

OPINION NO. 81-017**Syllabus:**

R.C. 3501.15 does not prevent a member of the board of elections from accepting appointment to the office of township trustee. It does, however, prevent him from running for election as a township trustee.

To: Frederick D. Pepple, Auglaize County Pros. Atty., Wapakoneta, Ohio
By: William J. Brown, Attorney General, April 7, 1981

I have before me your letter of February 13, 1981, in which you raise the following two questions:

1. May a member of a county board of elections, upon completion of his term as township trustee, run for reelection for another term as township trustee, while still remaining a member of the board of elections?
2. Are the office of township trustee and member of the county board of elections compatible so that one who is serving as a township trustee may accept the appointment as member of the board of elections, serving on both boards for the completion of his term as township trustee?

A township trustee is, pursuant to R.C. 505.01, an elected official, while a member of the county board of elections is appointed by the Secretary of State, in conformance with R.C. 3501.06. There is no express statutory prohibition against a township trustee also serving as a member of the board of elections. However, R.C. 3501.15 does prevent a member of the board of elections from also serving as a candidate for elective position. R.C. 3501.15 reads in pertinent part:

No person shall serve as a member. . .of the board of elections who 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.

This section clearly prevents a person who is a candidate for an elective office from also serving as a member of the board of elections. Therefore, in answer to your first question, R.C. 3501.15 bars an individual who is running for reelection as a township trustee from also holding the position of board of elections member.

Your second question addresses the issue of whether a person who is already a township trustee may be appointed as a member of the board of elections. Of course, any compatibility analysis must address the seven questions set forth in 1979 Op. Att'y Gen. No. 79-III. However, after considering those seven issues, I am unable to find any indication that the positions are incompatible under either the statutory or common law standards. As I noted previously, there is no express statutory prohibition against this specific dual employment, nor is one position either subordinate to or a check upon the other in violation of the common law test of compatibility. Therefore, unless R.C. 3501.15 prohibits one already holding office from becoming a member of the board of elections, the offices are compatible.

There are no court decisions dealing with this precise aspect of R.C. 3501.15; however, numerous opinions of the Attorney General have discussed the application of this section to a current officeholder. A situation analogous to the one presented by your letter is discussed in 1936 Op. Att'y Gen. No. 5295, vol. I, p. 347.

In the situation considered in that opinion, an individual who had been appointed to fill the unexpired term of county coroner, an elective position, was recommended as a member of the county board of elections. 1936 Op. No. 5295 concluded that, while R.C. 3501.15 (then G.C. 4785-16) prohibited the candidacy of a member of the board of elections, it did not prohibit that person from actually holding the two offices. The conclusion that R.C. 3501.15 was meant to bar members of the board of elections from also being candidates for elective office, but was not meant to prevent a member from holding an elective position, finds support in later Attorney General opinions. See generally 1974 Op. Att'y Gen. No. 74-006; 1964 Op. Att'y Gen. No. 64-897; 1954 Op. Att'y Gen. No. 3930, p. 307; 1938 Op. Att'y Gen. No. 2002, vol. I, p. 440. I concur in the reasoning set forth in these opinions and conclude that a member of a county board of elections may hold elective office, so long as the duties of the office are compatible with those of a board of elections member; however, R.C. 3501.15 bars a member of the board of elections from running as a candidate for an elective office, except for those offices specifically mentioned in R.C. 3501.15. 1974 Op. No. 74-006. R.C. 3501.15 was clearly meant to avoid any conflict of interest, or the appearance of a conflict of interest, which might result when an individual who is a candidate for elective office supervises the processes under which votes are taken and counted. This conflict does, of course, end when the election results are complete and the individual is no longer a candidate for office. At that point, there is no longer the need for the prohibition contained within R.C. 3501.15.

Therefore, it is my opinion, and you are advised, that R.C. 3501.15 does not prevent a member of the board of elections from accepting appointment to the office of township trustee. It does, however, prevent him from running for election as a township trustee.