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April 2, 2025

The Honorable Zachary A. Corbin
Brown County Prosecuting Attorney
740 Mount Orab Pike, Suite 1
Georgetown, Ohio 45121

SYLLABUS: 2025-006

The position of county bridge inspector/safety manager in a county engineer's office and the position of township fiscal officer in the same county are compatible where the duties assigned to the bridge inspector/safety manager are limited to inspecting county bridges, overseeing safety, and conducting safety training for the county highway department, provided that the person, as township fiscal officer, refrains from assisting in the preparation or presentation of the township's budget for bridge infrastructure projects.



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OPINION NO. 2025-006

The Honorable Zachary A. Corbin
Brown County Prosecuting Attorney
740 Mount Orab Pike, Suite 1
Georgetown, Ohio 45121

Dear Prosecutor Corbin:

You have requested an opinion on whether a person can serve simultaneously as the Brown County bridge inspector/safety manager and as township fiscal officer in the same county. For the reasons that follow, I find that the position of county bridge inspector/safety manager, where the assigned duties are limited to inspecting county bridges, overseeing safety, and conducting safety training for the county highway department, and the position of township fiscal officer are compatible, provided that the person, as the township fiscal officer, refrains from assisting in the preparation or presentation of the township's budget for bridge infrastructure projects.

I

“An issue of compatibility arises whenever one person wishes to hold simultaneously two or more positions of public service.” 2022 Ohio Atty.Gen.Ops. No. 2022-003, Slip Op. at 3; 2-12. A seven-part test was developed in prior Attorney General opinions for addressing issues of compatibility between two or more positions of public service. The seven questions that require analysis are:

1. Is either position in the classified service for purposes 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 one position subordinate to, or in any way a check upon, the other position?
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?
7. Is there a federal, state, or local departmental regulation applicable?

1979 Ohio Atty.Gen.Ops. No. 79-111, at 2-367 to 2-368; *see also* 2022 Ohio Atty.Gen.Ops. No. 2022-003, Slip Op. at 3-4; 2-10 to 2-11; 2021 Ohio Atty.Gen.Ops. No.

2021-005, Slip Op. at 2; 2-19 to 2-20. For two or more public positions to be compatible, all seven questions must be addressed and answered in favor of compatibility.

A

Question one concerns classified service. R.C. 124.57 “prohibits an officer or employee in the classified service from running for or holding a partisan political office, or engaging in other partisan political activities, and it prevents a partisan political officeholder from serving simultaneously as an officer or employee in the classified service.” 2003 Ohio Atty.Gen.Ops. No. 2003-006, at 2-31; 2022 Ohio Atty.Gen.Ops. No. 2022-003, Slip Op. at 4; 2-12 (“If one of the positions is in the classified service, the other position may not constitute partisan activity.”)

“The position of township fiscal officer is in the unclassified civil service because, *inter alia*, it is an elected position.” 2014 Ohio Atty.Gen.Ops. No. 2014-022, Slip Op. at 4; 2-198; *see* R.C. 124.11(A)(1) and 507.01. In subsequent communications through your staff, the county engineer has advised that the position of bridge inspector/safety manager in the county engineer’s office is also in the unclassified service. Since both positions at issue are in the unclassified service, question one is answered in favor of compatibility.

B

Question two asks if a statute or constitutional provision prohibits the simultaneous holding of both positions. There are no statutes or constitutional provisions prohibiting someone from simultaneously serving as a township fiscal officer and an employee of the county engineer's office within the same county. Question two, therefore, is answered in favor of compatibility.

C

Question three asks if one position is subordinate to, or a check upon, the other. To answer this question, the duties of both the township fiscal officer and the county engineer's employee who serves as the engineer's bridge inspector/safety manager must be examined to determine if either position is subordinate to, or a check upon, the other.

From the information you have provided from the Brown County Engineer, I understand that the bridge inspector/safety manager in the county engineer's office is appointed by the county engineer pursuant to R.C. 325.17, serves at the pleasure of the county engineer, and is subject to the direction and control of the county engineer. R.C. 325.17; *see* 2016 Ohio Atty.Gen.Ops. No. 2016-029, Slip Op. at 8-9; 2-337. There is no written job description for the Brown

County bridge inspector/safety manager but, through assigned duties, the employee is responsible for bridge inspections on all county bridges under the jurisdiction of the county engineer, oversees safety, and conducts safety training for all county highway department functions.

Information further provided through your office notes that this person is not a “deputy county engineer” capable of acting in place of the county engineer because he is not a registered professional engineer or registered surveyor. These credentials are necessary to serve as deputy county engineer. *See* R.C. 3.06(A) and 315.02. I also understand from information provided through your office that the position of bridge inspector/safety manager in Brown County does not have authority to rate or prioritize bridge projects or to close or condemn bridges and neither makes nor influences cost estimates for work in the township for which the person serves as the fiscal officer.

By statute, a township fiscal officer “is responsible for recording the proceedings of the board of township trustees, R.C. 507.04(A), notifying the board of elections of vacancies in township elective offices and of township boundary changes, R.C. 507.051, and administering oaths and certifying affidavits that pertain to the business of the township, R.C. 507.06.” 2014 Ohio Atty.Gen.Ops. No. 2014-022, Slip Op. at 2; 2-196. A township fiscal officer also handles multiple financial

matters for the township and serves as “fiscal officer” for purposes of R.C. Chapters 133 (Uniform Public Securities Law) and 5705 (Tax Levy Law). *See* R.C. 133.01(L)(9) and 5705.01(D); *see also* R.C. 507.04(A) and 507.11(B)(1).

A township fiscal officer is elected by the voters of the township and is responsible to them. R.C. 507.01. The bridge inspector/safety manager reports to the county engineer. Thus, neither position is subordinate to the other.

There are multiple circumstances where the responsibilities of the county engineer and township officials intersect “with respect to the construction, maintenance, repair, and improvement of roads and bridges within a township.” 2016 Ohio Atty.Gen.Ops. No. 2016-029, Slip Op. at 9; 2-337 to 2-338 (multiple citations to specific statutory sections). Most of these interactions, however, relate to the duties of the township’s board of trustees rather than the township’s fiscal officer. These include “R.C. 5541.03 (once a board of county commissioners has approved a board of township trustees’ application for the construction, reconstruction, or improvement of a part of the county highway system, the county engineer shall make the plans for the project and an estimate of the cost of the project); R.C. 5543.01(A)(2) (“the county engineer shall have general charge of . . . [c]onstruction, reconstruction, resurfacing, or improvement of roads by boards of township

trustees under [R.C. 5571.01, 5571.06, 5571.07, 5571.15, 5573.01-.15, and 5575.02-.09]”); R.C. 5543.02 (county engineer makes a cost estimate for township road construction projects and approves estimates before township moneys are paid); R.C. 5543.06 (county engineer is responsible for instructing township and county authorities “as to the best and most economical methods for repairing and maintaining the roads and bridges of the county”); R.C. 5543.09(A) (“the county engineer shall supervise . . . the construction, reconstruction, resurfacing, and improvement of public roads by boards of township trustees under [R.C. 5571.01, 5571.06, 5571.07, 5571.15, 5573.01-.15, 5575.02-09, and 5577.01]”); R.C. 5543.10(A) (“a board of township trustees may order a county engineer to construct sidewalks, curbs, or gutters”), and additional similar statutory provisions. 2016 Ohio Atty.Gen.Ops. No. 2016-029, Slip Op. at 9; 2-338.

Upon careful review of the duties of the two positions that you ask about, there do not appear to be circumstances where one would be subordinate to the other. The employee involved does not have the authority or the responsibility of a township trustee nor that of the county engineer. The limited duties and responsibilities each position has would not typically intersect.

My predecessor examined the interrelationships of a *township trustee* and the county engineer in 1993 Ohio Atty.Gen.Ops. No. 93-016 and determined that offices

of county engineer and township trustee do not intersect regularly in planning, building, and maintaining roads and bridges. A board of township trustees is under the general direction, but not necessarily the control of, the county engineer when road maintenance and construction are involved. *Id.* at 2-088. Insofar as the statutes relating to the maintenance and construction of roads do not place a township trustee under the control of an employee of the county engineer, the fact that the trustee is an employee of the engineer does not, in itself, result in that employment being a check upon the position of township trustee. *Id.*

Significantly, the statutory responsibilities and authority of a township *fiscal officer*, at issue here, are different from those of a township trustee. Although the fiscal officer and the members of the board of trustees have a working relationship, the fiscal officer does not have the same responsibility or authority that a township trustee has. The fiscal officer has no formal decision-making authority in the matters outlined.

Because neither position is a check on the authority of the other in these circumstances, question three is answered in favor of compatibility. My conclusion on this question is based on the circumstances that you have presented to me, including the limited authority of the position of bridge inspector/safety manager for Brown County. Should the authority of this position change in

the future, the question would need to be re-evaluated based on the circumstances that then exist.

D

Question four asks if it is physically possible for one person to discharge the duties of both positions. This is a factual determination that is usually left to the local parties involved. 2022 Ohio Atty.Gen.Ops. No. 2022-003, Slip Op. at 8; 2-14; 2010 Ohio Atty.Gen.Ops. No. 2010-020, at 2-131; 1989 Ohio Atty.Gen.Ops. No. 89-022, at 2-105. The parties involved are in the best position to both know the time requirements of each position and the feasibility of someone carrying out the duties of both positions. Because the answer to question four is left to the reasonable determination of the local parties involved, question four is answered in favor of compatibility.

E

Question five deals with impermissible conflict of interest. “A person cannot serve simultaneously in two positions when an impermissible conflict of interest exists between the positions.” 2023 Ohio Atty.Gen.Ops. No. 2023-001, Slip Op. at 5; 2-4. “A conflict of interest exists ‘when an individual’s responsibilities in one position are such as to influence the performance of his duties in the other position, thereby subjecting him to

influences which may prevent his decisions from being completely objective.” 2021 Ohio Atty.Gen.Ops. No. 2021-027, Slip Op. at 2; 2-97, quoting 1989 Ohio Atty.Gen.Ops. No. 89-052, 2-220. This necessitates a review of the two positions at issue to evaluate the potential for impermissible conflicts of interest.

The duties and obligations of a township fiscal officer and a bridge inspector/safety manager are addressed above in section C. As noted there, a township fiscal officer is responsible for recording the proceedings of the board of township trustees, notifying the board of elections of vacancies in township elective offices and of township boundary changes, administering oaths and certifying affidavits that pertain to the business of the township, and also handling multiple financial matters as the township’s “fiscal officer.” The position of bridge inspector/safety manager, with the duties assigned by the Brown County engineer, does not possess such authority or responsibility that would generally give rise to conflicting interests. Brown County’s bridge inspector/safety manager is not clothed with the authority to rate or prioritize bridge projects or to close, condemn, or influence the decision to close or condemn bridges or influence cost estimates in the township for which the person serves as the fiscal officer.

Upon examining the duties and responsibilities of a township fiscal officer and the bridge inspector/safety manager, there appears to be little opportunity for a

conflict of interest, and any potential conflicts are sufficiently avoidable.

A potential impermissible conflict could arise if either position placed the township fiscal officer and the county bridge inspector in competition for money generated within the ten-mill limitation set forth in R.C. Chapter 5705 (known as “inside milage”). Another potential conflict could arise if the township fiscal officer was required to participate in the preparation of the township's budget or county engineer's budget or presentation of either budget to the county budget commission if that budget includes expenses for bridge infrastructure projects. *See* 2007 Ohio Atty.Gen.Ops. No. 2007-023, at 2-240; *see also* 1992 Ohio Atty.Gen.Ops. No. 92-053, at 2-217 (stating that a township clerk, as the “fiscal officer” designated in R.C. 5705.01(D), might be ordered to appear before the county budget commission). Advocacy for additional shares of the “inside milage” could have the effect of reducing tax dollars assigned to other eligible entities. Provided that the township fiscal officer does not participate in the preparation or presentation of the tax budget, such conflict can be avoided. *See, e.g.,* 2007 Ohio Atty.Gen.Ops. No. 2007-023, at 2-240; *see also* 2004 Ohio Atty.Gen.Ops. No. 2004-025, at 2-227 to 2-228 (board of education member and village clerk-treasurer are compatible with restrictions); 2003 Ohio Atty.Gen.Ops. No. 2003-006, at 2-36 (township clerk and member of

board of county commissioners are compatible with restrictions).

Mindful of what my predecessor noted in 1993 Ohio Atty.Gen.Ops. No. 93-016 about the inter-relationship between the county engineer's office and the board of township trustees, I also must be concerned with potential conflicts of interest, if any, between a township fiscal officer and the county engineer. "That an individual is subject to potential conflicts of interest, however, does not necessarily render two positions incompatible. Rather, each potential conflict of interest requires a determination as to the immediacy of the conflict." *Id.* at 2-91. Where the possibility of conflict is remote and speculative, the conflict-of-interest rule is not violated. *Id.* Factors utilized in determining the immediacy of a conflict include "the degree of remoteness of a potential conflict, the ability or inability of an individual to remove himself from the conflict, whether the individual exercises decision-making authority in both positions, whether the potential conflict involves the primary functions of each position, and whether the potential conflict may involve budgetary controls." *Id.*

Since the potential conflict of interests here are avoidable, question five is answered in favor of compatibility. But this answer only holds true if the person simultaneously serving as a township fiscal officer and county bridge inspector adheres to the abstention measures set forth above.

F

Addressing questions six and seven together, I find no state or federal regulation preventing someone from simultaneously holding the positions of township fiscal officer and county bridge inspector/safety manager. Regarding the parts of questions six and seven that relate to local provisions and regulations, such determination is left to local officials to answer. *See* 2022 Ohio Atty.Gen.Ops. No. 2022-003, Slip Op. at 4; 2-12. Thus, for purposes of this opinion's analysis, questions six and seven are answered in favor of compatibility.

II

Because the positions in this request pass all seven parts of the compatibility test, I conclude that the two positions are compatible if the local officials involved also find questions four, six, and seven favor compatibility.

My review of potential conflicts of interest does not include consideration of matters covered by the ethical standards and prohibitions detailed in R.C. Ch. 102 and R.C. 2921.42-43. An Attorney General opinion refrains from making determinations concerning the application of R.C. Ch. 102 and 2921.42 or 2921.43 because the General Assembly has conferred authority upon the Ohio Ethics Commission to render advisory opinions concerning those provisions. R.C. 102.08.

Accordingly, it is my opinion, and you are hereby advised that:

The position of county bridge inspector/safety manager in a county engineer's office and the position of township fiscal officer in the same county are compatible where the duties assigned to the bridge inspector/safety manager are limited to inspecting county bridges, overseeing safety, and conducting safety training for the county highway department, provided that the person, as township fiscal officer, refrains from assisting in the preparation or presentation of the township's budget for bridge infrastructure projects.

Respectfully,

A handwritten signature in blue ink that reads "Dave Yost". The signature is written in a cursive style with a large, looping initial "D" and a long, sweeping tail on the "y".

DAVE YOST
Ohio Attorney General