or to pay the salary of the executive director of the children services board/PCSA, and a village legislative authority or board of township trustees within the same county contemplates asking the voters for additional funding, a person serving simultaneously as a member of the village legislative authority or board of township trustees and executive director of the children services board/PCSA may find it difficult to remain objective and disinterested in contemplating whether to submit a village or township tax levy to electors, for fear that the county levy may be rejected in favor of the village or township levy. *See* 2011 Op. Att’y Gen. No. 2011-008, at 2-66 to 2-67; 2007 Op. Att’y Gen. No. 2007-023, at 2-241. As we recognized in 2011 Op. Att’y Gen. No. 2011-008, at 2-67 (quoting 1988 Op. Att’y Gen. No. 88-011, at 2-43), “[q]uestions of competing concerns before the electorate may be critical in determining whether or when a board might consider bringing requests for additional taxes before the voters.”

Although this conflict of interest relates to financial or budgetary matters, we conclude that this conflict of interest also is not sufficient to render the position of executive director of a children services board/PCSA incompatible with the office of member of a village legislative authority or board of township trustees. The instances should be infrequent in which a board of county commissioners places an issue on the ballot to fund the operations of a children services board/PCSA or pay the salary of a person serving as executive director of that board at the same time a village or township in which the executive director also serves as a member of the village legislative authority or board of township trustees places a tax levy or bond issue for additional funding on the ballot. *Cf.* 2011 Op. Att’y Gen. No. 2011-008, at 2-67 (“it is unlikely that a city and county will both have a tax levy or bond issue on the same ballot every election”); 2007 Op. Att’y Gen. No. 2007-023, at 2-241 (“[i]t is unlikely that both the village and township will have a tax levy or bond issue on the same ballot every election. Thus, deliberations, discussions, or votes by the legislative authority of the village concerning the placement of a tax levy or bond issue for additional funding on the ballot when the township has previously placed such a levy or bond issue on the ballot will be infrequent”).

Moreover, an executive director of a children services board/PCSA does not exercise direct or final decision-making authority with respect to levying a tax pursuant to R.C. 5705.24. The officers responsible for determining whether to levy such a tax are the members of the board of county commissioners. *See* R.C. 5705.24. Although a member of a village legislative authority or board of township trustees is directly responsible for authorizing tax levies in excess of the ten-mill limitation on behalf of a village or a township, the member’s role in determining whether to authorize a tax levy is tempered by the role of the other members of the village legislative authority or board of township trustees. There is a presumption that a member of a village legislative authority or board of township trustees will perform her duties in a regular and lawful manner in the absence of contrary evidence. *See State ex rel. Speeth*, 163 Ohio St. 159 at (syllabus, paragraph 10). Nevertheless, any undue influence a member of a village legislative authority or board of township trustees may exert in discouraging a tax levy in excess of the ten-mill limitation on behalf of the village or township can be mitigated by the other members. *Cf.*

2011 Op. Att’y Gen. No. 2011-008, at 2-65. Furthermore, a member of a village legislative authority or board of township trustees who also serves as an executive director of a children services board/PCSA should abstain from participating in deliberations, discussions, and votes on a village or township tax levy or bond issue for additional funding when the county has already placed a tax levy or bond issue on the ballot to fund the operations of the children services board/PCSA or pay the salary of the executive director thereof. *See id.* at 2-67; 2004 Op. Att’y Gen. No. 2004-025, at 2-228.

A third conflict of interest exists with respect to reports that identify children in need of public care. R.C. 5153.28 requires boards of township trustees and officers of a municipal corporation to make a report to the children services board/PCSA of the county in which the township and municipal corporation are located “respecting any child in the county coming to their attention, who is deemed to be in need of public care.” The children services board/PCSA, through its executive director, is required to investigate the contents of the report. R.C. 2151.421; R.C. 5153.16(A)(1); *see also* R.C. 5153.11. A person serving simultaneously as an executive director of a children services board/PCSA and member of a village legislative authority or board of township trustees may be subject to influences that affect her objectivity in determining whether to make such a report. For example, if a children services board/PCSA is flooded with reports that require investigations, a person serving simultaneously as an executive director of a children services board/PCSA and member of a village legislative authority or board of township trustees may be reluctant, as an officer of the village or township, to make reports to the children services board/PCSA, as required by R.C. 5153.28. Conversely, if a children services board/PCSA has relatively few reports to investigate, a person serving simultaneously as an executive director of a children services board/PCSA and member of a village legislative authority or board of township trustees may be inclined to report instances that normally would not trigger the duty to report under R.C. 5153.28.

This conflict of interest also does not render the position of executive director of a children services board/PCSA incompatible with the office of member of a village legislative authority or board of township trustees. Public officers and employees are presumed to perform their duties in a regular and lawful manner in the absence of any evidence to the contrary. *See State ex rel. Speeth*, 163 Ohio St. 159 at (syllabus, paragraph 10). Furthermore, the duty to make reports with respect to children in need of public care is conferred upon all members of a board of township trustees and “other officers and employees of any ... municipal corporation.” R.C. 5153.28. It is not within the sole discretion of one member of a board of township trustees or village legislative authority to make such a report. In addition, although this conflict of interest relates to a primary function of the duties of an executive director of a children services board/PCSA, it is not a part of the primary functions of a member of a village legislative authority or board of township trustees. Finally, this conflict of interest does not relate to financial or budgetary matters.

A person serving simultaneously as an executive director of a children services board/PCSA and member of a village legislative authority or board of township trustees may be subject to conflicts of interest. The nature of the conflicts of interest, as discussed above, are

remote and speculative, and therefore do not render the position of executive director of a children services board/PCSA incompatible with the office of member of a village legislative authority or board of township trustees. In the event conflicts of interest do arise, the conflicts can be sufficiently mitigated or avoided. Accordingly, question five of the compatibility analysis may be answered in favor of compatibility.

Questions Six: Local Charters, Resolutions, and Ordinances

Question six of the seven-part compatibility test ask whether any local charter provisions, resolutions, or ordinances limit the holding of outside public employment by an executive director of a children services board/PCSA, member of a village legislative authority, or member of a board of township trustees. Whether any local charter provisions, resolutions, or ordinances apply is a matter of local concern. *See* 1996 Op. Att’y Gen. No. 96-062, at 2-252; 1993 Op. Att’y Gen. No. 93-016, at 2-85; 1979 Op. Att’y Gen. No. 79-111, at 2-368. We presume in this instance, having received no information to the contrary, that no local charter provisions, resolutions, or ordinances prohibit one person from holding the position of executive director of a children services board/PCSA and the office of member of a village legislative authority or board of township trustees.

Question Seven: State, Federal, or Local Departmental Regulations

Question seven of the compatibility analysis asks whether any state, local, or federal departmental regulations limit the holding of outside public employment by an executive director of a children services board/PCSA, member of a village legislative authority, or member of a board of township trustees. There are no state or local departmental regulations applicable. With respect to federal law, the federal Hatch Act may apply in this instance. 5 U.S.C.A. §§ 1501-1508.

The Hatch Act prohibits a “State or local ... employee” from being “a candidate for elective office” “if the salary of the employee is paid completely, directly or indirectly, by loans or grants made by the United States or a Federal agency.”¹³ 5 U.S.C.A. § 1502(a)(3). The Hatch

¹³ Division (a)(3) of 5 U.S.C.A. § 1502 does not apply to “an individual holding elective office.” 5 U.S.C.A. § 1502(c)(4). Therefore, if an individual holds an elective public office and is subsequently hired for a position that makes her a “State or local ... employee” and the employee’s salary is paid completely, directly or indirectly, by federal loans or grants, that individual does not have to resign his or her office, but may not seek reelection to that office while holding that position. *See* United States Office of Special Counsel, Hatch Act: Frequently Asked Questions, <https://osc.gov/Pages/HatchAct-FAQs.aspx> (choose “I am a State ... or Local Employee;” then choose the “+” sign next to the question, “If I hold a partisan elected office, does the Hatch Act prohibit me from accepting a position within State ... or local government where my salary is entirely federally funded?”) (last visited Aug. 10, 2016) (“[w]hile the Hatch Act prohibits a state, D.C., or local government employee whose salary is entirely federally

Act defines “State or local ... 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” federal loans or grants.¹⁴ 5 U.S.C.A. § 1501(4); *see also* 5 C.F.R. § 151.101(d). A “State or local agency” includes “the executive branch of a ... political subdivision of a State, or an agency or department thereof.” 5 U.S.C.A. § 1501(2); *see also* 5 C.F.R. § 151.101(a)-(b). A children services board/PCSA is an agency of the executive branch of a political subdivision of the State of Ohio, namely, a county. *See In re J.D.*, 172 Ohio App. 3d 288, 2007-Ohio-3279, 874 N.E.2d 858, at ¶20 (Franklin County) (recognizing that the Franklin County Children Services Board that functions as the public children services agency for Franklin County “serves as an arm of the executive branch of government”). Further, a county children services board/PCSA may receive financial assistance from the federal government. *See generally* R.C. 5153.16(A)(14) (a children services board/PCSA is responsible for administering federal funds). Therefore, an executive director of a children services board/PCSA may be a State or local employee within the meaning of the Hatch Act if the county children services board/PCSA is financed in whole or in part by federal grants or loans.¹⁵ If a county children services board/PCSA is financed in whole or in part by federal grants or loans and the salary of the executive director of the children services board/PCSA is paid completely, directly or indirectly, by federal grants or loans, the executive director is prohibited from being a “candidate for elective office.” 5 U.S.C.A. § 1502(a)(3).

“Elective office means any office which is voted upon at an election ..., but does not include political party office.” 5 C.F.R. § 151.101(i). An election, as used in the foregoing definition, “includes a primary, special, and general election.” 5 C.F.R. § 151.101(f). A member of a board of township trustees is nominated by petition and stands for election to that office on a nonpartisan ballot, “unless a majority of the electors of such township have petitioned for a primary election.” R.C. 3513.253; *see also* R.C. 3505.04; R.C. 3513.01; 2011 Op. Att’y Gen. No. 2011-034, at 2-267 n.4 (“[c]andidates for the office of township trustee are nominated by petition, rather than in a primary election.... When a township does not conduct a primary election for the office of township trustee, the candidates for such office appear on a nonpartisan

funded from running for partisan political office, it does not prohibit the employee from holding partisan elective office”).

¹⁴ Title 5 U.S.C.A. § 1501(4), divisions (A) and (B)(i)-(iii) provide exceptions to the definition of “State or local ... employee.” *See also* 5 C.F.R. § 151.101(d)(1), (2)(i)-(iii). Those exceptions are not relevant to your inquiries.

¹⁵ An executive director of a children services board/PCSA is principally employed to administer the work of the children services board/PCSA. *See* R.C. 5153.11. Thus, if a children services board/PCSA is at least partially funded by federal monies, an executive director of a children services board/PCSA is “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 a Federal agency.” 5 U.S.C.A. § 1501(4).

ballot”); 1978 Op. Att’y Gen. No. 78-022, at 2-52. A member of a village legislative authority in a village with a population of less than two thousand also is nominated by petition and stands for election to that office on a nonpartisan ballot unless a majority of the electors of the village files a petition with the board of elections requesting a primary election. R.C. 3513.01(C) (“[p]rimary elections shall not be held for the nomination of candidates for election as officers of ... any municipal corporation having a population of less than two thousand, unless a majority of the electors of any such ... municipal corporation ... files with the board of elections of the county within which such ... municipal corporation is located ... a petition signed by such electors asking that candidates for election as officers of such ... municipal corporation be nominated as candidates of political parties”); R.C. 3513.251 (“[n]ominations of candidates for election as officers of a municipal corporation having a population of less than two thousand ... shall be made only by nominating petition and their election shall occur only in nonpartisan elections, unless a majority of the electors of such municipal corporation have petitioned for a primary election”); 1982 Op. Att’y Gen. No. 82-085, at 2-239 (“[c]andidates for council in villages with a population of less than two thousand persons are nominated by petition, rather than in a primary election, unless a majority of electors files a petition with the board of elections requesting a primary.... The nominated candidates then seek election on a nonpartisan ballot”). Accordingly, the Hatch Act does not prohibit a “State or local ... employee” as defined in 5 U.S.C.A. § 1501(4) and 5 C.F.R. § 151.101(d), whose salary is paid completely, directly or indirectly, by federal grants or loans from serving simultaneously as a member of a board of township trustees or member of a village legislative authority when the township trustee or member of the village legislative authority is nominated by petition and elected after appearing on a nonpartisan ballot.

The election of a member of a board of township trustees or member of a village legislative authority transforms from nonpartisan to partisan when township or village electors petition for a primary election or when the candidate seeks election to a village legislative authority in a village with a population of two thousand or more persons. R.C. 3513.251; R.C. 3513.253; *see also* 1978 Op. Att’y Gen. No. 78-022, at 2-52 (“R.C. 3513.253 requires that a primary election be held upon petition of a majority of the electors in the township. Where such a primary is held the ensuing general election becomes partisan, with partisan ballots in use”). In those circumstances, the Hatch Act prohibits a “State or local ... employee” as defined in 5 U.S.C.A. § 1501(4) and 5 C.F.R. § 151.101(d), whose salary is paid completely, directly or indirectly, from federal loans or grants, from seeking election to the office of township trustee or member of a village legislative authority.

The final question of the compatibility analysis may be answered in favor of compatibility so long as the salary of an executive director of a children services board/PCSA is not paid completely, directly or indirectly, by federal loans or grants. If the salary of an executive director of a children services board/PCSA is paid completely, directly or indirectly, by federal loans or grants and the executive director is a “State or local ... employee” as defined in 5 U.S.C.A. § 1501(4) and 5 C.F.R. § 151.101(d), the final question of the compatibility analysis may still be answered in favor of compatibility so long as the person that serves as executive director of a children services board/PCSA seeks election to the office of member of a board of township trustees or member of a village legislative authority in a nonpartisan election.

Conclusions

It is our opinion, and you are hereby advised that:

1. A person may serve simultaneously as executive director of a children services board that is a public children services agency for a county and member of a village legislative authority provided that no contract exists between the children services board and the village, and, as executive director of the children services board, she does not participate in any deliberations or discussions or provide guidance to the children services board concerning prospective agreements with the village. A person serving simultaneously as executive director of a children services board and member of the village legislative authority shall not, as a member of the village legislative authority, participate in any deliberations, discussions, negotiations, or votes concerning prospective agreements with the children services board, or participate in any deliberations, discussions, or votes on tax levies or bond issues for additional funding for the village if the county has placed a tax levy on the ballot pursuant to R.C. 5705.24 to fund the operations of the children services board or pay the salary of the board's executive director. If the salary of the executive director of the children services board is paid completely, directly or indirectly, by federal loans or grants, and the executive director is a "State or local ... employee" as defined in 5 U.S.C.A. § 1501(4) and 5 C.F.R. § 151.101(d), the executive director may serve as a member of the village legislative authority only if she seeks election to the office of member of a village legislative authority in a nonpartisan election.

2. A person may serve simultaneously as executive director of a children services board that is a public children services agency for a county and member of a board of township trustees provided that no contract exists between the children services board and the township, and, as executive director of the children services board, she does not participate in any deliberations or discussions or provide guidance to the children services board concerning prospective agreements with the township. A person serving simultaneously as executive director of a children services board and member of the board of township trustees shall not, as a member of the board of township trustees, participate in any deliberations, discussions, negotiations, or votes concerning prospective agreements with the children services board, or participate in any deliberations, discussions, or votes on tax levies or bond issues for additional funding for the township if the county has placed a tax levy on the ballot pursuant to R.C. 5705.24 to fund the operations of the children services board or pay the salary of the board's executive director. If the salary of the executive director of the children services board is paid completely, directly or

indirectly, by federal loans or grants, and the executive director is a “State or local ... employee” as defined in 5 U.S.C.A. § 1501(4) and 5 C.F.R. § 151.101(d), the executive director may serve as a member of a board of township trustees only if she seeks election to the office of member of a board of township trustees in a nonpartisan election.

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