

OPINION NO. 95-040**Syllabus:**

Absent a departmental regulation, charter provision, or ordinance that provides otherwise, a member of the legislative authority of a village may be employed as a bus driver by a local school district. (1933 Op. Att'y Gen. No. 2130, vol. III, p. 2025 (syllabus, paragraph one) and 1930 Op. Att'y Gen. No. 2165, vol. II, p. 1237, overruled on the basis of statutory amendment.)

To: Greg Carroll, Adams County Prosecuting Attorney, West Union, Ohio

By: Betty D. Montgomery, Attorney General, December 12, 1995

You have requested an opinion concerning whether the positions of member of the legislative authority of a village and school bus driver for a local school district are compatible. You have indicated that the school bus driver is not an independent contractor, but rather an employee of the local school district.

1979 Op. Att'y Gen. No. 79-111 at 2-367 and 2-368 sets forth the following seven questions for determining whether two public positions are compatible:

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?

Questions six and seven are of local concern, and it is assumed, for purposes of this opinion, that there are no departmental regulations, charter provisions, or ordinances which limit the holding of outside employment by a member of the legislative authority of a village or school bus driver for a local school district.¹ There are no applicable federal or state regulations. In

¹ The Secretary of State's Office has indicated that the village in question has not adopted a charter provision pursuant to Ohio Const. art. XVIII, §7 that alters the qualifications for

addition, question four, which asks whether it is physically possible for one person to perform the duties of both positions, is a question of fact, which is best answered by the parties involved because they may more precisely determine the time demands of each position.

Question one asks whether either of the positions is a classified employment within the terms of R.C. 124.57, which prohibits employees or officers in the classified service of the state, the several counties, cities, and city school districts thereof, and civil service townships from participating in partisan political activities, other than to vote or express their political views. A member of the legislative authority of a village and a school bus driver for a local school district are not subject to R.C. 124.57's prohibition since that section does not apply to officers or employees in the service of a village or local school district. *See* 1989 Op. Att'y Gen. No. 89-069 at 2-315. R.C. 124.57's prohibition thus does not prohibit a member of the legislative authority of a village from serving as a school bus driver for a local school district.

Question two asks whether the empowering statutes of either position limit outside employment. No statute prohibits a member of the legislative authority of a village from serving simultaneously as a school bus driver for a local school district.² Accordingly, question two may be answered in the negative.

Question three asks whether one position is subordinate to, or in any way a check upon, the other. An examination of the duties of the positions in question discloses that the positions operate independently of each other, and that neither is responsible for assigning duties to, or supervising, the other. Accordingly, I find that one position is not subordinate to, or a check upon, the other.

Question five asks whether there is a conflict of interest between the two positions. An individual may not hold two public positions simultaneously if he would be subject to divided loyalties and conflicting duties or be exposed to the temptation of acting other than in the best

members of a village legislative authority that appear in R.C. 731.12. *See State ex rel. Ziegler v. Hamilton County Bd. of Elections*, 67 Ohio St. 3d 588, 621 N.E.2d 1199 (1993) (R.C. 731.12 creates an exclusive set of qualifications for village council members, which are procedural in nature; thus, a village that wishes to alter those qualifications may do so only by the adoption of a charter provision).

² 1933 Op. Att'y Gen. No. 2130, vol. III, p. 2025 (syllabus, paragraph one) and 1930 Op. Att'y Gen. No. 2165, vol. II, p. 1237 concluded that, insofar as G.C. 4218 (now R.C. 731.12) prohibits a member of a village council from holding other public employment, except notary public or member of the state militia, a member of a village council may not be employed by a board of education as a school bus driver. Currently, however, R.C. 731.12 provides that "[n]o member of the legislative authority [of a village] shall ... hold employment with said village." R.C. 731.12, as currently written, thus does not prohibit a member of the legislative authority of a village from holding other public employment so long as such employment is not with said village. 1956 Op. Att'y Gen. No. 6674, p. 447 (syllabus, paragraph one). Accordingly, in light of R.C. 731.12, as currently written, the conclusions set forth in 1933 Op. Att'y Gen. No. 2130, vol. III, p. 2025 (syllabus, paragraph one) and 1930 Op. Att'y Gen. No. 2165, vol. II, p. 1237 are overruled.

interest of the public. Given the respective duties of the positions in question, I believe there is no situation in which the duties of the two positions conflict. Therefore, I conclude that one person who serves as both a member of the legislative authority of a village and school bus driver for a local school district is not subject to a conflict of interest.

Based on the foregoing it is my opinion and you are advised that, absent a departmental regulation, charter provision, or ordinance that provides otherwise, a member of the legislative authority of a village may be employed as a bus driver by a local school district. (1933 Op. Att'y Gen. No. 2130, vol. III, p. 2025 (syllabus, paragraph one) and 1930 Op. Att'y Gen. No. 2165, vol. II, p. 1237, overruled on the basis of statutory amendment.)