

July 26, 2021

The Honorable Katherine J. Zartman
Williams County Prosecuting Attorney
1425 E. High St., Suite 115
Bryan, Ohio 43506

SYLLABUS: 2021-018

The position of Williams County Commissioner is not compatible with membership on the board of the Northwest Ohio Court Appointed Special Advocates (CASA).



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OPINION NO. 2021-018

The Honorable Katherine J. Zartman
Williams County Prosecuting Attorney
1425 E. High St., Suite 115
Bryan, Ohio 43506

Dear Prosecutor Zartman:

You have requested an opinion regarding whether the position of Williams County Commissioner is compatible with membership on the board of the Northwest Ohio Court Appointed Special Advocates (“CASA”). I conclude that the positions are incompatible.

I

I begin with the relevant background as I understand it from your request. The Williams County Board of Commissioners (“Commissioners”) oversees the Williams County Department of Jobs and Family Services (“Department”)—the public children’s services agency in Williams County. The Commissioners’ oversight of the Department includes, but is not limited to, the supervision of the Department Director and the establishment of the Department’s budget.

CASA is a 501(C)(3) nonprofit organization that serves a four-county area in Northwest Ohio, including Williams County. CASA trains volunteers that are appointed by the Williams County Juvenile Court in juvenile abuse, neglect, and dependency cases to represent the best interest of the child in court. CASA

volunteers' interests thus are independent from, and may be adverse to, the interests of the Department. The Juvenile Court provides \$10,000 to the CASA program each year. And the Commissioners, for their part, has some control over the Juvenile Court's budget. As your request recognizes, the Department and the CASA volunteer are *opposing parties* in any abuse, neglect, or dependency case in the Williams County Juvenile Court.

II

"Five questions are used to determine if a public officer may simultaneously serve in a private position." 2009 Op. Att'y Gen. No. 2009-053, at 2-398 to 2-399; *see* 1995 Op. Att'y Gen. No. 95-044, at 2-234 to 2-235. The five questions are:

1. Is the public position classified employment within the terms of R.C. 124.57?
2. Does a constitutional provision or statute prohibit a person from serving in both positions at the same time?
3. Does an impermissible conflict of interest exist between the two positions?
4. Are there local charter provisions, resolutions, or ordinances which are controlling?
5. Is there a federal, state, or local departmental regulation applicable?

If the answer to any of these questions exposes an incompatibility, the positions are incompatible. And here, I conclude that the third question is dispositive: there is an impermissible conflict between the position of Williams County Commissioner and the position of membership on the board of CASA. The reason is this:

the Department, which the Commissioners control, is *adverse* to CASA volunteers in many cases.

“A county department of jobs and family services provides a wide variety of aid and assistance to both individuals and families.” 2011 Op. Att’y Gen. No. 2011-008, at 2-60; *see* R.C. 329.04-.06. The board of county commissioners may designate any such department as the public children services agency for the county. *See* 2005 Op. Att’y Gen. No. 2005-025, at 2-262. The board of county commissioners has significant control over the department in its jurisdiction. For instance:

- The board of county commissioners appoints the county director of jobs and family service. R.C. 329.01.
- “*Under the control and direction of the board of county commissioners*, the county director of jobs and family services shall have full charge of the county department of job and family services.” R.C. 329.02.
- “The director, with *the approval of the board*, shall appoint all necessary assistants and superintendents of institutions under the jurisdiction of the department, and all other employees of the department, except that the superintendent of each such institution shall appoint all employees in it and only the board may appoint administrators under section 329.021 of the Revised Code.” *Id.* (Emphasis added).
- As a whole, “[t]he powers and duties of a county department of job and family services are, and shall be exercised and performed, *under the control and direction of the board of county commissioners.*” R.C. 329.04(B) (Emphasis added).

Furthermore, departments are “funded, in part, by appropriations made by the board of county commissioners.” 2016 Op. Att’y Gen. No. 2016-031, Slip Op. at 14; 2-372; *see* 2005 Op. Att’y Gen. No. 2005-025, at 2-265 to 2-266 (“the county director of jobs and family services prepares and submits the annual budget estimate of the county department of job and family services to the board of county commissioners, *see* R.C. 329.02, and the board and county budget commission review the budget and appropriate moneys to fund the operations of the department, *see* R.C. 5705.28-.38”); R.C. 329.02 (“the director shall prepare the annual budget estimate of the department and submit it to the board”). Thus, the board of county commissioners has substantial and continuous control over the county department of jobs and family services in its jurisdiction.

This level of control means that any individual serving on the CASA board *and* the Williams County Board of Commissioners would simultaneously: (1) represent CASA’s interests; and (2) have the power to exert control over the Department, which is frequently adverse to CASA’s interests in court. There is an obvious conflict of interest whenever an individual is in a position to influence two entities adverse to one another in judicial proceedings. Such is the case here. Although the CASA board itself is not a party to the case, CASA volunteers are. The Board trains the volunteers to represent the Board’s mission and values in court, oversees the volunteers, and the Board’s future funding may be influenced by the performance of its volunteers.

Moreover, since the conflict of interest here is clear and of repeating occurrence, I find that the conflict cannot be avoided or sufficiently mitigated. *See, e.g.*, 2011 Op. Att’y Gen. No. 2011-008, at 2-62 (“The factors used in making this decision include the probability of the conflicts arising, the ability of the person to remove himself from any conflicts that may arise, whether the person exercises decision-

making authority in both positions, and whether the conflicts relate to the primary functions of each position or to financial or budgetary matters”). In particular, the county commissioner could not feasibly abstain from all discussions or votes involving the budget of the Department. *See* 2014 Op. Att’y Gen. No. 2014-004, Slip Op. at 6; 2-28 (“Moreover, insofar as the conflicts of interest involve financial and budgetary matters, which are a primary function of a board of county commissioners, it is impractical for a county commissioner to continually abstain from such matters.”); *see also* 2010 Op. Att’y Gen. No. 2010-31, at 2-228.

Accordingly, it is my opinion, and you are hereby advised that:

The position of Williams County Commissioner is not compatible with membership on the board of the Northwest Ohio Court Appointed Special Advocates (CASA).

Respectfully,



DAVE YOST
Ohio Attorney General