

OPINION NO. 96-062

Syllabus:

The positions of part-time domestic relations magistrate in the court of common pleas and member of the county board of elections are compatible.

To: Brent A. Saunders, Gallia County Prosecuting Attorney, Gallipolis, Ohio
By: Betty D. Montgomery, Attorney General, November 21, 1996

You have requested an opinion whether the positions of part-time domestic relations magistrate in the court of common pleas and member of the county board of elections are

compatible. In 1979 Op. Att'y Gen. No. 79-111 at 2-367 and 2-368, one of my predecessors set forth the following seven questions for determining whether two public positions are compatible:

1. Is either of the positions a classified employment within the terms of R.C. 124.57?
2. Do the empowering statutes of either position limit the outside employment permissible?
3. Is one office 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 a conflict of interest between the two positions?
6. Are there local charter provisions or ordinances which are controlling?
7. Is there a federal, state, or local departmental regulation applicable?

All seven questions must yield an answer in favor of compatibility before two public positions may be found compatible.

I note initially that questions six and seven address matters of local concern, and it is assumed, for purposes of this opinion, that there are no departmental regulations, charter provisions, ordinances, or local rules of court that limit the holding of outside employment by a magistrate of the court of common pleas or member of the county board of elections. There are no state or federal regulations that are applicable to these two positions.

Question number one asks whether either of the positions is a classified employment within the terms of R.C. 124.57, which prohibits employees or officers in the classified service of the state, the several counties, cities, and city school districts thereof, and civil service townships from participating in partisan political activity other than to vote or express freely their political beliefs. *Accord* [1996-1997 Monthly Record] Ohio Admin. Code 123:1-46-02 at 337. The position of member of the county board of elections is in the unclassified service. *See* R.C. 124.11(A)(2). Magistrates of the court of common pleas are in the unclassified civil service if "the director of administrative services finds it impracticable to determine their fitness by competitive examination." R.C. 124.11(A)(10). In a telephone conversation with a member of my staff, you indicated that the Director of Administrative Services has determined that the position of magistrate in question is an unclassified position. Since neither of the positions which with you are concerned is a classified employment within the terms of R.C. 124.57, the prohibition of that section does not apply.

Question number two asks whether the empowering statutes of either position limit outside employment. No statute of which I am aware of expressly limits the outside employment of a

domestic relations magistrate.¹ R.C. 3501.15, however, prohibits an individual from serving as a member of the county board of elections when the individual "is a candidate for any office to be filled at an election, except the office of delegate or alternate to a convention, member of the board of directors of a county agricultural society, presidential elector, or a member of a party committee." Because the position of domestic relations magistrate is not filled by election, *see* Ohio R. Civ. P. 53(A); *see also* Ohio R. Civ. P. 75(C), the prohibition set out in R.C. 3501.15 does not apply. Accordingly, no statute prohibits a domestic relations magistrate from serving simultaneously as a member of the county board of elections.

Question number three asks whether one position is subordinate to, or in any way a check upon, the other. An examination of the duties of the positions in question discloses that the positions operate independently of each other, and that neither is responsible for assigning duties to, or supervising, the other. Thus, neither position is subordinate to, or a check upon, the other. *See* 1960 Op. Att'y Gen. No. 1177, p. 139, at 139-40 (a county court judge and member of the county board of elections serve different masters and are not subordinate to each other).

Question number four asks whether it is physically possible for one person to perform the duties of both positions. This is a factual question, and is best answered by the interested parties because they may more precisely determine the demands of each position. It seems likely, however, that these two positions can be filled by the same individual if there is no direct conflict in their working hours.

The final question asks whether there is a conflict of interest between the two positions. "One person may not simultaneously hold two public positions if he would be subject to divided loyalties and conflicting duties or exposed to the temptation of acting other than in the best interest of the public." 1985 Op. Att'y Gen. No. 85-042 at 2-150. Given the respective duties of the positions in question, I believe there is no situation in which the duties of the two positions conflict. *See* 1960 Op. Att'y Gen. No. 1177, p. 139, at 139 (none of the duties of a county court judge are inconsistent with the duties of a member of a county board of elections, "nor will the performance of the duties of one result in antagonism or a conflict of duties"). Therefore, I find that an individual who serves simultaneously as a domestic relations magistrate in a court of

¹ I note, as a general matter, that, pursuant to Ohio Const. art. IV, § 6(B) and R.C. 141.04(D), judges of the court of common pleas are prohibited from holding any other office of profit or trust, under the authority of this state, or of the United States. Because the prohibition of Ohio Const. art. IV, § 6(B) and R.C. 141.04(D) does not expressly include magistrates, the prohibition is not applicable to magistrates. *See generally In re Disqualification of Light*, 36 Ohio St. 3d 604, 522 N.E.2d 458 (1988) (R.C. 2701.03, which concerns the disqualification of a judge from a case, does not address the disqualification of court referees from a case). Moreover, it is the primary duty of the trial court, and not the magistrate, to act as the judicial officer. *Normandy Place Assoc. v. Beyer*, 2 Ohio St. 3d 102, 105, 443 N.E.2d 161, 164 (1982). Magistrates "serve only in an advisory capacity to the court and have no authority to render final judgments affecting the parties." *Takacs v. Baldwin*, 106 Ohio App. 3d 196, 208, 665 N.E.2d 736, 743 (Huron County 1995), *appeal disallowed*, 74 Ohio St. 3d 1513, 659 N.E.2d 1289 (1996). Rather, the trial court must approve the magistrate's "report and enter it upon its own record in order for that report to have any validity or binding effect." *Normandy Place Assoc. v. Beyer*, 2 Ohio St. 3d at 105, 443 N.E.2d at 164. As such, magistrates are not judges for purposes of Ohio Const. art. IV, § 6(B) and R.C. 141.04(D).

common pleas and member of the county board of elections is not subject to any impermissible conflicts of interest.

A review of the foregoing thus discloses that all seven questions yield an answer in favor of compatibility. Accordingly, I conclude that the positions of part-time domestic relations magistrate in the court of common pleas and member of the county board of elections are compatible.

Although I have determined that the positions in question are compatible, my consideration of the question presented in your letter of request does not constitute an opinion on the applicability of the provisions of the Code of Judicial Conduct. Pursuant to Ohio Gov. Bar R. V, § 2(C), the Board of Commissioners on Grievances and Discipline of the Supreme Court is authorized to "issue informal, nonbinding advisory opinion letters in response to prospective or hypothetical questions directed to the Board regarding the application of ... the Code of Judicial Conduct." Because "[t]he Attorney General will abstain from rendering an opinion where another governmental entity has been granted the authority to render advisory opinions concerning the relevant subject matter," 1987 Op. Att'y Gen. No. 87-033 (syllabus, paragraph three), it is appropriate for me to refrain from advising concerning the professional responsibilities of a domestic relations magistrate under the Code of Judicial Conduct. *See generally* Ohio Code of Judicial Conduct, Compliance Section (a magistrate is a judge for purposes of the Code of Judicial Conduct). It is, therefore, recommended that you request the Board of Commissioners on Grievances and Discipline of the Supreme Court for advice concerning the application of the Code of Judicial Conduct to the situation described in your letter.

Based on the foregoing, it is my opinion, and you are hereby advised, that the positions of part-time domestic relations magistrate in the court of common pleas and member of the county board of elections are compatible.