

November 15, 2016

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

SYLLABUS:

2016-036

An assistant prosecuting attorney assigned to prosecute misdemeanor and felony offenses in the Athens County Court of Common Pleas may serve as a member of a board of township trustees of a township located in Athens County, provided that in his capacity as assistant prosecuting attorney he does not serve on the county budget commission as the designee of the prosecuting attorney, prepare the budget of the county for submission to the county budget commission, appear before the county budget commission to advocate in support of the county budget, or prosecute misdemeanor or felony offenses associated with the township in which he serves as a trustee. In his capacity as a member of the board of township trustees he shall refrain from discussions, deliberations, negotiations, or votes under R.C. 309.09(B) to retain legal counsel other than the prosecuting attorney to advise or represent the township. (2001 Op. Att'y Gen. No. 2001-027 and 1999 Op. Att'y Gen. No. 99-027, followed.)



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OPINION NO. 2016-036

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

Dear Prosecutor Blackburn:

You have requested an opinion whether the office of trustee of a township in Athens County is compatible with a position of employment in the office of the Athens County prosecuting attorney. Specifically, you ask whether a person may serve as trustee of a township in Athens County while employed at the same time as an assistant prosecuting attorney assigned exclusively to prosecute misdemeanor and felony offenses in the Athens County Court of Common Pleas.¹

Whether two or more public offices or positions are compatible depends upon the answers to the following seven questions:

1. Is either of the positions a classified employment for purposes of R.C. 124.57?
2. Does a constitutional provision or statute prohibit the holding of both positions at the same time?
3. Is one position 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 an impermissible conflict of interest between the two positions?
6. Are there local charter provisions, resolutions, or ordinances that are controlling?

¹ No township in Athens County has adopted a limited home rule government under R.C. Chapter 504.

7. Is there a federal, state, or local departmental regulation applicable?
1979 Op. Att’y Gen. No. 79-111.

“All seven 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. If any one question yields an answer in the negative, the positions are incompatible.

At the outset we will address questions six and seven for these two positions. Question six focuses on the applicability of charter provisions, resolutions, and ordinances, and question seven concerns federal, state, and local departmental regulations. There are no applicable charter provisions, resolutions, ordinances, or state or federal regulations prohibiting an assistant prosecuting attorney from serving as a township trustee. Whether there is an applicable local departmental regulation or township resolution applicable to any of these employment arrangements is a matter for local officials to determine. We will assume, for the purpose of this opinion, that there are no such regulations or resolutions.

The first question of the compatibility analysis concerns the provisions of R.C. 124.57. This statute prohibits, in part, and except as provided therein, an officer or employee in the classified civil service of the state, the several counties, cities, city school districts, and civil service townships from holding partisan political offices or engaging in partisan political activities. R.C. 124.57(A). Thus, we must determine whether the position of assistant county prosecutor and township trustee are classified positions.

Assistant prosecuting attorneys are in the unclassified service. R.C. 124.11(A)(11); *see also* 1986 Op. Att’y Gen. No. 86-035, at 2-179 (an assistant prosecuting attorney is not a position of classified employment and therefore is not subject to the prohibitions in R.C. 124.57). As an elected official, R.C. 505.01, a trustee of a township located in Athens County is an unclassified position. R.C. 124.11(A)(1). Thus, the prohibitions in R.C. 124.57 do not apply to these two positions and do not prohibit someone from holding these two positions simultaneously.

The second question asks whether a constitutional or statutory provision prohibits a person from holding two positions simultaneously. Several statutory provisions prohibit a prosecuting attorney from serving in other public capacities. R.C. 3.11 thus declares that “[n]o person shall hold at the same time by appointment or election more than one of the following offices: sheriff, county auditor, county treasurer, clerk of the court of common pleas, county recorder, prosecuting attorney, and probate judge.” R.C. 309.02 states that “[n]o prosecuting attorney shall be a member of the general assembly of this state or mayor of a municipal corporation.” And R.C. 3313.13, provides, in pertinent part, that “no prosecuting attorney ... or other official acting in a similar capacity shall be a member of a board of education,” and further states that “[a]n assistant prosecuting attorney may serve as a member of a board of education of a school district in any county other than the county in which the assistant prosecuting attorney is employed if the board of education’s school district is not contiguous to the county in which the assistant prosecuting attorney is employed.”

The prohibitions in R.C. 3.11, R.C. 309.02, and R.C. 3313.13 by their express terms do not apply to an assistant prosecuting attorney who wishes to serve as a township trustee. Our research also does not disclose language elsewhere either in the Ohio Constitution or the Revised Code that prevents an assistant prosecuting attorney from serving as a township trustee in the county of the prosecuting attorney. Thus, question two is resolved in favor of compatibility.

Question three asks whether one position is subordinate to, or in any way a check upon, the other. A township trustee is an elected officeholder. R.C. 505.01. A township trustee serves on behalf of, and is answerable to, the township electorate. 2016 Op. Att’y Gen. No. 2016-034, slip op. at 9; 2014 Op. Att’y Gen. No. 2014-032, at 2-279. An assistant prosecuting attorney is appointed by the prosecuting attorney of the county, R.C. 309.06, and thus is accountable to the prosecuting attorney. 2001 Op. Att’y Gen. No. 2001-040, at 2-240; 1990 Op. Att’y Gen. No. 90-005, at 2-19. Thus, neither position is subordinate to, or is in any way a check upon, the other. Question three, therefore, is resolved in favor of compatibility.

The fourth question of the compatibility test asks whether it is physically possible for one person to perform the duties of both positions. This is a factual question that is best addressed by the interested local officials and the person who wishes to serve as a township trustee while also serving as an assistant prosecuting attorney. Being closer to the situation, they may be capable of assessing more accurately the time constraints and demands imposed upon the positions in question. *See* 2009 Op. Att’y Gen. No. 2009-010, at 2-90. If these parties determine that it is physically possible for a person to perform competently the duties of township trustee and assistant prosecuting attorney, a person may serve in each of these positions at the same time.

Finally, question five asks whether there is a conflict of interest between the duties, powers, or responsibilities assigned to each of the two public positions. A person may not hold two public positions simultaneously if he would be subject to divided loyalties, conflicting duties, or the temptation to act other than in the public’s best interest. 2009 Op. Att’y Gen. No. 2009-005, at 2-30. A conflict of interest exists if the duties or responsibilities of one of the positions are of such a nature as to influence improperly the exercise or performance of the duties and responsibilities attached to the other position. But as we also have explained in our opinions,

[t]he 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”).

2016 Op. Att’y Gen. No. 2016-034, slip. op. at 12.

In the case of an assistant prosecuting attorney who wishes to serve as a township trustee, the conflict of interest question requires that we catalog and assess the duties, powers, and responsibilities conferred upon each of those positions. 2001 Op. Att’y Gen. No. 2001-027, at 2-154; 1997 Op. Att’y Gen. No. 97-034, at 2-198 and 2-199.

The General Assembly has created the office of prosecuting attorney in each county of the state of Ohio, *see* R.C. 309.01 (“[t]here shall be elected quadrennially in each county, a prosecuting attorney”), and has specified throughout R.C. Chapter 309 and other select provisions of the Revised Code the numerous duties and powers reposed in that office. Pursuant to R.C. 309.08(A), the prosecuting attorney is authorized to “inquire into the commission of crimes within the county” and “shall prosecute, on behalf of the state, all complaints, suits, and controversies in which the state is a party.” Thus, the first responsibility of a prosecuting attorney is to investigate crimes alleged to have occurred within the county and to prosecute within the courts of the county having jurisdiction thereof persons alleged to have committed criminal offenses as defined by the General Assembly.

The prosecuting attorney also performs a vast array of legal services on the civil side of the law. The prosecuting attorney serves as legal adviser and representative of the officers, boards, and departments of county government, R.C. 309.09(A), and the officers, boards, and commissions of township governments within the county, R.C. 309.09(B). The prosecuting attorney shall serve as the legal advisor of a lake facilities authority pursuant to R.C. 353.02, and is required to provide legal counsel and representation to the boards of education of certain school districts, and the governing boards of educational service centers, within the county, R.C. 3313.35. The prosecuting attorney also may agree to provide legal counsel to a board of park commissioners, R.C. 309.09(D), a joint fire district, R.C. 309.09(E), a joint ambulance district, R.C. 309.09(F), a joint emergency medical services district, R.C. 309.09(G), or a fire and ambulance district, R.C. 309.09(H).

A prosecuting attorney “may appoint any assistants, clerks, and stenographers who are necessary for the proper performance of the duties of his office.” R.C. 309.06(A). Pursuant to this authorization, a prosecuting attorney, in a reasonable exercise of his discretion, may appoint attorneys to serve as assistant prosecuting attorneys who will undertake the performance of the myriad duties and responsibilities bestowed upon the prosecuting attorney. An assistant prosecuting attorney, therefore, acts for, and on behalf of, the prosecuting attorney. 1999 Op. Att’y Gen. No. 99-027, at 2-175 (“[w]ithout assistants, a prosecuting attorney would be unable to completely and appropriately perform the duties of his office.... An assistant prosecuting attorney thus performs his duties on behalf of the prosecuting attorney”).

However, “[a]n assistant prosecuting attorney is not, by virtue of his appointment to that position, conferred all of the powers, duties, and responsibilities of the prosecuting attorney.” *Id.* Rather, an assistant prosecuting attorney performs only those duties, and undertakes only those responsibilities, as are assigned or delegated to him by the prosecuting attorney. *State ex rel. Thomas v. Henderson*, 123 Ohio St. 474, 478, 175 N.E. 865 (1931); 1999 Op. Att’y Gen. No. 99-027, at 2-175; 1970 Op. Att’y Gen. No. 70-022, at 2-39. Therefore, an assistant prosecuting may

act for and on behalf of the prosecuting attorney in only those matters assigned to the assistant.² In this instance, therefore, we begin the conflict of interest assessment by identifying precisely which duties, powers, and responsibilities you have assigned to the assistant prosecuting attorney. You have appointed the assistant prosecuting attorney for the purpose of prosecuting misdemeanor and felony offenses before the Athens County Court of Common Pleas. The assistant prosecuting attorney does not provide legal counsel or representation with respect to civil law matters for which you are responsible. In particular, the assistant prosecuting attorney does not provide advice or representation in civil matters to the officers, agencies, and departments of Athens County government or to the officers, boards, and commissions of the township governments in Athens County.

Pursuant to R.C. 309.09(B), a prosecuting attorney is required to serve as legal counsel and representative to each board of township trustees within the county, and to prosecute and defend any action that may affect the board. *Kline v. Board of Twp. Trustees*, 13 Ohio St. 2d 5, 7-8, 233 N.E.2d 515 (1968). This statutory obligation means that a prosecuting attorney may not serve as a member of a board of township trustees of a township within his county while also serving as prosecuting attorney.³ 1988 Op. Att’y Gen. No. 88-049, at 2-224 (“an individual who

² Acknowledging this circumstance, our opinions no longer advise that a factor disqualifying a prosecuting attorney from serving in a second public position will be imputed without exception to an assistant prosecuting attorney. 1999 Op. Att’y Gen. No. 99-027 (syllabus) (questioning the validity of attributing to his assistant a disqualification that serves as a barrier to the prosecuting attorney serving in a second public office or employment, as espoused in 1983 Op. Att’y Gen. No. 83-030, 1970 Op. Att’y Gen. No. 70-053, 1970 Op. Att’y Gen. No. 70-022, 1969 Op. Att’y Gen. No. 69-133, and 1846-1906 Official Opinions of the Ohio Attorney General, vol. 4, p. 746). *Cf., e.g.*, 1983 Op. Att’y Gen. No. 83-030, at 2-112 (“because an assistant prosecutor is empowered to act for, and in the place of a prosecutor in most matters, the assistant is subject to the same limitation as the prosecutor, and may not hold any office which a prosecutor may not hold,” and concluding that an assistant prosecuting attorney may not serve as a member of a county board of mental retardation and developmental disabilities because, *inter alia*, the pertinent statute prohibits the prosecuting attorney from serving as a member of that board).

³ The rationale supporting the conclusion that a prosecuting attorney may not serve as a member of a board or agency for which he also serves as statutory legal counsel is that the prosecuting attorney would be able to advise the board or agency in his own interest. 1988 Op. Att’y Gen. No. 88-049, at 2-224; 1983 Op. Att’y Gen. No. 83-030, at 2-113. As explained in 1948 Op. Att’y Gen. No. 4130, p. 594, at 597:

It appears very clear that the person who is by law the legal adviser of a board could not be appointed by that board to a responsible position without violating the generally accepted rules as to incompatibility of offices. As such

functions as the legal adviser to a particular public board of which he is also a member would be subject, *inter alia*, to conflicting duties and interests in both capacities.... Thus, a prosecuting attorney may not serve upon a board of township trustees for which he also acts as legal adviser and counsel"). It also means that an assistant prosecuting attorney may not serve as a member of a board of township trustees that he is assigned to advise or represent.

You explain that you have not assigned the assistant prosecuting attorney to serve as legal adviser to or representative of any of the boards of township trustees of townships within Athens County, including the board of township trustees of which he wishes to be a member. You also do not plan to modify this arrangement at any time in the foreseeable future. Rather, the duties and responsibilities of the assistant prosecuting attorney shall be confined to matters arising under the criminal law. With this limitation in place, and provided your assistant observes the limitation, the assistant prosecuting attorney will not confront a conflict of interest that prevents his service as a township trustee while also fulfilling his duties and responsibilities as an appointee in your office.

Regarding other conflicts of interest that may confront the assistant prosecuting attorney who seeks to serve as a township trustee in Athens County, we turn our attention to 2001 Op. Att'y Gen. No. 2001-027 and 1999 Op. Att'y Gen. No. 99-027. In the 2001 opinion the Attorney General addressed the compatibility of the position of assistant prosecuting attorney and the office of member of a board of township trustees. The prosecuting attorney employed the assistant prosecuting attorney to handle appeals of criminal cases. The assistant's responsibilities were confined to this kind of work for the prosecuting attorney. The assistant prosecuting attorney did not conduct criminal trials for the prosecuting attorney, and the prosecuting attorney did not assign the assistant to advise or represent any of the prosecuting attorney's statutory clients in civil matters. As in your situation, the assistant prosecuting attorney did not counsel or represent any of the township governments within the county.

In view of the foregoing circumstances, 2001 Op. Att'y Gen. No. 2001-027 identified and explained several conflicts of interest that might confront an assistant prosecuting attorney while also serving as a township trustee. The opinion noted that, pursuant to R.C. 309.09(B), a board of township trustees has the authority to retain the services of legal counsel other than the prosecuting attorney to advise or represent the township in a particular matter. The exercise of this authority by a township trustee who is employed as an assistant prosecuting attorney might be improperly influenced by the assistant's loyalty to the prosecuting attorney. Specifically, the assistant might not wish to approve the township's retention of another attorney, lest that decision disadvantage the prosecuting attorney. This predisposition on the part of the assistant

legal adviser it would manifestly be within his power to advise the board in his own interest and while he could not be said to hold a direct check or control over himself, as such officer, he would be subjected to the temptation to mold his advice to further his own interests.

prosecuting attorney thus would mean that, in his capacity as township trustee, he would not ponder or make that decision in a completely disinterested and neutral manner. 2001 Op. Att’y Gen. No. 2001-027, at 2-157; *see also* 1997 Op. Att’y Gen. No. 97-044, at 2-274 (an assistant prosecuting attorney who serves as an administrative hearing officer for a child support enforcement agency (CSEA) may be required to preside over a hearing in which one of the parties is represented by the office of the prosecuting attorney by whom the assistant is employed, and “[i]n this situation, it would be difficult for the [assistant prosecuting attorney], as an administrative hearing officer, to set aside his loyalty to the county prosecuting attorney”).

The opinion reasoned, however, that the potential for the foregoing conflict of interest did not render the positions of assistant prosecuting attorney and township trustee incompatible. 2001 Op. Att’y Gen. No. 2001-027, at 2-157. The opinion determined that the township trustees likely would not find it necessary to consider the retention of legal counsel other than the prosecuting attorney on a regular basis. Further, should the township trustees have to consider such a matter, the assistant prosecuting attorney would be able to abstain from having any role in that decision. 2001 Op. Att’y Gen. No. 2001-027, at 2-157 and 2-158 (“the potential for this conflict of interest does not prohibit a person from serving simultaneously as a township trustee and assistant prosecuting attorney, provided that as a township trustee he does not participate in any deliberations, discussions, negotiations, or votes concerning the township’s employment of an attorney other than the prosecuting attorney”).

The 2001 opinion also found that the assistant prosecuting attorney would confront a conflict of interest were he to investigate or prosecute criminal offenses associated with the township in which he served as township trustee. For example, an assistant prosecuting attorney might be called upon to prosecute the offense of theft in office, R.C. 2921.41, against other officers or employees of the township, including the other trustees or the assistant himself. 2001 Op. Att’y Gen. No. 2001-027, at 2-156 n.6 The opinion chose to engage the presumption that the prosecuting attorney would ensure that the assistant not be required to prosecute criminal charges brought against any officers or employees of the township, thus eliminating the potential for this untenable conflict of interest. *Id.*

1999 Op. Att’y Gen. No. 99-027 addressed the compatibility of the position of assistant prosecuting attorney and the office of member of the legislative authority (*i.e.*, council) of a city. That opinion identified several potential conflicts of interest that are germane to your inquiry, insofar as the same conflicts of interest may confront an assistant prosecuting attorney in his capacity as a township trustee.

Pursuant to R.C. 117.28, a prosecuting attorney may institute a criminal proceeding against a public officer who is alleged in an audit report of the Auditor of State to have committed malfeasance or gross neglect of duty, for which a criminal penalty is provided, in connection with the misuse or misappropriation of public moneys. In the 1999 opinion the Attorney General explained that the prosecuting attorney might delegate to an assistant prosecuting attorney the task of conducting such a criminal action against one or more of the officers of the city in which the assistant served as a city council member. That would be an

unacceptable assignment for the assistant prosecuting attorney. To avoid this difficulty, the prosecuting attorney would have to ensure that the assistant prosecuting attorney would not be given that assignment. If that precaution were observed, the assistant prosecuting attorney would be able to serve as a member of the city's legislative authority. 1999 Op. Att'y Gen. No. 99-027, at 2-180.

The 1999 opinion also addressed a conflict of interest identified in many of our compatibility opinions, the conflict of interest that is presented by competition among political subdivisions within the same county for tax revenues generated by the unvoted property tax, that is, those taxes that may be imposed within the ten-mill limitation. 1999 Op. Att'y Gen. No. 99-027, at 2-182. The county budget commission is the agency of county government that is required to equalize the tax budgets of the county and the county's political subdivisions to ensure that each political subdivision's budget complies with the ten-mill limitation. As part of that process the law permits representatives of the county and its political subdivisions to appear before the county budget commission and advocate in support of the political subdivision's financial needs. The prosecuting attorney is a member of the county budget commission. R.C. 5705.27. The prosecuting attorney may designate another person to serve in the prosecutor's place on the county budget commission, and the designee may be an assistant prosecuting attorney within the office of the prosecuting attorney. 1943 Op. Att'y Gen. Gen. No. 6186, p. 363. These several circumstances might coalesce to place the assistant prosecuting attorney in a precarious position:

Because an assistant prosecuting attorney may be required to serve on behalf of the prosecuting attorney as a member of the county budget commission, an assistant could be placed in a position of passing upon the budgetary needs of the city he serves as a member of its legislative authority. *See* 1984 Op. Att'y Gen. No. 84-087 at 2-301.

In addition, a person who serves as an assistant prosecuting attorney and member of the legislative authority of a city may be required to prepare both the county's and city's tax budget and explain them to the county budget commission. As a member of the legislative authority of a city, he is required to prepare and adopt a tax budget for the city and may be asked to explain the budget to the county budget commission. R.C. 5705.28. Similarly, as an assistant prosecuting attorney, he may be required to prepare the county's tax budget and explain it to the county budget commission. *See* 1992 Op. Att'y Gen. No. 92-041 at 2-165. If the same person prepares both the county's and city's tax budgets and explains them to the county budget commission, a conflict of interest is present because he must advocate a position on behalf of one to the potential detriment of the other. *See* 1993 Op. Att'y Gen. No. 93-048 at 2-236. An argument that the county or city is entitled to a certain level of funds means a reduced level of funds is available for the other's use. Accordingly, the competition for advantageous budget decisions could subject a person who holds the positions of assistant prosecuting attorney and member of the legislative authority of a city to

influences that may prevent him from making completely objective decisions. See 1996 Op. Att’y Gen. No. 96-008 at 2-33; 1993 Op. Att’y Gen. No. 93-048 at 2-236.

1999 Op. Att’y Gen. No. 99-027, at 2-182 (footnote omitted).

Continuing, the 1999 opinion determined that this potential conflict of interest could be mitigated or avoided so that the assistant prosecuting attorney would be able to serve as a member of the city legislative authority:

However, for the following reasons, the potential for conflicts of interest involving budgetary matters is remote and speculative. You have stated that the person’s duties, as an assistant prosecuting attorney, do not include the preparation of the county’s tax budget or the explanation of it to the county budget commission, nor will he substitute for the prosecuting attorney on the county budget commission. Also, the delegation of such duties is not contemplated at this time. Thus, as an assistant prosecuting attorney, this person is not subject to conflicts of interest involving budgetary matters.

Because this person, as an assistant prosecuting attorney, is not responsible for preparing the county’s tax budget or explaining it to the county budget commission, he will not, as a member of the city’s legislative authority, be subject to influences that may prevent him from making completely objective decisions when preparing the city’s tax budget or explaining it to the commission. As an assistant prosecuting attorney, he will not be responsible for obtaining tax moneys from the county budget commission. The positions of assistant prosecuting attorney and member of the legislative authority are not in competition for the same moneys; thus, any conflicts of interest involving budgetary matters are remote and speculative.

1999 Op. Att’y Gen. No. 99-027, at 2-182 and 2-183.

The potential is real that the conflicts of interest thus identified in these two opinions will confront your assistant prosecuting attorney in connection with his service as a township trustee. We also are of the view, however, that he should be able to mitigate or eliminate these conflicts of interests by adhering to the Attorney General’s recommendations in the 1999 and 2001 opinions.

Consequently, in any instance in which the board of township trustees considers retaining legal counsel other than the prosecuting attorney to advise or represent the township, the assistant prosecuting attorney, in his capacity as a member of the board, shall abstain from participating in all deliberations, discussions, negotiations, or votes in that matter. Further, the assistant prosecuting attorney should not be required or permitted to prosecute criminal charges that may brought by your office or other prosecuting authority against officers or employees of

the township. In addition, we believe it prudent to enlarge this restriction to include the assistant prosecuting attorney's participation in any criminal matter, of whatever nature, that pertains to the township, its officers, or employees. The assistant prosecuting attorney thus should not be required or permitted to prosecute criminal offenses associated with or pertaining to the township, or officers or employees of the township, whether pursued by your office or by another prosecuting authority.

Regarding matters of budgeting and taxation, the assistant prosecuting attorney may also serve as a member of the board of township trustees so long as he does not serve on the county budget commission as your designee, prepare the tax budget of the county that is submitted to the county budget commission, or appear before the county budget commission to present and explain that budget. If those conditions are observed, the assistant prosecuting attorney will not face a conflict of interest in carrying out, as township trustee, his responsibilities in preparing the tax budget of the township that is submitted to the county budget commission or appearing before the county budget commission to explain or advocate on behalf of the township's tax budget. R.C. 5705.28(A) ("the taxing authority of each subdivision or other taxing unit shall adopt a tax budget for the next succeeding fiscal year"); R.C. 5705.01(A) (as used in R.C. Chapter 5705, "[s]ubdivision" means any township); R.C. 5705.01(C) (as used in R.C. Chapter 5705, "[t]axing authority" means, in the case of a township, the board of township trustees); 2008 Op. Att'y Gen. No. 2008-024, at 2-255 and 2-256.

Finally, the assistant prosecuting attorney's service as a member of the board of township trustees is compatible with his service as an appointee of your office so long as he is not required or permitted to serve as legal adviser to the township or represent the township in court proceedings.

Conclusions

Based upon the foregoing, it is my opinion, and you are hereby advised that an assistant prosecuting attorney assigned to prosecute misdemeanor and felony offenses in the Athens County Court of Common Pleas may serve as a member of a board of township trustees of a township located in Athens County, provided that in his capacity as assistant prosecuting attorney he does not serve on the county budget commission as the designee of the prosecuting attorney, prepare the budget of the county for submission to the county budget commission, appear before the county budget commission to advocate in support of the county budget, or prosecute misdemeanor or felony offenses associated

with the township in which he serves as a trustee. In his capacity as a member of the board of township trustees he shall refrain from discussions, deliberations, negotiations, or votes under R.C. 309.09(B) to retain legal counsel other than the prosecuting attorney to advise or represent the township. (2001 Op. Att'y Gen. No. 2001-027 and 1999 Op. Att'y Gen. No. 99-027, followed.)

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