

OPINION NO. 69-084

Syllabus:

One may be a member of a private, non-profit corporate board and also a member of a Board of Township Trustees that deals infrequently with such private non-profit corporation, if that member does not participate in the resolution of problems concerning that corporation..

To: R. Kenneth Kunkel, Delaware County Pros. Atty., Delaware, Ohio

By: Paul W. Brown, Attorney General, July 9, 1969

I have before me your request for my opinion as to whether there is a conflict between the positions of Township Trustee and member of the Board of Trustees of a non-profit corporation concerned with the development and supply of water resources in rural areas of the county. The point in time at which a conflict may arise is when the Township Trustees are to grant easements along roads and across ditches, etc. The board for the corporation consists of eleven members, two of whom are members of separate Boards of Township Trustees within the county.

The fact that a township trustee is also a member of the corporate board in question does not in and of itself void action taken by the Township Trustees concerning the non-profit corporation. In the case of Richardson v. Sycamore Twp., 6 O.N.P. (N.S.) 505, 18 O.D.N.P., 306 (1908), a Township Trustee was a director and stockholder of a bank making the highest bid for the usage of township funds. It was held that the contract was not thereby rendered void.

It is an established principle that public officers are disqualified from voting on a matter coming before the agency in which they serve if they have a direct, pecuniary interest in the matter in question. Oliver v. Brill, 14 O. App., 312 (1921). This has been applied to Township Trustees under Oliver v. Brill, supra.

The corporate trustees receive no compensation by virtue of their positions. There is no such direct pecuniary interest involved that Oliver v. Brill, supra, would require the Township Trustee to disqualify himself.

However, a public officer is a fiduciary as well as an officer to his constituents. He must perform fairly and in a personally disinterested manner as behooves a fiduciary. Oliver v. Brill, supra. This rule is designed to eliminate particular questions from the consideration of a prejudiced public officer. It is not designed to exclude him from that office altogether.

In light of the fact that the individuals in question do not serve on the same Board of Township Trustees, a given Board of Township Trustees will not be rendered unable to act on the matter in question. It is not a harsh result, thereby, to require the Township Trustees in question to abstain from voting on the granting of easements in order to ensure that there is no breach of fiduciary trust by said individuals.

It is, therefore, my opinion, and you are hereby advised that one may be a member of a private, non-profit corporate board and also a member of a Board of Township Trustees that deals infrequently with such private non-profit corporation if that member does not participate in the resolution of problems concerning that corporation.