

November 23, 2021

The Honorable Justin Lovett
Jackson County Prosecuting Attorney
295 Broadway Street, Suite 100
Jackson, Ohio 45640

SYLLABUS:

2021-027

A person may not serve simultaneously as a county sheriff and as a district supervisor of a soil and water conservation district when the positions are within the same county.



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OPINION NO. 2021-027

The Honorable Justin Lovett
Jackson County Prosecuting Attorney
295 Broadway Street, Suite 100
Jackson, Ohio 45640

Dear Prosecutor Lovett:

You have requested an opinion concerning the compatibility of two public positions. I have framed your question as follows:

May a person simultaneously hold the positions of county sheriff and district supervisor of a county soil and water conservation district when the positions are within the same county?

I conclude that the positions are incompatible.

I

An issue of compatibility arises whenever one person wishes to hold simultaneously two or more positions of public service. The following seven questions are used to determine if two positions are compatible:

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?

2021 Op. Att’y Gen. No. 2021-005, Slip Op. at 2; 2-19 to 2-20; 1979 Op. Att’y Gen. No. 79-111, at 2-367 to 2-368. All seven questions must be resolved in favor of compatibility for the positions to be compatible. 2013 Op. Att’y Gen. No. 2013-008, at 2-78. Here, the answer to Question Five—conflicts of interest—establishes the positions’ incompatibility, and so there is no need to consider the other questions.

Question Five asks whether a conflict of interest exists between two positions. A person may not serve simultaneously in two positions when an impermissible conflict of interest exists between the positions. 2017 Op. Att’y Gen. No. 2017-014, Slip Op. at 5; 2-130. 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.” 1989 Op. Att’y Gen. No. 89-052, at 2-220 (internal citations omitted.) Further, “a conflict of interest exists when a public servant is subject to divided loyalties and conflicting duties or exposed to the temptation of acting other than in the best interest of the public.” 1998 Op. Att’y Gen. No. 98-033, at 2-188 to 2-189.

Applying that principle here, I determine that a conflict of interest exists when a person serves both as a county sheriff and as a district supervisor of a soil and water conservation district within the same county. The reason is this: it is a conflict of interest for a county sheriff to hold another public position that has an investigatory function in the same county. To understand why, it is important to review the nature of the two positions' duties.

A

Consider first the role of county sheriff. The county sheriff is the chief law enforcement officer of the county, and has jurisdiction coextensive with the county, including all municipalities and townships. *See State v. Rouse* (1988), 53 Ohio App.3d 48, 52, 557 N.E.2d 1227, 1231, citing *In re Sulzman, Sheriff* 125 Ohio St. 594, 597, 183 N.E. 531, 532 (1932). The primary duty of a county sheriff is to preserve the public peace and to bring to justice persons who commit illegal acts. R.C. 311.01; 1997 Op. Att'y Gen. No. 97-003, at 2-15. In order to keep the peace, the county sheriff must investigate crimes that occur within the county. *See* 1998 Op. Att'y Gen. No. 98-033, at 2-187; 1988 Op. Att'y Gen. No. 88-035, at 2-157. This includes the duty to investigate violations of environmental laws in the county. *See, e.g., State v. D.J. Master Clean*, 123 Ohio App.3d 388, 704 N.E.2d 301 (10th Dist.1997).

Although a county sheriff has statutory authority to provide police services for a soil and water conservation district (R.C. 311.29) by means of a contract, there is no arrangement for police services for the Jackson County soil and water conservation district.

Thus, as the chief law enforcement officer of the county, a county sheriff has far-reaching law enforcement and investigatory responsibilities throughout the county. For this reason, none of my predecessors have ever found the office of county

sheriff to be compatible with another public position. *See, e.g.*, 1997 Op. Att’y Gen. No. 97-003, syllabus; 1961 Op. Att’y Gen. No. 1961-2066, syllabus, paragraph 1; 1937 Op. Att’y Gen. No. 1937-1312, syllabus; 1927 Op. Att’y Gen. No. 1927-802, at 1411; 1918 Op. Att’y Gen. No. 1918-942, at 120; 1915 Op. Att’y Gen. No. 1915-373, at 758; 1910 Op. Att’y Gen. No. 1910-446, at 448.

Now consider the role of a district supervisor of a soil and water conservation district. Soil and water conservation districts promote the conservation of natural resources. 2013 Op. Att’y Gen. No. 2013-006, at 2-67; R.C. 940.06. Soil and water conservation districts are coextensive with counties, but are separate political subdivisions of the state. R.C. 940.04.

The district supervisors administer the soil and water conservation districts. R.C. 940.04. The duties of the district supervisors include developing plans for "the conservation of soil resources, for the control and prevention of soil erosion, and for works of improvement for flood prevention and the conservation, development, utilization, and disposal of water within the district." R.C. 940.06(B). A district supervisor must live in the district. R.C. 940.04. Of note for this opinion, the district supervisors also have the authority to conduct investigations regarding "the character of soil erosion, floodwater and sediment damages, and the preventive and control measures and works of improvement for flood prevention and the conservation, development, utilization, and disposal of water needed within the district." R.C. 940.06(A).

Further, the district supervisors also have the authority to enter into agreements with the department of agriculture to obtain compliance in the district with the department of agriculture’s rules regarding agricultural pollution abatement. R.C. 940.06(K). The agreements require the district to

investigate agricultural pollution complaints. Ohio Adm. Code 901:13-1-01; *see* Ohio Dept. of Agriculture, *SWCD Standard Operating Procedures (SOP) for Handling Agricultural Pollution Complaints*, <https://perma.cc/4AU7-GF7V>.

Thus, both a county sheriff and a district supervisor have broad investigatory authority throughout the county. With few exceptions, prior opinions of my office have found that same person may not serve in two law enforcement positions, or two positions that have an investigatory function, in overlapping jurisdictions. *See, e.g.*, 2017 Op. Att’y Gen. No. 2017-028, syllabus; 2017 Op. Att’y Gen. No. 2017-004, syllabus; 1998 Op. Att’y Gen. No. 98-033, syllabus, paragraph 2; 1996 Op. Att’y Gen. No. 96-017, syllabus.

The prior opinions have found that an impermissible conflict of interest exists for two reasons: first, an individual serving in two law enforcement or investigatory positions at the same time could face divided loyalties. 2017 Op. Att’y Gen. No. 2017-028, Slip Op. at 4; 2-291; 1996 Op. Att’y Gen. No. 96-017, at 2-67. Second, an individual would be required to follow conflicting policies, procedures, or techniques in situations where the jurisdictions of the two agencies overlap. 2017 Op. Att’y Gen. No. 2017-028, Slip Op at 5; 2-291 to 2-292; 1989 Op. Att’y Gen. No. 89-044, at 2-188 to 2-189; 1986 Op. Att’y Gen. No. 86-007, at 2-31 to 2-32.

Such is the case here. A county sheriff is not simply a law enforcement officer for a law-enforcement agency within the county. A county sheriff is *the* chief law enforcement officer for the entire county. As one of my predecessors stated,

“The integrity of the law enforcement profession demands that the actions, conduct, and motives of law enforcement officers be beyond reproach. As such, I believe that

prudence dictates that a law enforcement officer may not simultaneously hold an additional position which would subject him to divided loyalties and conflicting duties or to the temptation to act other than in the best interests of the public.”

1996 Op. Att'y Gen. No. 96-017, at 2-67. Given the breadth of the jurisdiction of a county sheriff, this duty to remain beyond reproach is imperative.

A county sheriff would have difficulty maintaining impartiality in any investigation which also involves the soil and water conservation district. Consider, an investigation regarding agricultural pollution. In such an investigation, the main interest of the district would be to conserve natural resources. However, the sheriff's priority would be to determine if any criminal offenses had occurred and to investigate those criminal offenses. The sheriff's office and the district would also utilize different policies and procedures during the investigation. Thus, a person who tried to serve both entities at the same time during the investigation would struggle to remain objective.

A related conflict would arise between the law enforcement duties of a county sheriff and a district supervisor's interests in the activities of the soil and water conservation district. As the chief law enforcement officer for the county, the sheriff is responsible for investigating any possible criminal actions of the district. A county sheriff who also holds a position with the soil and water conservation district may develop a loyalty to the district that could interfere with the objective performance of county sheriff's duty to investigate the potential criminal activities of the district. *See, e.g.*, 1997 Op. Att'y Gen. No. 97-003, at 2-16 (a conflict of interest would result if a sheriff who enforces statutory criminal provisions against a county children services board were to serve as a member of that

board); 1988 Op. Att'y Gen. No. 88-093, at 2-448 (a deputy sheriff who is also a deputy clerk of court would be subject to divided loyalties because the sheriff could be called upon to investigate potential improprieties in the clerk's office).

Thus, a person who serves simultaneously in both positions will have difficulty remaining completely objective and will be subject to divided loyalties. I determine that a conflict of interest exists when a person serves both as a county sheriff and as a district supervisor for a soil and water conservation district within the same county.

B

I must next determine if there is a way to avoid or eliminate this conflict. Several factors bear on the question of whether a potential conflict of interest is impermissible. 1998 Op. Att'y Gen. No. 98-033, at 2-189. These factors include “the probability of the conflicts occurring, the ability of the person to remove himself from any conflicts that may occur, whether the person exercises decision-making authority in both positions, and whether the conflicts relate to the primary functions of each position, or to financial or budgetary matters.” 2004 Op. Att'y Gen. No. 2004-051, at 2-439.

Because both positions share county-wide authority, the conflicts of interest discussed in this opinion are not remote. It is also not possible to avoid the conflicts by allowing a deputy sheriff rather than a county sheriff to investigate matters involving the district. A county sheriff has authority to appoint deputy sheriffs to perform duties on the county sheriff's behalf. R.C. 311.04(B)(1) and 325.17. However, the duty to investigate crimes within the county is the *primary function* of a county sheriff, and cannot be completely delegated to another deputy. Further, because a subordinate employee is subject to the influence of a superior, a county sheriff may not avoid a conflict of interest by delegating this authority to a deputy

sheriff. *See* 2021 Op. Att’y Gen. No. 2021-002, Slip Op. at 7; 2-11; 2016 Op. Att’y Gen. No. 2016-017, Slip Op. at 19; 2-180.

The conflicts discussed in this opinion cannot be avoided or eliminated. Therefore, I determine that an impermissible conflict of interest exists when a person serves both as a county sheriff and as a district supervisor for a soil and water conservation district within the same county. Thus, the positions of a county sheriff and a district supervisor for a soil and water conservation district are incompatible when the positions are within the same county.

Conclusion

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

A person may not serve simultaneously as a county sheriff and as a district supervisor of a soil and water conservation district when the positions are within the same county.

Respectfully,



DAVE YOST
Ohio Attorney General