

OPINION NO. 87-084**Syllabus:**

1. The fire chief of a township volunteer fire department is a volunteer fireman for purposes of R.C. 505.011.
2. A township trustee may serve as a fire chief of a township volunteer fire department, provided that he does not receive compensation for his services.

To: Gregory A. White, Lorain County Prosecuting Attorney, Elyria, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, October 30, 1987

I have before me your request for my opinion concerning the compatibility of the positions of township trustee and township

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fire chief. Your request notes that in the situation in question, one individual, an elected township trustee, serves without compensation as the fire chief for the township's volunteer fire department. Specifically, you ask whether a township trustee may, under R.C. 505.011, also serve as fire chief in the volunteer fire department of the township in which he was elected as trustee?

R.C. 505.38 authorizes the board of township trustees to appoint a fire chief in each township having a fire department. R.C. 505.38(A) reads in pertinent part as follows:

(A) In each township or fire district which has a fire department, the head of such department shall be a fire chief, appointed by the board of township trustees, except that in a joint fire district the fire chief shall be appointed by the board of fire district trustees. The board shall provide for the employment of such fire fighters as it considers best, and shall fix their compensation.

The common law test of compatibility of public offices was set forth by my predecessor in 1979 Op. Att'y Gen. No. 79-111. The test includes seven questions, among them being the question of whether one office or position is subordinate to, or a check upon, the other. The fire chief is clearly subordinate to the township trustees, as the chief is appointed by the trustees under R.C. 505.38. The compatibility test also raises the issue of possible conflicts of interest. The possibility for conflict of interest or divided loyalty is rife in a situation where the fire chief is himself a member of a board which appoints the fire chief. Application of common law principles of compatibility would thus lead me to conclude that a township trustee could not also serve as chief of the township fire department. See 1960 Op. Att'y Gen. No. 1166, p. 120, overruled, 1978 Op. Att'y Gen. No. 78-017. My conclusion in this regard must, however, be reconsidered in light of R.C. 505.011.

R.C. 505.011 allows a township trustee to be appointed as a volunteer fireman in the township in which he serves, provided that he receive no compensation for his services. R.C. 505.011 states:

A member of a board of township trustees may be appointed as a volunteer fireman and in such capacity be considered an employee of the township, or he may be a member of a private fire company which has entered into an agreement to furnish fire protection for the township of which such member is a trustee; provided that such member shall not receive compensation for his services as a volunteer fireman.

In 1978 Op. Att'y Gen. No. 78-017, at 2-42 to 2-43, my predecessor opined that "the obvious purpose of R.C. 505.011 is to allow township trustees to serve their communities as volunteer firemen without jeopardizing their trusteeships", and that "the only caveat is that the trustees may not receive any compensation." In 1984 Op. Att'y Gen. No. 84-018, I addressed the question of whether a township trustee could serve as an officer of a township volunteer fire department. I concluded that an officer may be considered a volunteer fireman for purposes of R.C. 505.011. In Op. No. 84-018, the officer referred to was an assistant fire chief who was not appointed

directly by the board of township trustees, but was appointed by the fire chief.

The conclusions reached in Op. No. 78-017 and Op. No. 84-018, and the language of R.C. 505.011, raise the issue of whether or not the fire chief is a volunteer fireman for purposes of that statute. In order to resolve that issue, it is necessary to examine the language used in R.C. 505.011. The statute uses the term "volunteer fireman." There is no statutory definition of that term which specifically applies to R.C. 505.011.¹ Absent a statutory definition, statutory terms are to be given their ordinary meaning. R.C. 1.42. State ex rel. Celebrezze v. Board of County Commissioners, 32 Ohio St. 3d 24, 512 N.E.2d 332 (1987). The dictionary definition of the term "fireman" is "a man whose work is fighting fires; a member of the fire department." Webster's New World Dictionary 525 (2nd college ed., 1978). The word "member" ordinarily refers to a "person belonging to some association, society, community, party, etc." Id. at 885.

Taking into consideration that the term "fireman" is broadly defined as a member of the fire department, I must examine the statutory language describing the position of chief of a township volunteer fire department to see whether or not the fire chief is included as a member of the department. Under R.C. 505.37 and .38 a township may establish its own fire department, may procure fire protection through a contract with a separate fire department or company, or may establish a fire district. Since your question refers to a volunteer fire department I assume that the township has established its own volunteer department. Under R.C. 505.38, the township trustees are to appoint the chief and other members of the township fire department. R.C. 505.38(A) refers to the chief as "the head of...[the township fire] department." I am unaware of any other statutory reference to the chief of a township volunteer fire department that distinguishes the chief from other firemen in the department. Inasmuch as the single statutory differentiation between the chief of a township volunteer fire department and the other members of the department is that the chief is the "head of such department," R.C. 505.38(A), I find no basis on which to conclude that the General Assembly intended to treat the fire chief any differently than other volunteer fireman under R.C. 505.011.

I am not aware of any case which directly addresses the issue raised by your letter. However, a recent case did consider potential differences among separate types of fire fighters. In Doughtery v. Torrence, 2 Ohio St. 3d 69, 442 N.E.2d 1295 (1982) the Ohio Supreme Court construed the terms "member of the fire department" and "firemen" to include

¹ Definitions of "volunteer firemen" or "volunteer firefighters" appear in several other statutes. R.C. 505.22 defines the term "volunteer fireman" for purposes of R.C. 505.23. That section permits a political subdivision to purchase liability and casualty insurance for members of a volunteer fire department. R.C. 505.22(C) defines "volunteer firemen" as "all members in good standing of the volunteer fire department of such political subdivision." R.C. 146.01(A) defines a "volunteer fire fighter," for purposes of the volunteer fire fighter's dependents fund, as "a duly appointed member of a volunteer fire department on either a nonpay or part-pay basis."

volunteer firemen. The Court held that a volunteer fire fighter belonging to a municipal fire department is a "fireman" within the meaning of R.C. 701.02. R.C. 701.02 provided immunity to "members of the fire department" under certain circumstances. The court found no indication that volunteer firemen were to be excluded from the operation of the statute or otherwise differentiated from paid firemen. Statutory review of the term "member" led the Court to view that term as expansive rather than limiting. The court reasoned that through the use of the word "member" in R.C. 701.02 the legislature intended to protect all fire fighters regardless of the precise capacity of their service. In reaching its conclusion, the Court noted that the General Assembly had categorized different types of fire fighters in various other statutes, classifying them as volunteer or paid, part-time or full-time, and temporary or permanent.² The Court determined that the generic term "members of the fire department" in R.C. 701.02 was thus purposeful, and stated that "[a]pparently, the General Assembly uses the particular classifications when it seeks to differentiate among the various categories of fire fighters and the general terms when differentiation is not desired." 2 Ohio St. 3d at 71, 442 N.E.2d at 1297.

Application of the principles articulated in Doughtery v. Torrence solidifies my conclusion that a fire chief is a volunteer fireman for purposes of R.C. 505.011. Nothing in R.C. Chapter 505 suggests that the General Assembly intended to exclude the chief of a volunteer fire department from provisions otherwise generally applicable to members of such a department. Therefore, I find no basis to distinguish the chief from other volunteer firemen for purposes of R.C. 505.011. Had the General Assembly intended to exclude a fire chief from the operation of R.C. 505.011, it easily could have done so through an express reference. I view the absence of such an exclusion as purposeful.

Therefore, it is my opinion, and you are so advised that:

1. The fire chief of a township volunteer fire department is a volunteer fireman for purposes of R.C. 505.011.
2. A township trustee may serve as a fire chief of a township volunteer fire department, provided that he does not receive compensation for his services.

² The Court made reference to R.C. 737.22 regarding training and physical requirements, R.C. 737.26 regarding exemptions from jury duty for volunteer firemen, and R.C. 505.41 regarding workers' compensation insurance for members of volunteer fire companies, as statutes which categorize fire fighters.