

September 30, 2016

The Honorable Matthew E. Crall
Crawford County Prosecuting Attorney
112 E. Mansfield Street – Suite 305
Bucyrus, Ohio 44820

SYLLABUS:

2016-033

A person may not serve simultaneously as director of law of the City of Bucyrus and manager of the Crawford County Land Reutilization Corporation.



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OPINION NO. 2016-033

The Honorable Matthew E. Crall
Crawford County Prosecuting Attorney
112 E. Mansfield Street – Suite 305
Bucyrus, Ohio 44820

Dear Prosecutor Crall:

You have requested an opinion whether an elected director of law of a non-charter city may serve simultaneously as a manager¹ of a county land reutilization corporation established within the county in which the city is located.

A county land reutilization corporation is a nonprofit corporation that may be formed under R.C. Chapters 1724 and 5722 and is subject to the nonprofit corporation provisions of R.C. Chapter 1702, to the extent those provisions are not inconsistent with R.C. Chapter 1724. *See* R.C. 1724.01; R.C. 1724.04; R.C. 1724.08; 2014 Op. Att’y Gen. No. 2014-014, at 2-113 to 2-114. R.C. 5722.02-.15 set forth procedures for a county “to facilitate the effective reutilization of nonproductive land situated within its boundaries” (a land reutilization program). R.C. 5722.02(A). A county may elect, by resolution, to adopt and implement those procedures and form a county land reutilization corporation under Chapter 1724. R.C. 1724.04; R.C. 5722.02(B).

¹ Your request asks whether the position of elected city law director is compatible with the position of “chief executive officer/executive director” of a county land reutilization corporation. R.C. 1724.02(A)(12) authorizes a county land reutilization corporation to employ an “executive director” to “manage the operations of a county land reutilization corporation and employ others for the benefit of the corporation.” Following our receipt of your letter, the board of directors the Crawford County Land Reutilization Corporation (CCLRC) adopted a Code of Regulations. These Regulations do not authorize the appointment of an “executive director,” but provide that the board may enter into an agreement whereby the county treasurer’s office or other agency or entity designated by the board “shall serve as Land Bank Manager with full power and authority to manage and conduct all the business of the CCLRC, subject to review by the Board of Directors” for the CCLRC and oversee the CCLRC “staffing and office needs.” CCLRC Code of Reg., Art. VI, §§ 6.1.0.0-3.0.0. You have indicated that the manager position identified in the Code of Regulations is the position you referred to in your letter as “chief executive officer/executive director.” Therefore, in this opinion we will use the term “manager” and address the responsibilities of the manager as enumerated in the CCLRC’s Code of Regulations.

A county land reutilization corporation may be organized by a county for purposes related to returning vacant, abandoned, and foreclosed properties to productive use. Specifically, a county land reutilization corporation may be formed for the purposes of:

- (a) Facilitating the reclamation, rehabilitation, and reutilization of vacant, abandoned, tax-foreclosed, or other real property within the county for whose benefit the corporation is being organized, but not limited to the purposes described in division (B)(2) of this section;
- (b) Efficiently holding and managing vacant, abandoned, or tax-foreclosed real property pending its reclamation, rehabilitation, and reutilization;
- (c) Assisting governmental entities and other nonprofit or for-profit persons to assemble, clear, and clear the title of property described in this division in a coordinated manner; or
- (d) Promoting economic and housing development in the county or region.

R.C. 1724.01(B)(2). A county also may designate the county land reutilization corporation as the agency of the county for the reclamation, rehabilitation, and reutilization of vacant, abandoned, tax-foreclosed, or other real property in the county. R.C. 1724.10(A)(2).

The general powers of a county land reutilization corporation are set forth in R.C. 1724.02. *See also* 2014 Op. Att’y Gen. No. 2014-014, at 2-114. A county land reutilization corporation may, for example, borrow money for the purposes of the corporation, make loans, obtain and dispose of real and personal property, engage in code enforcement and nuisance abatement, and exercise the powers enumerated in R.C. Chapter 5722 (land reutilization programs). R.C. 1724.02.

Similar to counties, cities are authorized to elect, by resolution, to adopt and implement the procedures under R.C. 5722.02-.15. R.C. 5722.02(A). If a city makes this election, it may adopt and implement these procedures on its own or a city may enter into an agreement with a county and county land reutilization corporation the county has designated to implement the procedures. R.C. 5722.02(D). A city may also enter into an agreement with a county land reutilization corporation designating the county land reutilization corporation as the agency of the city for the reclamation, rehabilitation, and reutilization of vacant, abandoned, tax-foreclosed or other real property in the city. R.C. 1724.10(A)(3).

Your question concerns the Crawford County Land Reutilization Corporation (CCLRC) and the City of Bucyrus, the largest non-charter, statutory form, municipality in Crawford County. The CCLRC has been formed as a nonprofit corporation under R.C. Chapters 1702 and 1724. CCLRC Code of Regulations, Art. I, § 1.3.0.0. Crawford County elected to adopt and implement the procedures set forth under R.C. 5722.02-.15 and designated the CCLRC as its agency for reclamation, rehabilitation, and reutilization of vacant abandoned, tax-foreclosed or other real property under R.C. 1724.10. Resolution of the Crawford County Commissioners, February 4, 2016. The CCLRC has been given all the powers of a county land reutilization corporation “set forth in Section 1724.02 of the Ohio Revised Code, Chapter 5722 of the Ohio Revised Code or another section of the Ohio Revised Code expressly applicable to a county land reutilization corporation as such sections are

applicable to a county land reutilization corporation.” Amended and Restated Articles of Incorporation of CCLRC.

As discussed in more detail below, the Bucyrus City council regularly discusses and addresses issues related to the use and maintenance of property located in the City of Bucyrus (City) and engages in the demolition, acquisition, and sale of vacant or abandoned property. However, you advise that the City has not elected to implement a land reutilization program or entered into an agreement with the CCLRC to implement R.C. 5502.01-.15 on the City’s behalf. In addition, the City has not designated the CCLRC as the agency of the City for the reclamation, rehabilitation and reutilization of vacant, abandoned, tax-foreclosed, or other real property under R.C. 1724.10(A)(3). The CCLRC does not intend to enter into such agreements with the City but intends to engage in land reutilization activities within the City’s territorial boundaries.

Compatibility Test

The following five questions are used to determine whether a person may hold a public position and private position concurrently:²

1. Is the public position a classified employment within the terms of R.C. 124.57?
2. Does a constitutional provision or statute prohibit a person from serving in both positions at the same time?
3. Is there an impermissible conflict of interest between the two positions?
4. Are there local charter provisions, resolutions, or ordinances that are controlling?
5. Is there a federal, state, or local departmental regulation applicable?

2014 Op. Att’y Gen. No. 2014-014, at 2-115.

² A county land reutilization corporation is organized as a nonprofit corporation. Pursuant to R.C. 1724.10(B)(1), service as a member of the board of directors of a county land reutilization corporation is not a public office or employment. 2012 Op. Att’y Gen. No. 2012-040, at 2-349 n.3. Additionally, Attorney General opinions have concluded that a community improvement corporation is not a political subdivision and have recognized that such corporations are organized as private, nonprofit corporations. *Id.* Therefore, it is appropriate to conclude that a person serving as an officer of such a corporation does not hold a public office or employment for the purpose of determining the compatibility of the positions you have asked about. *See* R.C. 1702.04; R.C. 1724.01; R.C. 1724.08; 2012 Op. Att’y Gen. No. 2012-040, at 2-349.

Question three of the compatibility analysis asks whether there are impermissible conflicts of interest between the two positions.³ Public officers owe an undivided duty to the public, and thus they may not hold an additional position that subjects them to divided loyalties, conflicting duties or the temptation to act other than in the public interest. *Id.*; *see also* 1989 Op. Att’y Gen. No. 89-037, at 2-164 to 2-165) (“[t]he self-interest of the public official and the public interests which he represents, must not be brought into conflict” (quoting *State ex rel. Taylor v. Pinney*, 13 Ohio Dec. 210, 212 (C.P. Franklin County 1902))). Determination of whether a conflict of interest exists first requires an examination of how the duties, powers, and responsibilities of each position interrelate. 1994 Op. Att’y Gen. No. 94-035, at 2-178.

If that examination discloses conflicts of interest, we evaluate the immediacy of each potential conflict. 2004 Op. Att’y Gen. No. 2004-019, at 2-158. The factors considered in making this determination include the probability of the conflict arising, whether the person exercises decision-making authority in each position, whether the conflict relates to the primary functions of each position or to financial or budgetary matters, and the ability of the person to remove himself from any conflict that may arise. *Id.* at 2-158 to 2-159. If potential conflicts may be sufficiently avoided or mitigated, a person may serve in the positions simultaneously. 2012 Op. Att’y Gen. No. 2012-041, at 2-360.

The duties and responsibilities of a city law director are prescribed primarily in R.C. Chapter 733. Generally, a city law director serves as legal counsel and attorney to the several directors and officers of the city identified in Title 7 (municipal corporations) of the Revised Code. R.C. 733.51. He is responsible for rendering legal opinions on questions of law submitted by city officers, including the legislative authority of the city, and representing the city in suits when requested by the legislative authority of the city. R.C. 733.51; R.C. 733.53; R.C. 733.54. He is also the prosecuting attorney of the mayor’s court and is required to prepare all contracts, bonds, and other instruments in writing in which the city is concerned. R.C. 733.51; R.C. 733.52. If an obligation or contract made on behalf of

³ The Ohio Ethics Commission, rather than the office of the Attorney General, is authorized to address the application of the ethics and conflict of interest provisions of R.C. Chapter 102 and R.C. 2921.42-.43. *See* R.C. 102.08(A); 2001 Op. Att’y Gen. No. 2001-027, at 2-153 n.4. We will, therefore, refrain from interpreting and applying these provisions by way of a formal opinion. 2014 Op. Att’y Gen. No. 2014-011, at 2-91 n.4. Questions concerning the interpretation and application of these provisions in your particular situation should instead be directed to the Ohio Ethics Commission. *See, e.g.*, Ohio Ethics Comm’n, Advisory Op. No. 88-005, slip op. at 3. You may also want to consult the Board of Commissioners on Grievances and Discipline, which is responsible for interpreting the provisions of the Ohio Rules of Professional Conduct. Gov. Bar. R. V § 2; R.C. 102.08(A); 2014 Op. Att’y Gen. No. 2014-011, at 2-91 n.4; *see also* 2001 Op. Att’y Gen. No. 2001-027, at 2-153 n.4; 1994 Op. Att’y Gen. No. 94-035, at 2-180.

a city is being evaded or violated, the city law director shall apply for the specific performance of the obligation or contract on behalf of the city. R.C. 733.57.⁴

While a full description of the duties and responsibilities of the manager of the CCLRC is to be included in a separate contract, a general description of his duties and responsibilities are set forth in Article VI of the CCLRC's Code of Regulations. Article VI of the Regulations provides the manager shall serve "with full power and authority to manage and conduct all of the business of the CCLRC, subject to review by the Board of Directors" of the CCLRC, CCLRC Code of Reg., Art. VI, § 6.2.0.0, and "shall be responsible for the operation and the general management of CCLRC's activities and services," including the following directives:

6.4.1.0 – Give direction and leadership to the formulation and achievement of the organization's philosophy, mission, and its annual goal and objectives.

6.4.2.0 – Work with the Board of Directors and staff to develop and implement policies, procedures, and long-range strategic plans.

6.4.3.0 – Oversee administrative, financial and program operations and all personnel matters (design of staff organizational structure, hiring and firing responsibilities, etc.).

6.4.4.0 – Oversee staff's administration of 6.4.4.1 to 6.4.4.5[.]

⁴ R.C. Chapter 733 also makes a city law director responsible for applying for injunctions to restrain the misapplication of city funds and abuse of the city's corporate powers, R.C. 733.56, applying for writs of mandamus to compel city officers to perform any duties expressly required of them by law or ordinance, R.C. 733.58, and preparing official bonds for all officers of the city, R.C. 733.70. Several other provisions in the Revised Code address specific duties of a city law director with respect to his representation of a city's legal interests. *See, e.g.*, R.C. 705.09 (following an audit of the accounts of a city officer, if the officer is found indebted to the city, the city law director shall proceed to collect the indebtedness); R.C. 715.011 (the city law director shall approve lease agreements entered into by the city and construction contractors); R.C. 727.30 (the city law director may act as attorney for the county treasurer in actions brought for enforcement of the lien upon delinquent special assessments levied pursuant to R.C. 727.25); R.C. 749.09 (before entering into a contract for the erection of a hospital building, the city's board of hospital commissioners may have the specifications, forms of bids, and a form of contract and bid guaranty prepared by the city law director); R.C. 3313.35 (in city school districts, the city law director shall be the legal adviser for the board thereof); R.C. 3319.16 (in any court action involving the termination of a teacher's contract, a city board of education may utilize the services of the city law director); R.C. 3349.10 (the city law director may represent the board of directors of a municipal university, college, or other educational institution in all suits in which the board or the city is a party); R.C. 5705.412 (the city law director may bring an action to recover school district funds that have been expended unlawfully); *see also* 1986 Op. Att'y Gen. No. 86-035, at 2-182 to 2-183.

6.4.4.1 – Prepare and follow Board approval CCLRC annual budget.

6.4.4.2 – Negotiate and ensure compliance of CCLR contracts.

6.4.4.3 – Follow all CCLRC Codes and Regulations.

6.4.4.4 – Act as Fiscal Officer.

6.4.4.5 – Attend regular meetings of the Board of Directors.

CCLRC Code of Reg., Art. VI, § 6.1.0.0-4.4.5.

As discussed above, the City council regularly discusses and addresses issues related to the use and maintenance of property located in the City and engages in the demolition, acquisition, and sale of vacant or abandoned property. However, the City has not elected to implement the procedures under R.C. 5722.02-.15 to facilitate the reutilization of nonproductive land within its boundaries. The City also has not entered into an agreement with the CCLRC to implement the procedures under R.C. 5733.02-.15 on the City's behalf nor has it designated the CCLRC as the agency of the City for the reclamation, rehabilitation, and reutilization of vacant, abandoned, tax-foreclosed, or other real property under R.C. 1724.10(A)(3). The CCLRC does not plan to enter into such agreements, but does intend to engage in land reutilization activities and acquire properties within the City's territorial boundaries. These circumstances are likely to create conflicts of interest for a person who serves simultaneously as law director of the City and manager of the CCLRC. Let us describe these conflicts of interest.

Real property the CCLRC acquires within the City will be subject to the City's property regulations, including safety, zoning, and building ordinances. *See, e.g.*, Chapters 521, 1101-1103, and 1301-1371 of the Codified Ordinances of the City of Bucyrus, Ohio, *available at* http://whdrane.conwaygreene.com/NXT/gateway.dll?f=templates&fn=default.htm&vid=whdrane:OH_Bucyrus. The CCLRC and the City are authorized to acquire real property, *see* R.C. 715.01; R.C. 1724.01(B)(2)(b); R.C. 1724.02(A)(3), and may compete against each other in their exercise of this authority. The CCLRC and the City also are authorized to acquire abandoned lands subject to foreclosure under R.C. 323.78,⁵ property offered by an owner in lieu of foreclosure under R.C.

⁵ Under R.C. 323.78, a county treasurer may invoke the alternative redemption period in any petition for foreclosure of abandoned lands under R.C. 323.25, R.C. 323.65-.79, or R.C. 5721.18. *See* R.C. 323.78(A); *see also* R.C. 323.65(J) (defining the alternative redemption period as a special twenty-eight day period in which the abandoned land's owner of record can redeem the property from foreclosure by paying the delinquent amounts charged against it); *see generally* 2015 Op. Att'y Gen. No. 2015-005 (providing a detailed description of various statutory foreclosure procedures, including the procedures under R.C. 323.25, R.C. 323.65-.79, and R.C. 5721.18). "If a county treasurer invokes the alternative redemption period ..., and if a municipal corporation, township, county, school district, community development organization, or county land reutilization corporation has requested title to

5722.21,⁶ or property subject to forfeiture under R.C. 5723.01.⁷ The CCLRC also may seek to obtain nonproductive tax-foreclosed land under R.C. 5722.03⁸ or land subject to forfeiture under R.C.

the parcel,” R.C. 323.78 requires the court or board with jurisdiction, upon the property’s foreclosure, to order the property transferred to the requesting entity upon the alternative redemption period’s expiration.

⁶ R.C. 5722.21(B) authorizes the governing body of a municipality, county, township or county land reutilization corporation to declare, *inter alia*, by ordinance or resolution that it is in the public interest for the political subdivision or county land reutilization corporation to acquire tax-delinquent property to redevelop it or otherwise render it suitable for tax-paying use. *See* 2015 Att’y Gen. No. 2015-005, at 2-48 (a political subdivision or county land reutilization corporation may exercise this power without electing to implement R.C. 5722.02-.15 and this authority is supplemental to the powers under R.C. 5722.02-.15). Upon making such a declaration, the political subdivision or county land reutilization corporation “may purchase or otherwise acquire title to eligible delinquent land, other than by appropriation.” R.C. 5722.21(B). In practice, R.C. 5722.21 allows a property owner to voluntarily convey delinquent land to a political subdivision prior to the commencement of a foreclosure proceeding, on terms mutually agreed upon by both parties. *See* 2015 Op. Att’y Gen. No. 2015-005, at 2-48 (citing Ohio Legislative Service Comm’n, Final Bill Analysis, Sub. H.B. 127 (2003)).

⁷ When property is not disposed of in foreclosure, it is forfeited to the state or to a petitioning political subdivision, school district, or county land reutilization corporation pursuant to R.C. 5723.01(A). *See* R.C. 5723.01(A)(1) (“land ... which, pursuant to foreclosure proceedings under [R.C. 323.25], [R.C. 323.65-.79], or [R.C. 5721.18], has been advertised and offered for sale on two separate occasions ... and not sold for want of bidders, shall be forfeited to the state or to a political subdivision, school district, or county land reutilization corporation pursuant to [R.C. 5723.01(A)(3)]”); *see also* 2015 Op. Att’y Gen. No. 2015-005, at 2-52 to 2-54 (explaining that “political subdivision” means a municipal corporation, county, or township under R.C. 5723.01). Forfeiture proceedings are initiated under R.C. Chapter 5723 when a county prosecuting attorney certifies to the court that land has been foreclosed under R.C. 323.25, R.C. 323.65-.79, or R.C. 5721.18, but has not been sold for want of bidders after being twice advertised and offered for sale at public auctions, held at least two weeks apart. R.C. 5723.01(A)(1)-(2); *see also* 2015 Op. Att’y Gen. No. 2015-005, at 2-48 to 2-49. Upon receipt of this information, the court notifies the political subdivision, school district, and county land reutilization corporation within whose borders the property is located and that the property may be forfeited to whichever political subdivision, school district, or county land reutilization corporation petitions to acquire the delinquent land. R.C. 5723.01(A)(3). If such a petition is filed, the land is forfeited and transferred to the petitioning political subdivision, school district, or county land reutilization corporation. *Id.*

5722.04⁹ within the boundaries of the City. However, the CCLRC may not obtain property under R.C. 5722.03 or R.C. 5722.04 within the City's territorial boundaries unless the City adopts an

⁸ Pursuant to R.C. 5722.03, an electing subdivision may acquire nonproductive land within the electing subdivision's boundaries that is subject to a foreclosure proceeding under R.C. 323.25, R.C. 323.65-.79, or R.C. 5721.18. *See* R.C. 5722.03(A). An "electing subdivision" means any municipal corporation, county, or township that has enacted or adopted an ordinance or resolution for "purposes of adopting and implementing the procedures set forth in [R.C. 5722.02-.15]," as well as a county land reutilization corporation established by a county and designated to act on behalf of the county, except as otherwise expressly provided under R.C. Chapter 5722. *See* R.C. 5722.01(A).

Under R.C. 5722.02(C), the ordinance or resolution passed by the electing subdivision adopting the procedures under R.C. 5722.02-.15 shall be delivered to the auditor, treasurer and prosecuting attorney in each county where the electing subdivision is situated. Upon receipt of the ordinance or resolution, the county prosecuting attorney must prepare and deliver to the electing subdivision a list of all properties subject to foreclosure proceedings under R.C. 323.25, R.C. 323.65-.79, or R.C. 5721.18 within the electing subdivision's boundaries, and notify the subdivision whenever a foreclosure under these provisions is thereafter commenced. R.C. 5722.03(B); *see also* 2015 Op. Att'y Gen. No 2015-005, at 2-45 to 2-46. An electing subdivision may then notify the prosecuting attorney of the properties it wishes to acquire prior to advertisement and sale of these properties. R.C. 5722.03 (C). If the selected land is offered for sale but not sold, the electing subdivision is "deemed to have submitted the winning bid ... and the land is deemed sold to the electing subdivision for no consideration other than the amounts charged under [R.C. 5722.03(E) and (F)]." R.C. 5722.03(D); *see generally* R.C. 5722.03(E) (providing how costs of the foreclosure proceeding are allocated among the taxing districts); R.C. 5722.03(F) (requiring that an electing subdivision, other than a county land reutilization corporation, pay the fee for transferring and recording the deed); *see also* 2015 Op. Att'y Gen. No 2015-005, at 2-46.

⁹ Under R.C. 5722.04, an electing subdivision may acquire lands forfeited to the state within the electing subdivision's boundaries pursuant to R.C. 5723.01. Upon receipt of the ordinance or resolution of an electing subdivision under R.C. 5722.02(B), *see* note 8, *supra*, a county auditor shall prepare and deliver to an electing subdivision a list of lands forfeited to the state, and thereafter notify the electing subdivision of any additions or deletions from the list. R.C. 5722.04(A). The electing subdivision may select nonproductive lands from that list that it wishes to acquire. *Id.* If the selected land is advertised and offered for sale pursuant to Chapter 5723, but no minimum bid is received, the land is "deemed sold to the electing subdivision for no consideration other than the fee charged under [5722.04(C)]." R.C. 5722.04(B); *see generally* R.C. 5722.04(C) (requiring an electing subdivision to pay the fee for transferring and recording the deed). If a county land reutilization corporation acquires land under this section, liens placed on the property for abatement costs, R.C. 715.261, water rents or charges, R.C. 743.04, or water and sewer services, R.C. 6119.06, are extinguished. R.C. 5722.04(C).

ordinance consenting to the acquisition. *See* R.C. 5722.01.¹⁰ The CCLRC also may seek to acquire property directly from the City or the City may be in a position to acquire property from the CCLRC. *See* R.C. 715.01; R.C. 721.01; R.C. 1724.01(B)(2)(b); R.C. 1724.02(A)(3). Furthermore, if the CCLRC acquires property that is subject to reutilization within the boundaries of the City, the CCLRC may request that the City issue bonds or use tax increment financing for the purpose of constructing public infrastructure improvements on the property. *See* R.C.1724.02(A)(1)(b)(ii)(II).

As legal counsel for the City, the law director may be asked to provide advice regarding the language or effect of the City ordinances or the state statutes referenced above. He also may be asked or expected to actively assist City leaders in deciding whether and how to act pursuant to these ordinances or statutes. *See also Akron Bar Ass'n v. Miller*, 80 Ohio St. 3d 6, 9, 684 N.E.2d 288 (1997) (legal counseling is more than informing the “client about the legal consequences of pursuing a particular objective that the client has already identified and chosen,” and extends to clarifying the client’s goals and “helping him make a deliberately wise choice among them” (citing Kronman, *The Lost Lawyer* 128-129 (1993))).

For example, the law director may be asked about the consequences of the CCLRC acquiring a particular piece of property within its boundaries; how the City’s safety, zoning, or building ordinances apply to property the CCLRC acquires; whether the City should seek to acquire a particular piece of property; how the City accomplishes acquisition of such property; what sort of liability the City might assume if it acquires the property; whether the City should consent to the CCLRC’s acquisition of property under R.C. 5722.01 and the legal consequences of providing such consent; whether the City should buy property from or sell property to the CCLRC and how to accomplish a purchase or sale of the property; whether the City should issue bonds for infrastructure improvements if the CCLRC makes that request of the City; or how to issue bonds for infrastructure improvements.

The law director may find it difficult to provide disinterested and objective advice to the City on these or similar questions while he serves as manager of the CCLRC. *See generally* 2006 Op. Att’y Gen. No. 2006-034, at 2-315 (“a conflict of interest occurs when a person’s ‘responsibilities in one position are such as to influence the performance of his duties in the other position, thereby

¹⁰ As discussed in note 8, *supra*, R.C. 5722.03 provides procedures whereby an electing subdivision may acquire nonproductive tax-foreclosed land within “an electing subdivision’s boundaries.” Similarly, R.C. 5722.04, discussed in note 9, *supra*, provides procedures whereby an electing subdivision may acquire property forfeited to the state within an “electing subdivision’s boundaries.” R.C. 5722.01(H) provides that “land within an electing subdivision’s boundaries” under Chapter 5722 does not include land within the boundaries of a municipal corporation, unless the electing subdivision is the municipal corporation or the municipal corporation adopts an ordinance that gives consent to the electing subdivision to include such land. Therefore, land within a city’s boundaries is not land within a county land reutilization corporation boundaries for purposes of R.C. 5722.03 and R.C. 5722.04 and subject to acquisition by a county land reutilization corporation unless the municipal corporation consents to the acquisition.

subjecting him to influences which may prevent his decisions from being completely objective,” (quoting 1980 Op. Att’y Gen. No. 80-035, at 2-149)); *see also* 1999 Op. Att’y Gen. No. 99-027, at 2-181 (“a person’s responsibilities as a member of the legislative authority [of a city] may influence the performance of his duties as an assistant prosecuting attorney, thereby subjecting him to influences that may prevent his legal advice as an assistant from being completely objective and disinterested”); 1948 Op. Att’y Gen. No. 4130, p. 594, at 597 (a prosecuting attorney may not serve as county veterans service officer because he advises the board who appoints the position and, therefore, would be “subjected to the temptation to mold his advice to further his own interests”).

Should the City decide to pursue acquisition of foreclosed or forfeited property the CCLRC is seeking, the law director may be required to appear in the foreclosure action on behalf of the City. *See* R.C.733.51; R.C. 733.53. In this circumstance, the City and the CCLRC may be opposing parties in the same legal proceeding. *See* 1999 Op. Att’y Gen. No. 99-027, at 181 (a conflict of interest exists for an assistant prosecutor who also serves as a member of the legislative authority of a city if a county board he represents and the city are opposing parties in the same legal proceedings.) If the City chooses to buy property from or sell property to the CCLRC, it is the law director’s responsibility to draft a contract of conveyance and enforce the contract’s terms. R.C. 733.51; R.C. 733.56; *see also* 1999 Op. Att’y Gen. No. 99-027, at 181 (a conflict of interest exists for a person who serves as an assistant prosecutor and member of the legislative authority of a city if a county board he represents and the city enter into a contract). If the City issues bonds under R.C. 1724.02(A)(1)(b)(ii)(II) it is the law director’s duty to oversee the various aspects of the bonds’ issuance. R.C. 733.51.

Having identified conflicts of interest, we must evaluate the immediacy of the potential conflicts to determine whether the conflicts may be sufficiently avoided or eliminated so as to allow a person to serve in these positions simultaneously. *See* 2004 Op. Att’y Gen. No. 2004-019, at 2-158.¹¹

¹¹ R.C. 1724.10(B)(1) authorizes a person to hold a public office and serve simultaneously as a member of the governing board of a county land reutilization corporation. *See* 2012 Op. Att’y Gen. No. 2012-041, at 2-361 n.5; 2012 Op. Att’y Gen. No. 2012-040, at 2-350 and 2-351; 1979 Op. Att’y Gen. No. 79-061, at 2-206 (R.C. 1724.10(B)(1) “is rather obviously intended to eliminate problems regarding conflicts of interest and incompatibility”). You do not ask, however, whether a public officer may serve on the governing board of a county land reutilization corporation. Rather, you ask whether a city law director may serve simultaneously as the manager of such a corporation. 2012 Op. Att’y Gen. No. 2012-041 considered whether a county treasurer might serve simultaneously as the executive director of a county land reutilization corporation. The Attorney General advised that conflicts of interests prevented a county treasurer from serving as executive director. The Attorney General also noted that R.C. 1724.10(B)(1) did not apply to authorize the dual service because the executive director was not a member of the corporation’s governing board, and no other provision in R.C. Chapter 1724 explicitly authorized a public officer to serve as executive director of a county land reutilization corporation. *Id.* R.C. 1724.10(B)(1) also does not apply in this instance. The manager of the CCLRC is not a member of the governing board of the CCLRC, and no other provision in R.C. Chapter 1724 makes a city law director eligible to serve as manager of the CCLRC.

The factors considered in making this determination include the probability of the conflicts arising, whether the person exercises decision-making authority in each position, whether the conflicts relate to the primary functions of each position or to financial or budgetary matters, and the ability of the person to remove himself from any conflicts that may arise. *Id.*

The number and variety of instances in which the law director may be required to advise or represent the City make it likely that he will confront conflicts of interest related to his role as manager of the CCLRC. Again, the CCLRC intends to engage in land reutilization activities within the City. As discussed above, the properties the CCLRC acquires will be subject to the City's safety, zoning, and building regulations. In addition, the CCLRC's property reutilization activities may conflict with the City's interests in acquiring or selling real property or place the law director on both sides of a contract. Minutes of meetings of the legislative authority of the City reveal that safety and zoning regulation compliance and property use, acquisition, and sales are ongoing concerns of the City. The law director regularly advises and acts on behalf of the City in these areas. *See, e.g.*, Bucyrus, Ohio August 1, 2016 Council Meeting Minutes, at pp. 2 and 5 (law director reported the work of his office and the Code Enforcement Officer to facilitate use of downtown sidewalks for outdoor seating consistent with City permitting and zoning requirements as well as state law; law director was asked about the details of a house demolished by the City with state grant funds); Bucyrus, Ohio July 19, 2016 Council Meeting Minutes, at p. 4 (law director answered questions regarding the adoption and enforcement of International Property Maintenance Code by the City); Bucyrus, Ohio July 5, 2016 Council Meeting Minutes, at pp. 3-4 (law director asked the Public Lands and Building Committee for authorization to pursue acquisition of property delinquent in taxes via purchase or eminent domain; law director discussed appropriations for the demolition of 10 properties in the City and indicated that the county land bank (CCLRC) was "still quite a ways away" from tearing down its first house); Bucyrus, Ohio June 21, 2016 Council Meeting Minutes, at pp. 2-3 (law director reported that the owner of a nuisance property in violation of the International Property Maintenance Code wanted to donate his property but advised that the City must pass legislation in order to accept the donation; law director also discussed potential appropriations for the demolition of nuisance properties and explained how the City might recover demolition costs through property liens and the foreclosure process); Bucyrus, Ohio June 7, 2016 Council Meeting Minutes, at pp. 1 and 6 (law director participated in a discussion regarding the foreclosure of an abandoned gas station and suggested the possibility of presenting the property to the county land bank; he also addressed citizen concerns about the enforcement of the International Property Maintenance Code and referred various proposed property sales, acquisitions, donations, and demolitions to the Public Lands and Buildings Committee and Finance Committee); Bucyrus, Ohio February 16, 2016 Council Meeting Minutes, at pp. 3-4 (law director explained ordinances governing parking space requirement and suggested exploring amendments to these regulations; he discussed the failure to sell two properties acquired by the City through foreclosure and repossession and the possibility of placing the properties in the county land bank or attempting to sell them at an auction with specific sale conditions); Bucyrus, Ohio February 2, 2016 Council Meeting Minutes, at pp.4-6 and 15 (law director advised the City regarding requests from local businesses to amend certain zoning regulations; the City passed an ordinance to advertise property for sale requiring the land to be planted in crops and not placed in any government land bank program). Of particular note are the June 7 and February 15 meeting minutes reflecting that the law director discussed the possibility of transferring land owned by the City to the CCLRC. Thus, it

appears likely the law director will have to provide advice regarding the ordinances and laws governing property use and acquisition as they relate to the CCLRC's land reutilization activities or will find it necessary to represent the City in a transaction for the transfer of property to or from the CCLRC.

Other city officers or employees may be responsible for deciding how the City will act in any particular instance, yet the law director also plays "a significant and authoritative role" as legal advisor. *See* Ohio Ethics Comm'n, Advisory Op. No. 91-008 ("[a]lthough the law director does not participate directly to enact an ordinance, as council members, the president of council, and the mayor do, it is apparent that the law director plays a significant and authoritative role in the introduction, adoption, interpretation, and enforcement of council's enactments"). *But see* 1912 Op. Att'y Gen. No. 747, vol. II, p. 1874 at 1880 (prosecuting attorney could serve as city solicitor even though the prosecutor sits on the budget commission which reviews and approves the city's budget, because the city solicitor "has no official duties in connection with the preparation of the city's annual budget, except in his advisory capacity as legal counsel of the city"). In addition, providing legal advice, as well as drafting contracts and legal memoranda, and appearing before courts or boards, are essential duties of the city law director. *See* R.C. 733.51; R.C. 733.53. The City's officers, as well as the citizens who elected him, rely upon the law director to perform these duties as needed. He cannot sufficiently avoid conflicts of interest by simply abstaining from or delegating the performance of his duties. *See* 2012 Op. Att'y Gen. No. 2012-041, at 2-365 ("[w]hen a conflict of interest relates to the primary duties of a public official, it is impractical for the public officer to abstain from all such matters," and if he were to do so, "he may not be performing in a competent manner important duties [he] is required by law to perform").

In prior opinions we have stated a member of a legislative authority may avoid a potential conflict of interest by abstaining from voting on a matter that is the source of the conflict of interest. *See* 2016 Op. Att'y Gen. 2016-022, slip op. at 6 ("as mayor and member of the legislative authority of a city, the person could abstain from participating in deliberations, discussions, negotiations, or votes concerning the county land reutilization corporation"). In those circumstances, when one member abstains, the other members of the legislative body are able to vote on the matter at hand and accomplish the work of the political subdivision. In contrast, the city law director is designated exclusively by statute to act as legal advisor to the City.

The law director also cannot eliminate or mitigate these conflicts by delegating the performance of his advisory responsibilities to an assistant law director or another attorney. As the elected law director for the City he is directly or indirectly involved in all matters where legal advice or representation is sought and he exerts his influence in the performance of these duties. *See* 2012 Op. Att'y Gen. No. 2012-041, at 2-364 to 2-365 (a county treasurer cannot remove himself from overseeing or participating in all matters related to moneys allocated and disbursed from the treasurer's DETAC fund to a county land reutilization corporation because he "is directly or indirectly involved in all decisions related to the allocation or disbursement of moneys from the DETAC fund to a county land reutilization corporation and therefore exerts his influence on those matters"); 2006 Op. Att'y Gen. No. 2006-023, at 2-207 (township police chief is directly or indirectly involved in all departmental matters or investigations and exerts his influence in all such matters or investigations);

see also Thomas v. Bd. of Comm'rs of Hamilton County, 88 Ohio St. 489, 493-494, 104 N.E. 536 (1913) (assistant city solicitors perform their assigned duties and responsibilities at the direction of the city solicitor). The law director has the “exclusive right to appoint all officers, clerks, and employees in [his office] ... and remove or suspend any such officers, clerks, or employees, subject to civil service laws.” R.C. 733.01. His assistants and employees serve at his pleasure. *See, e.g.*, 1999 Op. Att’y Gen. No. 99-027, at 2-173 (assistant prosecuting attorneys are appointed by, and serve at the pleasure of the prosecuting attorney pursuant to R.C. 309.06(A)). An assistant or employee that fails to align himself with the goals and interests of the city law director risks the loss of his position. *See* 2016 Op. Att’y Gen. No. 2016-017, at 2-180 (“a county treasurer’s delegation of specific duties to a deputy treasurer to avoid or mitigate a conflict of interest facing the county treasurer does not eliminate the possibility that the deputy treasurer may be adversely influenced by the interests of his superior”). Therefore, an assistant law director or other attorney to whom the law director assigns a legal matter in which the latter faces a conflict of interest may be adversely influenced by the personal opinion of the law director in the matter; thus, the conflict of interest is not avoided by the delegation of responsibility. *See id.*

Moreover, while the City may retain outside legal counsel other than the law director, *see generally Amherst v. Dietrich*, 129 Ohio App.3d 343, 717 N.E.2d 1109 (the legislative authority may hire outside legal counsel for the purpose of issuing bonds), we do not believe this is a practical alternative in these circumstances. The retention of outside counsel increases the cost of legal services to the public and deprives the city of the representation by the attorney selected by the electorate. *In re Advisory Comm. on Prof'l Ethics*, Docket No. 18-98, 162 N.J. 497, 505, 745 A.2d 497 (2000) (because conflicts are likely to arise regularly for an elected municipal attorney serving as a municipal administrator, hiring outside counsel is not a sound solution). As discussed above, the City legislative authority regularly addresses and discusses safety and zoning ordinances, as well as property acquisitions and sales with the law director. The City should not be compelled to retain outside counsel to handle all such matters related to the CCLRC so that the law director may serve as manager of the CCLRC.

The city law director also cannot avoid these conflicts by limiting his responsibilities as the manager of the CCLRC. While the duties of the manager of the CCLRC are to be set forth more specifically pursuant to contract, the Code of Regulations for the CCLRC provides that the manager is responsible for the “operation and the general management of CCLRC’s activities and services.” CCLRC Code of Reg., Art. VI, § 6.4.0.0. He is expected to “[g]ive direction and leadership to the formulation and achievement of the organization’s philosophy, mission, and its annual goal and objectives” and “implement policies, procedures, and long-range strategic plans.” CCLRC Code of Reg., Art. VI, § 6.4.1.0-.2.0 In addition, the manager of the CCLRC oversees the CCLRC’s program and the CCLRC’s staff administration of the program. CCLRC Code of Reg., Art. VI, § 6.4.3.0-4.0. He is responsible for the overall coordination, direction and success of the CCLRC’s business. The CCLRC intends to conduct business in the City. Therefore, he will be responsible for the coordination, direction and success of the CCLRC’s business in the City.

Even if he were able to confine his involvement in activities conducted by the CCLRC in the City, his employment by the CCLRC may depend upon the success of the CCLRC; therefore, he may

still find it challenging to put aside his loyalty to the CCLRC when advising the City as law director. *See, e.g.*, 1997 Op. Att’y Gen. No. 97-044, at 2-274 (if an administrative hearing officer who also serves as an assistant prosecutor were to preside over a hearing in which one of the parties is represented by the county prosecuting attorney who employs him, it would be difficult for the individual as an administrative hearing officer to set aside his loyalty to the county prosecuting attorney).

We find, therefore, that the conflicts of interest that exist for the city law director as a result of serving as manager of the CCLRC cannot be sufficiently avoided or mitigated. Thus, we conclude that the positions are incompatible.

Conclusion

It is our opinion, therefore, and you are hereby advised that a person may not serve simultaneously as director of law of the City of Bucyrus and manager of the Crawford County Land Reutilization Corporation.

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