

OPINION NO. 73-035

Syllabus:

The offices of township trustee and juvenile probation officer are compatible.

To: Gene Wetherholt, Gallia County Pros. Atty., Gallipolis, Ohio
By: William J. Brown, Attorney General, April 20, 1973

I have your request for an opinion which reads in part as follows:

I request your opinion with regard to the compatibility of the Offices of Township Trustee and Juvenile Probation Officer. At the present time the Judge of the Common Pleas Court of Gallia County, Ohio, Juvenile Division, has asked me if there would be any conflict of interest, or incompatibility, should he hire a Juvenile Probation Officer under authority of Section 2151.13 of the Revised Code when such person is already a duly elected Township Trustee for Gallipolis Township, Gallia County, Ohio.

In making my own observation, I would like to point out that 1959 Ohio Attorney General's Opinion 110 finds that there is incompatibility between the elected position of Township Trustee and the position of County Probation Officer. At page 113 of this opinion, however, it states that the County Probation Officer appointed under Section 2301.27 is in the classified service of the civil service of the county. It would seem that a Juvenile Probation Officer appointed under authority of Section 2151.13 would not be in the classified service of the civil service of the county, and, therefore, the former opinion referred to would seem not to apply in this case.

In Opinion No. 223, Opinions of the Attorney General for 1959, my predecessor held that the elective position of township trustee was incompatible with the classified position of county probation officer. In that Opinion, my predecessor based his decision on R.C. 143.41, which provides as follows:

No officer or employee in the classified service of the state, the several counties, cities, and city school districts thereof, shall directly or indirectly, orally or by letter, solicit or receive, or be in any manner concerned in soliciting or receiving any assessment, subscription, or contribution for any

political party or candidate for public office; nor shall any person solicit directly or indirectly, orally or by letter, or be in any manner concerned in soliciting any such assessment, contribution, or payment from any officer or employee in the classified service of the state and the several counties, cities, or city school districts thereof; nor shall any officer or employee in the classified service of the state, the several counties, cities, and city school districts thereof, be an officer in any political organization or take part in politics other than to vote as he pleases and to express freely his political opinions.
(Emphasis added.)

In contrast to county probation officers, juvenile probation officers are not classified public servants. They serve at the pleasure of the juvenile court judge. R.C. 2151.13 and Opinion No. 1190, Opinions of the Attorney General for 1937. Thus, R.C. 143.41 is inapposite here. Likewise, I can find no other Section of the Revised Code or Ohio Constitution which prohibits a township trustee from serving as a juvenile probation officer.

In the absence of controlling constitutional or statutory provisions, reference must be made to the common law rule of incompatibility. As Judge Killits stated in State, ex rel. Wolf v. Shaffer, 6 Ohio N.P. (n.s.) 219, 221 (1906):

* * * [W]e have several sections dealing with specific offices prohibiting the holders thereof from holding any other offices of trust or profit in the state. But as to all offices not within these special prohibitions, the rules of the common law unquestionably obtain, and, in this particular the issue here is governed wholly by the common law.

The common law test of incompatibility applies only when at least one of such positions qualifies as a public office. State ex rel. Attorney General v. Gebert, 12 Ohio C.C.R. (n.s.) 274 (1909); Opinion No. 65-150, Opinions of the Attorney General for 1965; Opinion No. 73-024, Opinions of the Attorney General for 1973. The position of township trustee is clearly a public office under the test enunciated by the Supreme Court in State, ex rel. Landis v. County Commissioners, 95 Ohio St. 157, 159 (1917). That test reads as follows:

If official duties are prescribed by statute, and their performance involves the exercise of continuing, independent, political or governmental functions, then the position is a public office and not an employment.

A township trustee's duties are prescribed in R.C. Chapter 505 and involve the exercise of independent political judgment. See Opinion No. 5565, Opinions of the Attorney General for 1955.

The common law rule governing compatibility in offices was

enunciated by the court in State ex rel. Attorney General v. Gebert, supra. That rule is as follows (12 Ohio C.C.R. (n.s.) 275):

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

In order to determine whether the position of juvenile probation officer is subordinate to, or in any way a check upon the board of township trustees, we must inquire into the duties of each. In Opinion No. 461, Opinions of the Attorney General for 1957, my predecessor enumerated the duties of a juvenile probation officer as follows:

The duties of the probation officer of the juvenile court, as set forth in Section 2151.14, Revised Code, are:

1. To make such investigations as the juvenile court directs, and keep a written record thereof;
2. To furnish to any person placed on probation a statement of the conditions of probation, and to instruct him regarding them;
3. To keep informed concerning the conduct and conditions of each person under his supervision and to report thereon to the judge;
4. To use all suitable methods to aid persons on probation and to bring about improvement in their conduct and condition;
5. To keep full records of his work; keep accurate and complete accounts of money collected from under his supervision, give receipts therefor, and make reports thereon to the judge;
6. To serve process of the court within or without the county;
7. To make arrests without warrant upon reasonable information, or upon view of violation of Sections 2151.01 to 2151.54, inclusive, of the Revised Code, and detain the person arrested pending the issuance of a warrant;
8. And to perform such other duties, incident to his office, as the judge directs.

In none of these roles does the juvenile probation officer come into conflict with township trustees.

It is well settled that township trustees are agents of the state and have no power except that specifically delegated to them

by the state. Hopple v. Brown Township, 13 Ohio St. 311 (1862).

The powers and duties delegated to the township trustees are defined in R.C. Chapter 505. R.C. Chapter 505 does not grant a township any powers over juvenile courts. Thus, the offices of juvenile probation officer and township trustee cannot be subordinate to one another. An individual who is both a juvenile probation officer and a township trustee does not serve conflicting interests before the county budget commission as he would if he were both a school board member and a township trustee. See Opinion No. 951, Opinions of the Attorney General for 1949; Opinion No. 1081, Opinions of the Attorney General for 1915.

Nor is the situation in this case like that posed in Opinion No. 65-88, Opinions of the Attorney General for 1965; and Opinion No. 69-167, Opinions of the Attorney General for 1969. In those opinions the offices of township trustee and member of the board of health were held to be incompatible because the township under R.C. 5705.05 was required to levy a general tax for money for health district expenses. In this case, township trustees cannot levy a tax to support juvenile courts and thereby increase the available funds for a juvenile judge to use in paying probation officers.

Finally, I need only mention in passing that there should be no problem of physical impossibility for one person to discharge the duties of both offices.

In specific answer to your question it is my opinion, and you are so advised, that the offices of township trustee and juvenile probation officer are compatible.