

April 7, 2025

The Honorable Andrew S. Wick
Morrow County Prosecuting Attorney
60 East High Street
Mount Gilead, Ohio 43338

SYLLABUS:

2025-007

A person may serve as both township fiscal officer and member of the board of zoning appeals in the same township, provided that the township fiscal officer refrains from assisting in the preparation of the township's budget with respect to the board of zoning appeals.



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OPINION NO. 2025-007

The Honorable Andrew S. Wick
Morrow County Prosecuting Attorney
60 East High Street
Mount Gilead, Ohio 43338

Dear Prosecutor Wick:

Your predecessor requested an opinion on whether a person may serve simultaneously as a township fiscal officer and member of the township board of zoning appeals within the same township.

For the reasons that follow, I find that a person may serve in both positions simultaneously, provided that the township fiscal officer refrains from assisting in the preparation of the township's budget with respect to the board of zoning appeals.

I

Questions of compatibility arise whenever a person wishes to simultaneously hold two or more positions of public service. *See, e.g.*, 2023 Ohio Atty.Gen.Ops. No. 2023-001; 2022 Ohio Atty.Gen.Ops. No. 2022-007; 2022 Ohio Atty.Gen.Ops. No. 2022-003. Since 1979, my

predecessors and I have analyzed questions of compatibility based on the following seven-part test:

1. Is either position in the classified services 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?

See 1979 Ohio Atty.Gen.Ops. No. 79-111, at 2-367 to 2-368. All seven questions must be addressed and resolved favorably for two positions to be compatible. 2022 Ohio Atty.Gen.Ops. No. 2022-007, Slip Op. at 3; 2-37.

II

Before proceeding with the seven-part analysis, it is necessary to review the general powers, duties, and responsibilities of each position. I begin with the township fiscal officer, an elected official of the township. R.C. 507.01. The township fiscal officer's main responsibility is to "keep an accurate record of the proceedings of the board of township trustees at all of its meetings, and of all its accounts and transactions, including the acceptance of the bonds of township officers." R.C. 507.04(A). In addition, the township fiscal officer must notify the board of elections of vacancies in township offices and of township boundary changes, administer oaths and certify affidavits, and record bonds. *See* R.C. 507.051, 507.06, and 507.08.

A township fiscal officer handles various financial matters, including administrative duties related to bonds and levies. *See, e.g.*, R.C. 133.19(A) (certifies to the board of township trustees the estimate of the maximum maturity of bonds for permanent improvements and that all permanent improvements have an estimated life or period of usefulness of at least five years); R.C. 133.27(A)(4) (signs R.C. Chapter 133 securities issued on behalf of the board of township trustees); R.C. 507.11(B) (countersigns all orders for payment of township moneys); R.C. 5705.03 (receives the proceeds of any township tax levy from the county); and R.C. 5705.41 (certifies that the amount of money required

to be paid by the township under a contract or order has been lawfully appropriated and is in the treasury or in the process of collection).

A member of a board of zoning appeals has a different role in the township. Each township that adopts a comprehensive zoning plan under R.C. Chapter 519 must have a board of zoning appeals composed of five members. The members must be residents of the unincorporated territory in the township included in the area zoned. R.C. 519.13(A). The board may hear and decide appeals when it is alleged that an administrative official has made an error in the enforcement of zoning laws under R.C. Chapter 519 or zoning resolutions. R.C. 519.14(A). The board may also grant variances from the terms of zoning resolutions, grant conditional zoning certificates, and revoke an authorized variance or conditional zoning certificate granted for the extraction of minerals. R.C. 519.14(B) to (D).

III

The Classified Service

The first question in the seven-part test asks whether either position is in the 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 office of township fiscal officer is an elected position. R.C. 507.01 and 3513.253. According to R.C. 124.11(A)(1), “All officers elected by popular vote or persons appointed to fill vacancies in those offices” are in the unclassified service. Thus, the prohibition in R.C. 124.57 does not apply to a township fiscal officer.

In addition, R.C. 124.57 applies only to officers and employees in the service of the “state, the several counties, cities, and city school districts of the state, or the *civil service townships*.” (Emphasis added.) The classified service of a civil service township is limited to persons in the employ of civil service township police and fire departments having ten or more full-time paid employees. See R.C. 124.01(G) (defining “civil service township”) and R.C. 124.40(B) (limiting the jurisdiction of a township civil service commission). Therefore, a member of a township board of zoning appeals is not in the classified service, regardless of whether the township is a civil service township.

As neither office is in the classified service for purposes of R.C. 124.57, the prohibition does not apply to

prevent a person from serving in both positions at the same time. Question one is, therefore, answered in favor of compatibility.

Constitutional and Statutory Limits

The second question asks whether a constitutional provision or statute directly prohibits serving in both positions at the same time. For example, no township trustee may be employed by the zoning commission of their township. R.C. 519.05. There is no law that directly prohibits a township fiscal officer from serving on the board of zoning appeals.

A member of the board of zoning appeals must reside in the unincorporated territory of the township included in the area zoned. R.C. 519.13(A). The residency requirement is the only necessary qualification a person must have to be appointed to the board. A township fiscal officer also must reside in the township. R.C. 3.15(A)(3). If the fiscal officer lives in the township's unincorporated territory that is included in the area zoned, the fiscal officer would be qualified to serve on the board of zoning appeals.

R.C. 519.16 specifically allows a township fiscal officer to be appointed as secretary of the township zoning commission, secretary of the board of zoning appeals, and township zoning inspector, and to be compensated for those services. A strict reading of R.C. 519.16 might

seem to limit the township fiscal officer to those roles. However, “the canon *expressio unius est exclusio alterius*,” which means the expression of one thing excludes others, “does not apply to every statutory listing or grouping; it has force only when the items expressed are members of an ‘associated group or series,’ justifying the inference that items not mentioned were excluded by deliberate choice, not inadvertence.” *Summerville v. City of Forest Park*, 2010-Ohio-6280, at ¶35, quoting *Barnhart v. Peabody Coal Co.*, 537 U.S. 149, 168 (2003). I cannot infer from R.C. 519.16 that a fiscal officer is limited only to serving the township zoning commission or board of zoning appeals as its secretary or as zoning inspector. Previous attorney general opinions have concluded that a township fiscal officer may serve in other offices at the same time. See 2022 Ohio Atty.Gen.Ops. No. 2022-007 (member of a local board of education); 2014 Ohio Atty.Gen.Ops. No. 2014-022 (administrator of the court of common pleas); 2007 Ohio Atty.Gen.Ops. No. 2007-023 (village mayor); *but see* 1985 Ohio Atty.Gen.Ops. No. 85-052, at 2-191 (an individual may not serve as both township zoning inspector and member of the township’s zoning commission). Thus, the second question here is answered in favor of compatibility.

Subordination and Control

Question three asks whether either position is subordinate to, or a check upon, the other position. In 2006

Ohio Atty.Gen.Ops. No. 2006-015, one of my predecessors concluded that a township trustee may not simultaneously serve on the board of zoning appeals, primarily because the township trustees appoint the members of the board of zoning appeals. R.C. 519.13. In addition, “the members may be allowed their expenses, or such compensation, or both, as the board of township trustees may approve and provide.” *Id.* Unlike the board of township trustees, the township fiscal officer has no appointing authority, no power to remove, nor any duty to set compensation for the board of zoning appeals. Thus, a member of the board of zoning appeals is not subordinate to the township fiscal officer.

Likewise, the board of zoning appeals has no authority to supervise or direct the township fiscal officer. The powers of a board of zoning appeals are quasi-judicial and limited to zoning enforcement. *See* R.C. 519.14 (listing the board’s powers and responsibilities); 2000 Ohio Atty.Gen.Ops. No. 2000-035, at 2-222; 1960 Ohio Atty.Gen.Ops. No. 1625, p. 553, at 555 (“the powers of a township board of zoning appeals . . . are clearly of a judicial nature”); *see also Surber v. Hines*, 2024-Ohio-95, ¶11 (2d Dist.).

R.C. 519.16 expressly permits the fiscal officer to serve as secretary of the board of zoning appeals. If a township fiscal officer presently serves as secretary of the board, one might question whether the role of secretary is subordinate to the members. According to one

dictionary definition, a secretary is someone “employed to handle correspondence and manage routine and detail work *for a superior*.” (Emphasis added). *Merriam-Webster’s Collegiate Dictionary* (11th Ed. 2005). My predecessor, however, concluded that the position of secretary to a board is not subordinate to the members of a board when record-keeping is a statutory duty of the officer or board members. *See* 2011 Ohio Atty.Gen.Ops. No. 2011-027, at 2-226 (township fiscal officer may serve as secretary to the board of township trustees); 1999 Ohio Atty.Gen.Ops. No. 99-035, at 2-230 (zoning commission members may serve as secretary to the commission on a rotating basis), *citing* 1957 Ohio Atty.Gen.Ops. No. 1052, p. 482. In another context, the law *requires* a member of a commission to simultaneously serve as the secretary. *See* R.C. 5705.27 (assigning the county auditor to serve as member and secretary of the county budget commission). The board of zoning appeals is required by law to keep minutes of its proceedings and records of its examinations and other official actions. R.C. 519.15. Thus, a township fiscal officer is not subordinate to the members of the board of zoning appeals, even if the fiscal officer serves as secretary of the board.

The second half of the question is whether either public office acts as a check on the other. As noted above, the township trustees provide for the expenses of, and determine appropriate compensation for, the members of the board of zoning appeals. R.C. 519.13(B). The

township fiscal officer may be asked by the trustees to assist in preparing the township's annual budget. *See* 2003 Ohio Atty.Gen.Ops. No. 2003-006, at 2-35. In this context, the fiscal officer might act as a check on the board of zoning appeals, its expenditures, and the members' compensation. But the township fiscal officer is not legally required to prepare or assist in preparing the budget for each fiscal year. If the board of township trustees employs a township administrator, the township administrator is responsible for preparing and submitting a budget for each fiscal year. R.C. 505.031 and 505.032. As the taxing authority, the board of township trustees is responsible for adopting the budget. R.C. 5705.28. To the extent that a fiscal officer assists with preparing or presenting the budget, the fiscal officer lacks any independent decision-making authority. 1999 Ohio Atty.Gen.Ops. No. 99-046, at 2-291. Therefore, the answer to this question does not preclude one from serving simultaneously as township fiscal officer and as a member of the board of zoning appeals, and the question is answered in favor of compatibility.

Physical Ability to Discharge Duties

Question four asks if it is physically possible for one person to perform the duties of both roles. As a practical matter, this has routinely been considered a factual question for local officials to determine. As prior opinions have explained, local officials best understand the

demands of each position in the township. *See* 2022 Ohio Atty.Gen.Ops. No. 2022-003, Slip Op. at 8; 2-14; 2022 Ohio Atty.Gen.Ops. No. 2022-007, Slip Op. at 5; 2-38 (“After all, 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”).

That said, the township fiscal officer must personally attend at least one meeting of the township trustees each quarter, unless prevented by an emergency. R.C. 507.04(A). A board of zoning appeals meets at the call of the chair, at such other times as the board determines, and as needed for public hearings on appeals. R.C. 519.15. To serve simultaneously as township fiscal officer and member of the board of zoning appeals, the person must be able to attend necessary meetings of both the board of zoning appeals and the township trustees.

If local officials find it physically possible for a township fiscal officer to serve simultaneously in both positions, then question four may be answered in favor of compatibility.

Conflicts of Interest

The fifth question relates to conflicts of interest. A person cannot serve simultaneously in two positions when an impermissible conflict of interest exists between the

positions. *See, e.g.*, 2023 Ohio Atty.Gen.Ops. No. 2023-001, Slip Op. at 5; 2-5. “A conflict of interests 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.’” *See* 2021 Ohio Atty.Gen.Ops. No. 2021-027, Slip Op. at 2; 2-97, quoting 1989 Ohio Atty.Gen.Ops. No. 89-052, at 2-220. If conflicts exist, I must determine whether the conflicts can be avoided or eliminated entirely, thus allowing the person to hold both positions at the same time. Relevant 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.” 2020 Ohio Atty.Gen.Ops. No. 2020-001, Slip Op. at 2; 2-2, quoting 2004 Ohio Atty.Gen.Ops. No. 2004-051, at 2-439.

A township fiscal officer is not required by statute to prepare or assist in preparing the township budget. *See* 2003 Ohio Atty.Gen.Ops. No. 2003-006, at 2-35. However, the township trustees may request the fiscal officer to prepare the budget, present it to the county budget commission, or assist a township administrator in performing those tasks. *Id.* As noted earlier, if the township employs a township administrator, the administrator is primarily responsible for preparing the

annual budget for the next fiscal year. R.C. 505.032. Not every township, however, employs a township administrator. Even in that circumstance, if the township fiscal officer refrains from assisting with preparing the budget or presenting it to the county budget commission, at least with respect to the board of zoning appeals, a conflict of interest can be avoided. *See* 2022 Ohio Atty.Gen.Ops. No. 2022-007; 2004 Ohio Atty.Gen.Ops. No. 2004-025, at 2-227 to 2-228; 2003 Ohio Atty.Gen.Ops. No. 2003-006, at 2-36.

According to R.C. 507.11(B), all orders for payment out of township funds must be signed by at least two township trustees and countersigned by the township fiscal officer. Orders for payment could include payment of expenses and compensation for members of the board of zoning appeals. *See* R.C. 519.13. While it may seem at first a conflict of interest to sign checks for one's own compensation or expenses as a member of the board, the fiscal officer's duty to countersign payments is ministerial; it does not require any independent exercise of discretion or judgment. *See* 2004 Ohio Atty.Gen.Ops. No. 2004-025, at 2-230 to 2-231 ("when a village clerk-treasurer or township clerk certifies the availability of money payable under a public contract or disburses public moneys payable under a contract, the clerk-treasurer or clerk performs a ministerial duty, or one that involves obedience to instructions or laws instead of discretion, judgment, or skill"). Absent evidence to the contrary, there is a presumption that a township

fiscal officer will perform ministerial duties in a regular and lawful manner. *See, e.g.,* 2007 Ohio Atty.Gen.Ops. No. 2007-023, at 2-236; *State ex rel. Speeth v. Carney*, 163 Ohio St. 159, 186 (1955).

In sum, any foreseeable conflict of interest between the two positions can be avoided. The township fiscal officer is not legally responsible for preparing the township's annual budget. If the township fiscal officer serves as a member of the board of zoning appeals, the fiscal officer should not prepare or assist in preparing the annual budget with respect to the board of zoning appeals. And if a township fiscal officer employs one or more assistants, it may be possible to delegate responsibilities that overlap or conflict with the duties of the board of zoning appeals. *See* R.C. 507.021.

My review of potential conflicts of interest does not include matters covered by R.C. Chapter 102 (the Public Ethics Law), R.C. 2921.42 (Unlawful Interest in Public Contracts), or R.C. 2921.43 (Soliciting Improper Compensation). The Ohio Ethics Commission has authority to render advisory opinions concerning those provisions. *See* R.C. 102.08(E). With that caveat, there does not appear to be any conflict of interest that precludes serving in both positions. The fifth question, then, is also answered in favor of compatibility.

***Charter Provisions, Local Ordinances, and
Other Applicable Regulations***

I will address the sixth and seventh questions together. The sixth question asks whether local charter provisions, resolutions, or ordinances control or resolve the question of compatibility. And for the seventh question, I consider whether any federal, state, or local departmental regulation is applicable.

The portions of questions six and seven that relate to local provisions and regulations are left to local officials to answer. *See, e.g.*, 2022 Ohio Atty.Gen.Ops. No. 2022-007, Slip Op. at 15; 2-43; 2022 Ohio Atty.Gen.Ops. No. 2022-003, Slip Op. at 4; 2-12. Only certain municipalities and counties operate under local charters; there is no legal authority for a township to adopt a charter, even if it has adopted limited home rule. *See* Ohio Const., art. X, §3; art. XVIII, §7; R.C. Ch. 504. However, the county prosecutor should consider whether any resolutions adopted by the board of township trustees would prevent the fiscal officer from serving as a member of the township board of zoning appeals.

The State Auditor is the only state officer with direct oversight of township fiscal officers. R.C. 117.43. The State Auditor has not adopted any administrative rules that would prevent a township fiscal officer from serving on a board of zoning appeals. *See generally* Adm.Code 117. While the federal government might

issue grant money to townships with conditions attached, it is unlikely that any such regulations would prevent the township fiscal officer from serving as a member of the board, and the matter could be addressed if that circumstance arises. Unless local officials find that local provisions and regulations control issues of compatibility, questions six and seven are answered in favor of compatibility.

Conclusion

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

A person may serve as both township fiscal officer and member of the board of zoning appeals in the same township, provided that the township fiscal officer refrains from assisting in the preparation of the township's budget with respect to the board of zoning appeals.

Respectfully,

A handwritten signature in blue ink that reads "Dave Yost". The signature is written in a cursive, flowing style.

DAVE YOST
Ohio Attorney General