

September 28, 2017

The Honorable Katherine J. Zartman
Williams County Prosecuting Attorney
1425 E. High St., Suite 115
Bryan, Ohio 43506

SYLLABUS:

2017-032

A person may not serve simultaneously as prosecuting attorney of Williams County and member of a joint-county board of alcohol, drug addiction, and mental health services of a joint-county alcohol, drug addiction, and mental health service district of which Williams County is a part.



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OPINION NO. 2017-032

The Honorable Katherine J. Zartman
Williams County Prosecuting Attorney
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Dear Prosecutor Zartman:

We have received your request whether a person may serve simultaneously as the prosecuting attorney of Williams County and as a member of a board of alcohol, drug addiction, and mental health services (“ADAMHS”) of a joint-county alcohol, drug addiction, and mental health service district that comprises four counties, including Williams County. R.C. 340.01(B) requires that “[a]n alcohol, drug addiction, and mental health service district ... be established in any county or combination of counties having a population of at least fifty thousand.” A “county or combination of counties having a population of less than fifty thousand may establish” an alcohol, drug addiction, and mental health service district upon the approval of the Director of Mental Health and Addiction Services. *Id.* “Districts comprising more than one county shall be known as joint-county districts.” *Id.* Each alcohol, drug addiction, and mental health service district, including any joint-county district, is governed by an ADAMHS board. R.C. 340.02(A).

Williams County, Defiance County, Fulton County, and Henry County have established a joint-county alcohol, drug addiction, and mental health service district pursuant to R.C. 340.01(B). The joint-county district is governed by an ADAMHS board known as the Four County Board of Alcohol, Drug Addiction, and Mental Health Services. You ask whether a person may serve simultaneously as the prosecuting attorney of Williams County and as a member of the Four County Board of Alcohol, Drug Addiction, and Mental Health Services.

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?
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). 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.

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. In this instance, the prosecuting attorney of Williams County acts as a check upon the Four County Board of Alcohol, Drug Addiction, and Mental Health Services in her capacity as a member of the Williams County Budget Commission. Accordingly, the two positions are incompatible.

Provisions in R.C. Chapter 5705 govern the submission of tax budgets and the levying of taxes by the taxing authority of each subdivision or taxing unit in the county. R.C. 5705.01(A) defines “subdivision” to include, among other entities, a county and “a joint-county alcohol, drug addiction, and mental health service district.” The taxing authorities of a county and a joint-county alcohol, drug addiction, and mental health service district are the board of county commissioners and the joint-county district’s ADAMHS board, respectively. *See* R.C. 5705.01(C).

R.C. 5705.28(A) states, in part, that “the taxing authority of each subdivision or other taxing unit shall adopt a tax budget for the next succeeding fiscal year.” A subdivision is not required to adopt a tax budget under R.C. 5705.28(A) if it does not levy a tax, *see* R.C. 5705.28(B)(2)(a), or if the county budget commission, by majority vote, waives the requirement that the subdivision adopt a tax budget, *see* R.C. 5705.281. *See also* R.C. 5705.28(B)(1) (a board of trustees of a school library district that meets certain requirements files a tax budget with the board of education of a school district). We understand that the Four County Board of Alcohol, Drug Addiction, and Mental Health Services does not currently adopt and submit a tax budget in

Williams County on behalf of the joint-county district.¹ However, we also understand that the Williams County Board of Commissioners appropriates money to the Four County Board of Alcohol, Drug Addiction, and Mental Health Services to support the services provided to Williams County by the Four County Board.²

R.C. 340.07 authorizes a board of county commissioners of any county that participates in a joint-county alcohol, drug addiction, and mental health service district to appropriate money to the joint-county ADAMHS board, upon a request by the ADAMHS board for such an appropriation, “for the operation, lease, acquisition, construction, renovation, and maintenance of community addiction services providers, community mental health services providers, and facilities.” R.C. 5705.221 also authorizes the board of county commissioners to levy a tax in excess of the ten-mill limitation when “the amount of taxes which may be raised within the ten-mill limitation by levies on the current tax duplicate will be insufficient to provide the necessary requirements of ... the county’s contribution to a joint-county [alcohol, drug addiction, and mental health service] district of which the county is a part.” The county’s tax budget estimates the county’s anticipated expenditures and receipts, including the amount of money the county will require from the general property tax. *See* R.C. 5705.29 (listing the information each taxing unit shall include in its tax budget); *see also* R.C. 5705.09 (requiring each subdivision to establish certain funds into which tax revenues may be deposited and from which expenditures may be made). Accordingly, the amount of money appropriated by the Williams County Board of Commissioners to the Four County Board of Alcohol, Drug Addiction, and Mental Health Services is included in the tax budget of Williams County.

¹ Information regarding the tax budget and sources of funding for the Four County Board of Alcohol, Drug Addiction, and Mental Health Services was provided to us by the Board’s Finance and Administration Assistant.

² A joint-county alcohol, drug addiction, and mental health services (“ADAMHS”) board “may receive funding from private and public sources for the operation of alcohol, drug addiction, and mental health programs and the maintenance or acquisition of facilities,” including from the counties comprising the joint-county district. 2013 Op. Att’y Gen. No. 2013-005, at 2-45; *see also* R.C. 340.03(A)(7) (requiring an ADAMHS board to “[r]ecruit and promote local financial support for addiction services, mental health services, and recovery supports from private and public sources”); R.C. 340.07 (appropriation of funds to a joint-county ADAMHS board by a board of county commissioners); R.C. 340.09(A)(1) (“[u]sing funds the general assembly appropriates for these purposes, the department of mental health and addiction services shall provide any county assistance for” various purposes, including “[t]he operation of the board of [ADAMHS] serving the county”); R.C. 5119.23 (governing the allocations of state funds to ADAMHS boards); R.C. 5705.221 (authorizing a board of county commissioners to levy a tax in excess of the ten-mill limitation to support an alcohol, drug addiction, and mental health service district of which the county is a part).

The tax budget of Williams County, along with the tax budgets of all of the other subdivisions in the county, are submitted to the county auditor and presented to the county budget commission for examination. R.C. 5705.30; R.C. 5705.31; *see also* R.C. 5705.27 (creating county budget commissions). The county budget commission consists of “the county auditor, the county treasurer, and the prosecuting attorney.” R.C. 5705.27. The county budget commission reviews the tax budgets “and ascertain[s] the total amount proposed to be raised in the county for the purposes of each subdivision and other taxing units.” R.C. 5705.31. The county budget commission ascertains that levies in excess of the ten-mill limitation as well as the other levies identified in divisions (A) through (E) of R.C. 5705.31 “have been properly authorized.”³ R.C. 5705.31 (“[d]ivisions (A) to (E) of this section are mandatory and commissions shall be without discretion to reduce such minimum levies except as provided in such divisions”). “[T]he phrase ‘properly authorized,’ as employed in R.C. 5705.31, requires the [county] budget commission to determine that” the taxing authority of the subdivision or other taxing unit has the power to impose the tax, “either by its own action or by vote of the people, and that the enactment of the measure imposing the tax was in compliance with statutory requirements.” *Vill. of S. Russell v. Budget Comm’n of Geauga Cnty.*, 12 Ohio St. 3d 126, 132, 465 N.E.2d 876 (1984). The county budget commission also “determine[s] whether [the] rate of taxation is clearly required by the budget of the taxing district or the political subdivision,” or, in other words, “whether the funds to be derived from a levy approved for a specific purpose are indeed budgeted for that purpose.” *Id.* If the county budget commission determines that the levies are properly authorized, the county budget commission approves the levies without modification. R.C. 5705.31.

After approving the mandated levies in R.C. 5705.31(A)-(E), the county budget commission adjusts the amounts that the tax budgets estimate will be required from the general property tax so as to bring the tax levies required therefor within the ten-mill limitation and other limitations specified in R.C. 5705.01 to R.C. 5705.47.⁴ *See* R.C. 5705.32(A). The amount of

³ R.C. 5705.31(D), for example, requires a county budget commission to approve a minimum levy within the ten-mill limitation for the current expense and debt service of each subdivision or other taxing unit that existed during the last five years the fifteen-mill limitation was in effect (the period of 1929 through 1933). *See Newton Twp. v. Trumbull Cnty. Budget Comm’n*, Ohio Tax Case No. 92-M-1313, 1994 Ohio Tax LEXIS 1794, at *6 (BTA Oct. 28, 1994). When territory annexed to a municipal corporation remains part of a township, the minimum levy of the municipal corporation or township is adjusted pursuant to R.C. 5705.315(A)-(B).

⁴ “Revenue derived from taxes levied within the ten-mill limitation is commonly referred to as ‘inside millage.’” 2016 Op. Att’y Gen. No. 2016-012, at 2-120. 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

money required by each subdivision, as shown in each subdivision's tax budget, affects the amount of tax dollars derived from taxes levied within the ten-mill limitation that will be allocated to each of the subdivisions in the county. *See* 2011 Op. Att'y Gen. No. 2011-008, at 2-64. The amount of tax dollars allocated to each subdivision dictates the amount of money that will be available for use by the subdivision's various departments, agencies, and offices. In this instance, the amount of tax dollars allocated to Williams County affects the amount of money that will be available for appropriation to the Four County Board of Alcohol, Drug Addiction, and Mental Health Services. Therefore, as a member of the county budget commission, the prosecuting attorney of Williams County acts as a check upon the financial requests of the Four County Board of Alcohol, Drug Addiction, and Mental Health Services.

A prior opinion of the Attorney General relied upon the same reasoning to determine that a person may not serve simultaneously as a prosecuting attorney and a member of a board of county hospital trustees. *See* 1951 Op. Att'y Gen. No. 692, p. 417 (syllabus). In that opinion, the Attorney General explained:

[County hospital] trustees, as part of their task of operating [a county] hospital, certify each year 'the amount necessary for the ensuing year' to the county commissioners.... The commissioners, acting in their capacity as the taxing authority for the county, then take this amount, or an amount similar thereto, and submit it, as part of their adopted tax budget, through the proper channels to the county budget commission. At this point the county budget commission, of which the prosecuting attorney is a member, either approves or revises that tax budget.... In this way a prosecuting attorney is required to act as a check upon the financial requests of county hospital trustees.

Id. at p. 420.

A person may not hold two public positions simultaneously if one of the positions is in any way a check upon the other. As a member of the county budget commission, the Williams County prosecuting attorney acts as a check upon the financial requests of the Four County Board of Alcohol, Drug Addiction, and Mental Health Services. Accordingly, we conclude that a person may not serve simultaneously as prosecuting attorney of Williams County and member of a joint-county board of alcohol, drug addiction, and mental health services of a joint-county alcohol, drug addiction, and mental health service district of which Williams County is a part.

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.

Conclusion

It is our opinion, and you are hereby advised that a person may not serve simultaneously as prosecuting attorney of Williams County and member of a joint-county board of alcohol, drug addiction, and mental health services of a joint-county alcohol, drug addiction, and mental health service district of which Williams County is a part.

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