

August 8, 2014

The Honorable Laina Fetherolf
Hocking County Prosecuting Attorney
88 South Market Street
Logan, Ohio 43138

SYLLABUS:

2014-032

A township trustee may serve simultaneously as an unpaid, auxiliary deputy sheriff within the same county when the township has not contracted with the county sheriff's office for police protection. A township trustee who serves simultaneously as an unpaid, auxiliary deputy sheriff should abstain from any deliberations, discussions, and votes concerning a township tax levy in excess of the ten-mill limitation when the county has already placed a levy for support of the county sheriff's office on the ballot. (1961 Op. Att'y Gen. No. 2311, p. 335, distinguished.)



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August 8, 2014

OPINION NO. 2014-032

The Honorable Laina Fetherolf
Hocking County Prosecuting Attorney
88 South Market Street
Logan, Ohio 43138

Dear Prosecutor Fetherolf:

You have requested an opinion regarding a person's simultaneous service as a township trustee and an auxiliary deputy sheriff within the same county.¹ As you have noted, the Attorney General has previously found the positions of township trustee and deputy sheriff incompatible. 1961 Op. Att'y Gen. No. 2311, p. 335. These two positions were found incompatible on the basis of a conflict of interest involving a board of township trustees' authority to contract with the county sheriff for police protection. *Id.* at 336 to 337. *See generally* R.C. 505.43 (in order to obtain police protection, or to obtain additional police protection, a township may enter into a contract with, *inter alia*, a county sheriff, if the contract is first authorized by the board of township trustees). Because "it

¹ Pursuant to R.C. 311.04, a county sheriff may appoint one or more deputies. "A sheriff is vested with absolute discretion to determine what deputies shall be employed, the length of their employment, and the duties of his office to be performed by them[.]" *State ex rel. Geyer v. Griffin*, 80 Ohio App. 447, 458, 76 N.E.2d 294 (Allen County 1946). This discretion has been interpreted to include the authority to appoint auxiliary deputy sheriffs, more commonly referred to as "special deputy sheriffs." *See* 1989 Op. Att'y Gen. No. 89-071, at 2-326 (while there is no statutory provision expressly creating the position of special deputy sheriff, the position exists at common law and has long been recognized in Ohio); 1977 Op. Att'y Gen. No. 77-027, at 2-101 (same as previous parenthetical). "The term 'special deputy sheriff' has been used to designate a deputy sheriff who serves on terms that are different from those on which a regular deputy serves. For example, his duties may be limited, he may be employed only intermittently as needed, or he may serve without compensation." 1989 Op. Att'y Gen. No. 89-071, at 2-326. While an auxiliary, or special, deputy sheriff serves on terms different from those on which a regular deputy serves, he is appointed pursuant to R.C. 311.04 and is considered a deputy sheriff by law. *See* 1977 Op. Att'y Gen. No. 77-027, at 2-102 ("[t]he term 'special' relates not to an individual's qualification as a deputy but to the nature of his assignment as a deputy and to the fact that his commission and powers may be limited consistent with such assignment.... In law, the special deputy thus appointed and approved is deemed a 'deputy;' there is no distinction").

could be difficult for a township trustee to exercise independent judgment when contracting with the county sheriff to obtain police protection for the township which he serves, if at the same time such trustee is a deputy sheriff,” the 1961 opinion concluded that a person may not serve simultaneously as a township trustee and a deputy sheriff within the same county. 1961 Op. Att’y Gen. No. 2311, p. 335, at 337.

You ask that we re-examine the compatibility of these positions based on particular facts that you have presented. You explain that a recently elected township trustee would like to continue his service as an auxiliary deputy sheriff with the Hocking County Sheriff’s Office. The township trustee serves as an auxiliary deputy sheriff on a very intermittent basis and does not receive compensation for his service as a deputy sheriff. You have stated that examples of duties performed by the person as an auxiliary deputy sheriff include providing security at the annual county fair and other intermittent security assignments. He wishes to continue to serve as an auxiliary deputy sheriff in order to maintain his commission as a deputy sheriff and the peace officer basic training certificate he received pursuant to R.C. 109.77.² You also explain that the township for which he serves as trustee does not contract with the county sheriff for the provision of police services.

Since issuance of the 1961 opinion finding the positions of township trustee and deputy sheriff incompatible, the Attorney General has developed the following comprehensive test for determining whether a person may serve simultaneously in two public positions:

1. Is either position in the classified service for purposes of R.C. 124.57?
2. Does a constitutional provision or statute prohibit holding both positions at the same time?
3. Is one position subordinate to, or in any way a check upon, the other?
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?

² Pursuant to 2A Ohio Admin. Code 109:2-1-12(D), a person who has previously been awarded a certificate of completion of basic training from the Executive Director of the Ohio Peace Officer Training Commission but who has not been appointed as a peace officer or trooper for more than one year is required to complete additional training upon re-appointment as a peace officer.

1979 Op. Att’y Gen. No. 79-111, at 2-367 to 2-368; *see also* 2012 Op. Att’y Gen. No. 2012-017, at 2-143 to 2-144; 2009 Op. Att’y Gen. No. 2009-018, at 2-127 to 2-128. We will apply this test to determine whether a person may serve simultaneously as a township trustee and an unpaid, auxiliary deputy sheriff within the same county when the township has not contracted with the county sheriff’s office for the provision of police protection.

Discussion of R.C. 124.57

The first question of the compatibility analysis asks whether either position is a classified employment within the terms of R.C. 124.57. This statute prohibits an officer or employee in the classified service of the state, the several counties, cities, city school districts, and civil service townships³ from taking part in a variety of political activities that are partisan in nature. 2003 Op. Att’y Gen. No. 2003-041, at 2-336. R.C. 124.57 “prohibits an officer or employee in the classified service from seeking election or appointment to, 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.”⁴ 2003 Op. Att’y Gen. No. 2003-041, at 2-336.

A township trustee is in the unclassified civil service because, *inter alia*, it is an elected position. *See* R.C. 124.11(A)(1) (the unclassified service includes “[a]ll officers elected by popular vote or persons appointed to fill vacancies in those offices”); R.C. 505.01 (election of members of a board of township trustees). *See also generally* 2003 Op. Att’y Gen. No. 2003-041, at 2-337 to 2-338 (explaining that R.C. 124.57’s prohibition does not apply to officers and employees in the service of a township that is not a civil service township and, further, that the classified service of a civil service township is limited to persons employed by civil service township police and fire departments having ten or more full-time paid employees).

You have indicated that the person also does not serve in the classified civil service as an auxiliary deputy sheriff. *See also Gratsch v. Hamilton Cnty. Sheriff’s Dep’t*, 91 F. Supp. 2d 1160, 1175 (S.D. Ohio 2000), *aff’d in part and rev’d in part on other grounds*, 12 F. App’x 193 (6th Cir. 2001) (“[r]egular deputy sheriffs generally are presumed to be classified civil servants.... However, it appears that special deputies are not members of the classified civil service whatsoever”). Accordingly, R.C. 124.57 does not apply and will not prevent the person from serving simultaneously as a township trustee and an unpaid, auxiliary deputy sheriff.

³ For purposes of R.C. 124.57, “civil service township” means “any township with a population of ten thousand or more persons residing within the township and outside any municipal corporation, which has a police or fire department of ten or more full-time paid employees and which has a civil service commission established under [R.C. 124.40(B)].” R.C. 124.01(G).

⁴ An officer or employee in the classified civil service may participate in partisan politics if a charter provision or the terms of a collective bargaining agreement authorize such participation. 2003 Op. Att’y Gen. No. 2003-041, at 2-336 n.7.

Applicability of Constitutional Provisions or Statutes, Local Charter Provisions, Resolutions, or Ordinances, or Federal, State, or Local Departmental Regulations

For ease of discussion, we will address the second, sixth, and seventh questions of the compatibility analysis together. Question two asks whether a constitutional provision or statute prohibits a person from holding both positions at the same time. No constitutional provision or statute prohibits a person from serving simultaneously in the positions of township trustee and auxiliary deputy sheriff. *See State ex rel. Scioto Cnty. Prosecutor v. Murphy*, Scioto App. No. 02CA2831, 2003-Ohio-4550, 2003 WL 22017242, at ¶17; *cf.* R.C. 311.04(B)(1) (“[n]o judge of a county court or mayor shall be appointed a deputy [sheriff]”).

Questions six and seven concern the applicability of local charter provisions, resolutions, or ordinances and federal, state, and local regulations. We find no federal or state regulation prohibiting a person from serving simultaneously as a township trustee and an auxiliary deputy sheriff.⁵ Whether an applicable local charter provision, resolution, ordinance, or departmental regulation prohibits a person from serving in these positions simultaneously is a question for local officials to answer. For purposes of this opinion, we assume that no such charter provision, resolution, ordinance, or departmental regulation exists.

Subordination and Control

The third question asks whether one position is subordinate to, or in any way a check upon, the other. A township trustee, as an elected official, is responsible to the township’s electorate. 1997 Op. Att’y Gen. No. 97-045, at 2-279. An auxiliary deputy sheriff is appointed by, and thus responsible to, the county sheriff. R.C. 311.04. Therefore, the positions serve different masters and neither is required to assign duties to, or supervise, the other.⁶ Accordingly, neither position is subordinate to, or in any way a check upon, the other.

⁵ Pursuant to 5 U.S.C.A. § 1502(a)(3) (West 2007 & Supp. 2014), a “[s]tate or local officer or employee,” *see* 5 U.S.C.A. § 1501(4) (West Supp. 2014), may not be a candidate for elective office if that officer or employee’s salary is paid completely, directly or indirectly, by loans or grants made by the federal government. This prohibition is commonly referred to as the Hatch Act. Because the auxiliary deputy sheriff serves without compensation, the Hatch Act does not apply here.

⁶ Pursuant to R.C. 505.43, a board of township trustees may enter into a contract with a county sheriff for the provision of police protection. The terms of a contract entered into under R.C. 505.43 may require the board of township trustees to evaluate services provided by the county sheriff and his deputies under the contract. *See, e.g., State ex rel. Scioto Cnty. Prosecutor v. Murphy*, Scioto App. No. 02CA2831, 2003-Ohio-4550, 2003 WL 22017242, at ¶33. Under these limited circumstances, a township trustee may serve as a check upon an auxiliary deputy sheriff. Here, however, you have indicated that the township in question does not contract with the county sheriff for the provision of police protection.

Physical Ability to Hold and Serve in Both Positions

Question four of the compatibility analysis asks whether it is physically possible for one person to perform the duties of both positions. This is a factual question that is best addressed by local officials because they may determine more accurately the time constraints and demands imposed upon the positions in question. *See* 2006 Op. Att’y Gen. No. 2006-003, at 2-23. It seems likely, however, that the duties of these two positions can be discharged competently by the same person given that the person serves as an auxiliary deputy sheriff on an intermittent basis. We must caution that a township trustee, as an elected township officer, is required to perform statutory duties, and where the nature of such duties requires the trustee to be present at a particular time or place, or act in a particular manner, the trustee must be able to do so. *Id.* at 2-23 to 2-24. This means that there may not be a direct conflict between the times when the person is needed to carry out the duties of each of the positions.

Conflicts of Interest

The fifth and final question of the analysis asks whether there is a conflict of interest between the two positions.⁷ A person may not serve simultaneously in two public positions if he would be subject to divided loyalties, conflicting duties, or the temptation to act other than in the public’s best interest in either or both positions. 1994 Op. Att’y Gen. No. 94-013, at 2-60.

We must first review the powers, duties, and responsibilities conferred upon a township trustee and an auxiliary deputy sheriff to determine whether a person who holds both of these positions may be subject to a conflict of interest. If the review discloses any potential conflicts, we must then examine whether the conflicts may be avoided sufficiently or eliminated entirely, thus allowing the person to hold both positions at the same time. Factors used in making this determination include the probability of the conflict, the ability of the person to remove himself from the conflict should it arise, whether the person exercises decision-making authority in both positions, and whether the conflict relates to the primary functions of each position or to financial or budgetary matters. 2004 Op. Att’y Gen. No. 2004-015, at 2-126.

A board of township trustees is the governing body of a township. *See generally* R.C. Chapter 505 (setting forth the general powers and duties of a board of township trustees). In that role the board is vested by statute with various powers and duties associated with the government of the township. *See, e.g.*, R.C. 505.10 (may accept and sell township property); R.C. 505.262 (may contract for the purchase of equipment, buildings, and sites for any lawful township purpose); R.C. 505.37 (may provide for fire protection); R.C. 505.48 (may create a township police district). A board of township

⁷ The Ohio Ethics Commission, rather than the office of the Attorney General, is authorized by R.C. 102.08 to address the application of the ethics and conflict of interest provisions of R.C. Chapter 102 and R.C. 2921.42-43. We will, therefore, refrain from interpreting such provisions by way of a formal opinion and recommend that you consult with the Ohio Ethics Commission for advice and interpretations concerning these statutory provisions.

trustees also handles fiscal and budgetary matters on behalf of the township and is designated as the township's taxing authority for purposes of R.C. Chapters 133 (uniform public securities law) and 5705 (tax levy law). R.C. 133.01(NN)(7); R.C. 5705.01(C).

An auxiliary deputy sheriff is appointed by the county sheriff pursuant to R.C. 311.04. *See* 1977 Op. Att'y Gen. No. 77-027, at 2-102. A county sheriff is responsible for determining the duties to be performed by an auxiliary deputy sheriff. *See* 1991 Op. Att'y Gen. No. 91-063, at 2-300. An auxiliary deputy sheriff is a deputy "authorized to perform only some of the duties of the county sheriff, or appointed by the sheriff without being immediately assigned to perform any of his duties, but subject to duty from time to time as the sheriff in his discretion may determine." 1991 Op. Att'y Gen. No. 91-037, at 2-199; *accord State ex rel. Geyer v. Griffin*, 80 Ohio App. 447, 457, 76 N.E.2d 294 (Allen County 1946).

There are instances in which the powers, duties, and responsibilities of a township trustee and an auxiliary deputy sheriff may come into conflict. As explained in the 1961 opinion finding the positions of township trustee and deputy sheriff incompatible, a potential conflict of interest arises from the township's authority to contract with the county sheriff for police protection. *See* R.C. 505.43 (in order to obtain police protection, or to obtain additional police protection, a township may enter into a contract with, *inter alia*, a county sheriff, if the contract is first authorized by the board of township trustees); 1961 Op. Att'y Gen. No. 2311, p. 335, at 336 to 337; *see also* R.C. 311.29 (a township may enter into a contract with a county sheriff authorizing the sheriff to perform any police function, exercise any police power, or render any police service on behalf of the township that the township may perform, exercise, or render); R.C. 505.50 (a board of township trustees may enter into a contract with the county sheriff for the provision of police protection or additional police protection services either on a regular basis or for additional protection in times of emergency). The 1961 opinion found that this conflict rendered the positions of township trustee and deputy sheriff incompatible because "it could be difficult for a township trustee to exercise independent judgment when contracting with the county sheriff to obtain police protection for the township which he serves, if at the same time such trustee is a deputy sheriff[.]" 1961 Op. Att'y Gen. No. 2311, p. 335, at 337.

Shortly after the issuance of the 1961 opinion, however, the Scioto County Court of Common Pleas held that a person may serve simultaneously as a township trustee and a deputy sheriff. *Pistole v. Wiltshire*, 90 Ohio Law Abs. 525, 189 N.E.2d 654 (C.P. Scioto County 1961). The court found that a township's authority to contract with the county sheriff for police protection did not render the positions incompatible because it is the county sheriff, rather than a deputy sheriff, who has the power to enter into such a contract. *Id.* at 534. The court explained:

Since the law imposes no duty nor gives any authority to a deputy sheriff to contract for police protection under authority of [former R.C. 505.441, now R.C. 505.43], we can see no conflict of interest resulting from the provision authorizing the sheriff to contract with the township trustees for police protection which would make the position of deputy sheriff incompatible with that of township trustee.

Id.

More recently, and under slightly different factual circumstances, the Fourth District Court of Appeals found the positions of township trustee and deputy sheriff incompatible based on this conflict of interest. *State ex rel. Scioto Cnty. Prosecutor v. Murphy* at ¶¶32-36. In *Murphy*, the board of township trustees with which the person served regularly contracted with the county sheriff for police protection. *Id.* at ¶32. Further, the contract under consideration by the court required the sheriff's office to perform services under the contract "to the reasonable satisfaction" of the board of township trustees, thus requiring the trustees to evaluate the services rendered by the sheriff's office, including its deputies. *Id.* at ¶¶32-33. Under these circumstances, the court found that a person serving simultaneously as township trustee and deputy sheriff was "placed in a position of having divided loyalties" and, thus, held that, "under the current facts and circumstances," the two positions were rendered incompatible by this conflict of interest. *Id.* at ¶¶34, 36.

A review of these authorities discloses that a determination of whether this conflict renders the positions of township trustee and auxiliary deputy sheriff incompatible depends upon the particular facts and circumstances of the dual service. *See id.* at ¶32 (recognizing that finding the positions of township trustee and deputy sheriff incompatible diverged from prior authorities on the issue, but noting that "in the case sub judice, there are several factors present that were not found in the prior authorities"). Under the facts and circumstances you have presented, we find that the township's authority to contract with the county sheriff for police protection does not render the positions of township trustee and unpaid, auxiliary deputy sheriff incompatible. In the situation you have presented, the township with which the person serves as trustee does not contract with the county sheriff for police protection. Thus, the person is not currently subject to this potential conflict of interest. Further, it is only speculative whether the township will ever contemplate entering into a contract with the county sheriff's office. We do not believe that the mere potential for this conflict to arise is sufficient to render these two positions incompatible. *See* 1986 Op. Att'y Gen. No. 86-059, at 2-328 (clarified on another matter by 1990 Op. Att'y Gen. No. 90-037) ("I do not believe that the mere possibility that the township and village may enter into a contract renders the positions of township trustee and village employee incompatible"); 1979 Op. Att'y Gen. No. 79-111, at 2-372 (finding the positions of municipal council member and special deputy sheriff compatible, despite the fact that a municipality may contract with the county sheriff for police protection, in part, because "it is only speculative whether a municipality will enter into a contract involving the sheriff's department"). Furthermore, in the present situation, the person serves as an *unpaid*, auxiliary deputy sheriff. Thus, even if the board of township trustees were to consider contracting with the county sheriff for the provision of police protection, the person would not stand to gain a financial benefit from the contract.⁸ *Cf.* 2000 Op. Att'y Gen. No. 2000-015, at 2-89 to 2-90 (a person serving

⁸ R.C. 511.13 provides "[n]o member of the board of township trustees or any officer or employee thereof shall be interested in any contract entered into by such board." You have informed us that the township in question does not contract with the county sheriff for police protection. Accordingly, we need not address whether a township trustee violates R.C. 511.13 by serving as an unpaid, auxiliary deputy sheriff with a county sheriff's office that provides police protection to the township pursuant to contract. *See generally* 1982 Op. Att'y Gen. No. 82-008 (syllabus) ("[t]he

simultaneously as an employee of a university and trustee of a regional airport authority that contracts with the university is subject to an impermissible conflict because, as an employee of the university, the person is interested in having the university obtain contractual benefits so that it retains the ability to employ and compensate the employee).

An additional conflict of interest exists between these two positions because a county sheriff is authorized to call upon the chairperson of a board of township trustees to furnish law enforcement or fire protection personnel, or both, as may be necessary to preserve the public peace within the county. R.C. 311.07(B). When so called upon by the county sheriff, the chairperson of the board of township trustees shall furnish such aid “insofar as possible without withdrawing from the [township] the minimum police and fire protection appearing necessary under the circumstances.” *Id.* A township trustee may be subject to divided loyalties if he is called upon by the county sheriff for whom he serves as an auxiliary deputy sheriff to furnish law enforcement or fire protection personnel to the county. However, in our opinion, this potential conflict is also insufficient to render the positions of township trustee and auxiliary deputy sheriff incompatible. First, the county sheriff is authorized to call upon only the chairperson of the board of township trustees to furnish such aid. You have not indicated that the person serves as the chairperson of the board of township trustees. Moreover, the county sheriff is not required to call upon the chairperson of a board of township trustees for assistance, and it is only speculative whether the county sheriff will do so. Finally, even if the person is called upon by the county sheriff to furnish law enforcement or fire protection personnel to the county, we will presume that he will perform his duties as township trustee in a regular and lawful manner in the absence of evidence to the contrary. *See State ex rel. Speeth v. Carney*, 163 Ohio St. 159, 126 N.E.2d 449 (1955) (syllabus, paragraph 10) (“[i]n the absence of evidence to the contrary, public officials ... will be presumed to have properly performed their duties in a regular and lawful manner”).

Additional conflicts of interest exist between these positions because of budgetary and taxing issues. First, a conflict of interest may exist because of competition between the township and the county for tax moneys generated within the ten-mill limitation.⁹ Except as provided in R.C. 5705.28(B) or R.C. 5705.281,¹⁰ the taxing authority of a township and a county is required to prepare,

provision of R.C. 511.13 which prohibits members of the board of township trustees and officers or employees of a township from having an interest in contracts entered into by the board of township trustees applies to any contract entered into by such board, unless the interested person meets the criteria for a permissible interest set forth in this section”).

⁹ In Ohio, property may not be taxed in excess of one percent of its true value in money for state and local purposes unless approved by the voters or as provided for by a municipal charter. Ohio Const. art. XII, § 2. This is known as the “ten-mill limitation.” *See* R.C. 5705.02-.03; *see also* 2011 Op. Att’y Gen. No. 2011-008, at 2-64 n.3.

¹⁰ R.C. 5705.28(B)(2)(a) provides that “[t]he taxing authority of a taxing unit that does not levy a tax is not required to adopt a tax budget pursuant to [R.C. 5705.28(A)].” R.C. 5705.281 permits the

adopt, and submit an annual tax budget to the county budget commission. R.C. 5705.28(A). As used in R.C. Chapter 5705, “taxing authority” means the board of township trustees in the case of a township and the board of county commissioners in the case of a county. R.C. 5705.01(C). Thus, a board of township trustees prepares, adopts, and submits the township’s annual tax budget to the county budget commission. To assist the board of county commissioners in preparing the county’s annual tax budget, the county sheriff files with the board of county commissioners an estimate of his office’s contemplated revenue and expenditures for the ensuing fiscal year. R.C. 5705.28(C)(1).

After the annual tax budgets are submitted, the county budget commission revises and adjusts the levies of the township and the county within the limits of the law. R.C. 5705.31; R.C. 5705.32. A township competes with every other subdivision in the county, including the county itself, for a finite amount of the tax revenue generated within the ten-mill limitation. 2012 Op. Att’y Gen. No. 2012-008, at 2-54 to 2-55. Likewise, a county competes with every other subdivision in the county, including townships, for a finite amount of the revenue generated within the ten-mill limitation. *Id.* at 2-54. Because adjustments made by the county budget commission affect the amount of tax money generated within the ten-mill limitation that will be allocated to townships and the county, both townships and the county are authorized to have representatives appear before the county budget commission to explain their financial needs. R.C. 5705.32(E). A township trustee who also serves as an auxiliary deputy sheriff with the county sheriff’s office may be subject to influences that could prevent him from making completely objective, disinterested decisions when preparing or explaining the township’s annual tax budget to the county budget commission. This is because an argument that the township is entitled to a certain level of funds means a reduced level of funds available for the county’s potential use, which in turn may mean that fewer funds will be available to the county sheriff’s office.

A similar conflict of interest exists because of the competition between a township and the county for moneys from the undivided local government fund. *See* R.C. 5747.50-.55. Because both townships and counties are “subdivisions” for purposes of R.C. 5747.50-.55, both may receive disbursements of money from the undivided local government fund. *See* R.C. 5747.01(Q)(1); 2012 Op. Att’y Gen. No. 2012-008, at 2-56. Townships and the county are provided an opportunity to appear before the budget commission to establish their need for moneys from the undivided local government fund. R.C. 5747.51(B); 2012 Op. Att’y Gen. No. 2012-008, at 2-56. A township trustee who also serves as an auxiliary deputy sheriff with the county may be subject to divided loyalties if he were required to explain to the county budget commission the township’s need for moneys from the undivided local government fund.

We believe, however, that the foregoing tax and budgetary conflicts do not render these two positions incompatible. An auxiliary deputy sheriff does not prepare or adopt an annual tax budget that is submitted to the county budget commission nor is he required to appear before the county

county budget commission to waive the requirement that the taxing authority of a subdivision adopt a tax budget pursuant to R.C. 5705.28(A).

budget commission. Thus, the person will not be responsible for preparing or presenting competing tax budgets to the county budget commission. Further, even though the person is required as township trustee to prepare the township's tax budget, and may be required to explain the township's financial needs to the county budget commission, his role is limited by the role others play in the budget process. First, the tentative annual tax budget is prepared and adopted by the entire board of township trustees, of which the person who also serves as auxiliary deputy sheriff is only one voting member. *See* 2011 Op. Att'y Gen. No. 2011-008, at 2-65 to 2-66. Further, while the township and the county each prepare and submit a tentative tax budget and request moneys from the undivided local government fund, it is the county budget commission that actually allocates to the township and the county tax proceeds within the ten-mill limitation and moneys from the undivided local government fund. *See, e.g.,* R.C. 5705.31; R.C. 5705.32; R.C. 5747.51-.53. Finally, is it is unlikely that the person would use less than his best judgment in preparing the township's tax budget or explaining the township's financial needs to the budget commission. *See State ex rel. Speeth*, 163 Ohio St. 159 (syllabus, paragraph 10). This is especially true in light of the fact that the person serves as an *unpaid*, auxiliary deputy sheriff and, therefore, has no personal financial stake in the county's budget whatsoever.

A final budgetary conflict may exist between these positions because of competition between the township and the county for tax moneys in excess of the ten-mill limitation. A board of township trustees and a board of county commissioners, as taxing authorities of partially coextensive subdivisions, *see* R.C. 5705.01(C), may place levies on the ballot for taxes in excess of the ten-mill limitation. R.C. 5705.07; *see also* R.C. 5705.19. A board of county commissioners is authorized to place a tax levy on the ballot for the purpose of funding the county sheriff's office in various respects. R.C. 5705.19(J); 1993 Op. Att'y Gen. No. 93-042 (syllabus) (a county may propose a tax levy in excess of the ten-mill limitation to fund equipment used directly in the operation of the sheriff's office). Where both the township and the county contemplate asking voters for a tax levy for additional funding, a person who serves simultaneously as township trustee and auxiliary deputy sheriff might find himself subject to divided loyalties and influences that may prevent his decisions, as township trustee, from being completely objective and disinterested. For example, if the county has authorized a tax levy for the financial support of the county sheriff's office, the person as township trustee may be apprehensive about advocating in favor of placing a township levy on the ballot for fear that the levy for support of the sheriff's office may be rejected in favor of the township levy.

However, in our opinion, this conflict also does not render these two positions incompatible. It is unlikely that the township will contemplate placing a tax levy on the ballot every time the county has a levy for support of the county sheriff's office on the ballot. Therefore, this conflict should arise infrequently. Moreover, even if such a conflict should arise, a township trustee who serves simultaneously as an auxiliary deputy sheriff will be able to remove himself from any deliberations, discussions, or votes on the township's tax levy because the board of township trustees is capable of functioning and performing its statutory duties when one of its members abstains from participating in a matter. *See* 2006 Op. Att'y Gen. No. 2006-003, at 2-27; 2002 Op. Att'y Gen. No. 2002-013, at 2-76. A township trustee, as a public official, has a duty to abstain from participating in any matter that would impair his objectivity. 2002 Op. Att'y Gen. No. 2002-013, at 2-76. Accordingly, a township trustee who also serves as an auxiliary deputy sheriff should abstain from any deliberations,

discussions, and votes concerning a township tax levy in excess of the ten-mill limitation when the county has already placed a levy for support of the county sheriff's office on the ballot.

In sum, we find that the foregoing conflicts of interest do not render the positions of township trustee and unpaid, auxiliary deputy sheriff incompatible when the township has not contracted with the county sheriff's office for the provision of police protection.

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that a township trustee may serve simultaneously as an unpaid, auxiliary deputy sheriff within the same county when the township has not contracted with the county sheriff's office for police protection. A township trustee who serves simultaneously as an unpaid, auxiliary deputy sheriff should abstain from any deliberations, discussions, and votes concerning a township tax levy in excess of the ten-mill limitation when the county has already placed a levy for support of the county sheriff's office on the ballot. (1961 Op. Att'y Gen. No. 2311, p. 335, distinguished.)

Very respectfully yours,

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

MICHAEL DEWINE
Ohio Attorney General