

Note from the Attorney General's Office:

1959 Op. Att'y Gen. No. 59-602 was modified by and overruled in part by
1985 Op. Att'y Gen. No. 85-080.

602

COMPATIBILITY — TOWNSHIP TRUSTEE INCOMPATIBLE
WITH POSITION IN HIGHWAY DEPARTMENT—CLASSIFIED
OR UNCLASSIFIED SERVICE IMMATERIAL.

SYLLABUS:

The office of township trustee is incompatible with the position of state highway department employee whether the latter position be in the classified or unclassified service of the state highway department.

Columbus, Ohio, June 11, 1959

Hon. Ralph A. Hill, Prosecuting Attorney
Clearmont County, Batavia, Ohio

Dear Sir:

I have before me your request for my opinion which poses the following question:

“Is the elective position of township trustee compatible with that of a state highway employee either in the classified or unclassified category?”

In 32 Ohio Jurisprudence, page 908, it is stated:

“One of the most important tests as to whether officers are incompatible is found in the principle that incompatibility is recognized whenever one office is subordinate to the other in some of its important and principal duties, or is subject to supervision or control by the other,—as an officer who presents his personal accounts for audit,—or is in any way a check upon the other, or where a contrariety and antagonism would result in an attempt by one person to discharge the duties of both.”

As to the first aspect of your question, namely, whether or not the position of township trustee is compatible with that of a classified employee of the state highway department, the testing of the two positions in the light of the foregoing broad descriptive definition is not required. I merely need to apply the well-known express provision directed against partisan political activity of all officers and employees in the classified service of the state, its counties, cities and school districts contained in Section 143.41, Revised Code, and I am thus lead to the inescapable conclusion that the office of township trustee, it being elective pursuant to Section 505.01, Revised Code, and therefore political, is incompatible with the position of a classified service employee of the state highway department.

More involved is the second aspect of your question: May a township trustee at the same time be an employee in the unclassified service of the state highway department? If there is conflict of such nature and extent as to make the two positions incompatible, it must apparently arise from the provisions of statutes dealing with the respective positions and the reasonable implications therefrom.

In my recent Opinion No. 223, Opinions of the Attorney General for 1959, to which reference is made in your letter, the question of compatibility of position of township trustee relative to classified and unclassified service employees of a county highway department was under consideration and the conclusion was reached that those positions were incompatible. In examining statutes in relation to the immediate question before me, an essentially similar situation is revealed, although there is variance as to the possible and probable points of conflict.

Section 5571.01, Revised Code, provides that the board of township trustees may "construct, reconstruct, resurface or improve any public road or part thereof under its jurisdiction or any county road, intercounty highway, or state highway within its township." Section 5571.02, Revised Code, confers on the board of township trustees both control over the township roads and the duty to keep them in good repair, and then proceeds to say:

"The board of township trustees may, with the approval of county commissioners or the director of highways, maintain or repair a county road, or intercounty highway, or state highway within the limits of its township."

Section 5524.03, Revised Code, provides in pertinent part:

“The board of county commissioners and the board of trustees of any township within which is located a crossing which the director petitions to be discontinued may file an answer as provided in section 5524.02 of the Revised Code. After the judgment of the court has been rendered *the rights and obligations of the parties and the powers of the court shall be the same as provided by section 5524.02 of the Revised Code.*” (Emphasis added)

The pertinent part of Section 5524.02, Revised Code, which deals with the closing of crossings by the director of highways within municipal corporations and to which reference is made in Section 5524.03, Revised Code, reads as follows:

“* * * If the court finds that the crossing should be closed to vehicular traffic, or to pedestrian traffic, or to both, it shall so order. If the court finds that the crossing cannot be closed without unreasonable inconvenience to the public, it shall find for the municipal corporation. *Either party aggrieved by the order may appeal as in other civil cases.*”

“If a municipal corporation refuses or neglects to comply with an order made by the court as provided by this section, *the court may enforce its orders by either mandamus or mandatory injunction, or as for contempt of court, as the necessity of the case requires, upon the application of the director.*” (Emphasis added)

Section 5535.08, Revised Code, provides:

“The state, county, and township shall each maintain its roads, as designated in section 5535.01 of the Revised Code; however, the county or township may, by agreement between the board of county commissioners and the board of township trustees, contribute to the repair and maintenance of the roads under the control of the other. *The state, county, or township, or any two or more of them, may, by agreement, expend any funds available for road construction, improvement, or repair upon roads inside a village. A village may expend any funds available for street improvement upon roads outside the village and leading thereto.*” (Emphasis added)

It is not difficult to see that the foregoing sections of the Revised Code contain the ingredients of contrariety and antagonism which may develop under a variety of circumstances between a township and the state department of highways, whereby a township trustee who would also be a state highway unclassified service employee could not act freely and without

restraint with respect to one of the principal duties of township trustees. The possibility of direct conflict between two positions is best exemplified in the provisions of Sections 5524.02 and 5524.03, Revised Code, under which the director of state highways and a board of township trustees may appear in court as opponents.

In the light of the foregoing it is quite clear and I therefore advise you that the office of township trustee is incompatible with the position of a state highway employee either in the classified or unclassified service.

Respectfully,

MARK MCELROY
Attorney General