OPINION NO. 70-137

Syllabus:

The office of township trustee is compatible with that of secretary of a conservancy district.

To: Claire M. Ball, Jr., Athens County Pros. Atty., Athens, Ohio
By: Paul W. Brown, Attorney General, October 5, 1970

Your request for my opinion reads as follows:

> "I would like your opinion on the follow-
> ing question:
>
> "'Is the position of secretary of a con-
> servancy district, under Chapter 6101 of the
> Ohio Revised Code, compatible with the office
> of township trustee?'"

The concept of incompatibility of offices is elaborated on in
State, ex rel. Attorney General v. Gebert, 12 C.C. (N.S.) 274, 275
(1969), as follows:

> "Offices are considered incompatible when
> one is subordinate to, or in any way a check
> upon, the other; or when it is physically im-
> possible for one person to discharge the duties
> of both."

The duties and powers of township trustees and of secretaries
of conservancy districts are prescribed by statute. Section
6101.12, Revised Code, sets forth the powers of the latter posi-
tion as follows:

> "The secretary of the conservancy district
> shall be the custodian of the records of the
> district and of its corporate seal and shall
> assist the board of directors in such particu-
> lars as it directs in the performance of its
> duties. The secretary shall attest, under the
> corporate seal of the district, all certified
> copies of the official records and files of the
> district that are required of him by sections
> 6101.01 to 6101.84, inclusive, of the Revised
> Code, or by any person ordering such copies
> and paying the reasonable cost of transcription.
> Any portion of a record so certified and attest-
> ed prima facie imports verity. The secretary
> shall serve also as treasurer of the conservancy
> district, unless a treasurer is otherwise pro-
> vided for by the board.
>   "* * *   * * *   * * *"

Clearly, little or no discretionary power is granted to secretaries of conservancy districts as they are not instrumental in the formulation of policy decisions but instead handle the administrative work which must be done. In other words, the position of secretary of a conservancy district is a ministerial one which vests the holder with little power which could serve as a basis for the position serving as a check upon or being superior to the position of township trustee.

Township trustees, under Chapters 501, 503 and 505, Revised Code, are vested with powers to govern the body politic known as a township. Their powers, like those of the secretary of a conservancy district, are created solely by statute and cannot be expanded beyond limits of the statutory grant. A study of the statutes which delineate the powers and duties of boards of township trustees does not reveal grants of authority to said boards in the areas of environmental control outlined in Section 6101.04, supra, which are of special concern to a conservancy district. The areas of authority, where some overlapping of functions is possible, concern authority over roadways.

Section 5571.01, Revised Code, confers powers to the township board over public roads within the jurisdiction of the township, including the responsiblity to construct and maintain said roads. Under Section 6101.15, Revised Code, authority is conferred upon the directors of a conservancy district to construct or elevate roadways so long as any changes made to roadways are done to advance the purposes for which the district was originally created. It is apparent that any roadways changes initiated by the conservancy district board must be commensurate with its statutorily imposed environmental control function and that no general grant of power over roads which might be within the district is intended. Consequently, even if the secretary of the conservancy district while carrying out his ministerial functions is involved with the district's roadways functions, there is little possibility of conflict with township authorities.

Therefore, in light of the foregoing, it is clear and I hereby advise you that the office of township trustee is compatible with that of secretary of a conservancy district.