

OPINION NO. 2003-041**Syllabus:**

1. A person may serve simultaneously as a township trustee and member of the Summit County Planning Commission, provided that as a township trustee and planning commission member he does not participate in any deliberations, discussions, negotiations, or votes concerning matters in which he has a conflict of interest that is prohibited by applicable statutes governing conflicts of interest.
 2. A person may serve simultaneously as a member of a township board of zoning appeals and member of the Summit County Planning Commission.
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To: Sherri Bevan Walsh, Summit County Prosecuting Attorney, Akron, Ohio

By: Jim Petro, Attorney General, December 23, 2003

You have requested an opinion concerning the propriety of a member of the Summit County Planning Commission serving simultaneously in another public position. Specifically, you ask the following two questions:

1. Is the position of Township Trustee compatible with service as a member of the County of Summit's Planning Commission?
2. Is the position of a member of a Township Board of Zoning Appeals compatible with service as a member of the County of Summit's Planning Commission?

Because your questions concern a member of the Summit County Planning Commission serving as either a township trustee or a member of a township board of zoning appeals, we will consider your two questions together.¹

By way of background, on January 1, 1980, Summit County adopted a charter form of government pursuant to Ohio Const. art. X, § 3.² 1996 Op. Att'y Gen. No. 96-043 at 2-161. Under this constitutional provision, Summit County has authority, "through properly adopted charter provisions, to restructure its government with respect to both the form of county government and its officers,' so long as the charter provides for the exercise of all powers and the performance of all duties imposed by statute on counties and county

¹The first syllabus paragraph of 1965 Op. Att'y Gen. No. 65-69 advised that "[t]he office of township trustee is incompatible with that of member of a regional planning commission in which such township is represented." This opinion, however, did not address the particular question considered here, whether the positions of county planning commissioner and township trustee are compatible, and thus it is not dispositive of this issue. Moreover, the General Assembly since the issuance of this opinion has amended R.C. 713.21 and R.C. 713.22 to permit regional and county planning commissioners to "hold any other public office." 1965 Ohio Laws 252, 253 (Am. S.B. 276, eff. Oct. 6, 1965). This amendment thus has a bearing upon the ability of a regional or county planning commissioner to serve as a township trustee, and, as stated in 1977 Op. Att'y Gen. No. 77-034 at 2-122 and 2-123, "negate[s] the conclusion reached in 1965 Op. Att'y Gen. No. 65-69."

²Ohio Const. art. X, § 3, states, in part:

The people of any county may frame and adopt or amend a charter as provided in this article.... Every such charter shall provide the form of government of the county and shall determine which of its officers shall be elected and the manner of their election. It shall provide for the exercise of all powers vested in, and the performance of all duties imposed upon counties and county officers by law. Any such charter may provide for the concurrent or exclusive exercise by the county, in all or in part of its area, of all or of any designated powers vested by the constitution or laws of Ohio in municipalities; it may provide for the organization of the county as a municipal corporation; and in any such case it may provide for the succession by the county to the rights, properties, and obligations of municipalities and townships therein incident to the municipal power so vested in the county, and for the division of the county into districts for purposes of administration or of taxation or of both.

officers." 2001 Op. Att'y Gen. No. 2001-020 at 2-113 (quoting 1994 Op. Att'y Gen. No. 94-095 at 2-469).

Summit County Charter, art. II, § 2.03(2) requires the county executive³ "[t]o appoint officers and members of boards, agencies, commissions and authorities required by general law to be appointed by boards of county commissioners." Pursuant to Section 141.01 of the Codified Ordinances of Summit County, Ohio, the county council⁴ has provided for the Summit County Planning Commission and authorized the county executive to appoint the members thereof.⁵

Compatibility Test

When determining whether two public positions are compatible, the following seven-question analysis is used:

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 employment in another public position or the holding of another public office?

³The county executive has "all the powers and duties of an administrative nature under [the Summit County] Charter and such powers and duties, except as otherwise provided herein, as are vested in or imposed upon boards of county commissioners by general law." Summit County Charter, art. II, § 2.03.

⁴The legislative power of Summit County is vested in the county council. Summit County Charter, art. III, § 3.03. The power of the county council includes, *inter alia*, the authority to establish "such boards, agencies, commissions, and authorities as the County Council determines to be necessary for the efficient administration of the County." *Id.* at art. III, § 3.03(2).

⁵Section 141.01 of the Codified Ordinances of Summit County, Ohio, provides as follows:

(a) The County Planning Commission, established pursuant to Ohio R.C. 713.22, shall continue to exercise the powers and duties established by general law. (Res. 81-36. Approved 2-3-81.)

(b) The Planning Commission shall consist of nine (9) citizens of the County, and one District Representative and one At-Large Representative from Summit County Council. The members of the Commission shall continue in their positions for their respective terms. Vacancies shall be filled by appointment of the Executive pursuant to Section 2.03(2) of the County Charter.

(c) The terms for the District Representative and the At-Large Representative from Summit County Council shall commence immediately and shall expire on December 31, 2004 and December 31, 2002 respectively. All appointments for successor District Representatives and At-Large Representatives shall be for a period of four years. (Ord. 2002-510. Adopted 8-26-02.)

It is our understanding that you are concerned with the appointment of persons to the planning commission who do not serve on the county council. Thus, this opinion does not address the propriety of a member of the county council who serves on the planning commission serving as a township trustee or member of a township board of zoning appeals.

3. Is one position 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 an impermissible conflict of interest between the two positions?
6. Are there local charter provisions, resolutions, or ordinances which are controlling?
7. Is there a federal, state, or local departmental regulation applicable?

2003 Op. Att'y Gen. No. 2003-010 at 2-69 and 2-70.

The sixth and seventh questions of this analysis relate to the applicability of charter provisions, resolutions, ordinances, and federal, state, and local regulations. In your particular situation, there are no applicable state or federal regulations. Whether there is an applicable charter provision, resolution, ordinance, or local departmental regulation is a matter for local officials to determine. For the purpose of this opinion, it is assumed that there is no charter provision, resolution, ordinance, or local departmental regulation that prevents a member of the county planning commission from serving as a township trustee or a member of a township board of zoning appeals.

Discussion of R.C. 124.57

Question one of the analysis concerns the application of R.C. 124.57 to each of the positions with which you are concerned. R.C. 124.57 prohibits an officer or employee in the classified service of the state, or of a county, city, city school district, or civil service township, from taking part in a variety of activities that occur as part of the regular political process and are partisan in nature.⁶ In simple terms, R.C. 124.57 does the following: it prohibits an officer or employee in the classified service from seeking election or appointment to, or holding, a partisan political office, or engaging in other partisan political activities, and it prevents a partisan political officeholder from serving simultaneously as an officer or employee in the classified service.⁷ 2001 Op. Att'y Gen. No. 2001-034 at 2-203; *see*

⁶R.C. 124.57 provides, in part, as follows:

No officer or employee in the classified service of the state, the several counties, cities, and city school districts thereof, and civil service townships, 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 for any candidate for public office; ... nor shall any officer or employee in the classified service of the state, the several counties, cities, and city school districts thereof, and civil service townships, be an officer in any political organization or take part in politics other than to vote as the officer or employee pleases and to express freely political opinions. (Emphasis added.)

⁷An officer or employee in the classified service may participate in partisan politics if a charter provision or the terms of a collective bargaining agreement authorize such participation. *See Hudak v. Cleveland Civil Serv. Comm'n*, 44 Ohio App. 3d 15, 17, 540 N.E.2d 741

2 Ohio Admin. Code 123:1-46-02(C); *see also Heidtman v. City of Shaker Heights*, 163 Ohio St. 109, 126 N.E.2d 138 (1955).

We must first determine whether the position of member of the county planning commission, township trustee, or member of a township board of zoning appeals is one that is subject to R.C. 124.57's prohibition. According to one of your assistants, the members of the county planning commission serve without pay, *see* R.C. 713.22(C), and thus have been excepted from the classified service of the county. *See generally In re Appeal of Ford*, 3 Ohio App. 3d 416, 420, 446 N.E.2d 214 (Franklin County 1982) ("employment in the service of the state under R.C. 124.01⁸ has two requisites: (1) employment by a state agency, and (2) compensation being paid in whole or in part from state funds, whether general or special, regardless of the source of such state funds" (footnote added)). The prohibition of R.C. 124.57 thus does not apply to a member of the county planning commission.

In addition, R.C. 124.57 applies only to officers and employees in the service of the "state, the several counties, cities, and city school districts thereof, and *civil service townships*." (Emphasis added.) It does not apply, however, to officers and employees in the service of a township that is not a civil service township.⁹ *See generally* 2000 Op. Att'y Gen. No. 2000-025 at 2-167 (R.C. 124.57 does not apply to officers and employees in the service of a park district created pursuant to R.C. Chapter 1545 since R.C. 124.57 does not expressly refer to such persons). Accordingly, R.C. 124.57's prohibition does not apply to a township trustee or member of a township board of zoning appeals in the service of a township that is not a civil service township.

With respect to civil service townships, R.C. 124.11(B), which indicates the positions that comprise the classified service, provides, in part:

The classified service shall comprise all persons in the employ of the state and the several counties, cities, city health districts, general health districts, and city school districts thereof, not specifically included in the unclassified service. *Upon the creation by the board of trustees of a civil*

(Cuyahoga County 1988) ("[t]he city's charter generally controls its civil service practices, pursuant to its home rule powers"), *appeal dismissed*, 37 Ohio St. 3d 704, 531 N.E.2d 1316 (1988); *Harbarger v. Ballard*, 53 Ohio App. 2d 281, 283-84, 373 N.E.2d 390 (Summit County 1977) ("[t]he Supreme Court in *State, ex rel. Canada, v. Phillips* (1958), 168 Ohio St. 191, [151 N.E.2d 722,] has, in effect, established the principle that a city ... has home rule powers under [Ohio Const. art. XVIII, § 3] in matters affecting civil service and public employee situations. It is obvious from this authority that [a city] is not bound by the state law"); 1991 Op. Att'y Gen. No. 91-065 (syllabus, paragraph one) ("[t]he terms of a collective bargaining agreement may provide that a classified employee may engage in partisan politics and, pursuant to R.C. 4117.10(A), such terms will prevail over the provisions of R.C. 124.57").

⁸R.C. 124.01 defines the terms "[c]ivil service," and "[c]lassified service" for purposes of R.C. Chapter 124.

⁹For purposes of R.C. Chapter 124, "[c]ivil service township" means any township with a population of ten thousand or more persons residing within the township and outside any municipal corporation, which has a police or fire department of ten or more full-time paid employees, and which has a civil service commission established under [R.C. 124.40(B)]." R.C. 124.01(G).

service township civil service commission,¹⁰ the classified service shall also comprise, except as otherwise provided in division (A)(17) or (C) of this section,¹¹ all persons in the employ of civil service township police or fire departments having ten or more full-time paid employees. (Emphasis and footnotes added.)

The classified service of a civil service township is limited to persons in the employ of civil service township police and fire departments having ten or more full-time paid employees. *See generally* R.C. 124.40(B) (“[t]he jurisdiction of the civil service township civil service commission is limited to employees of the township fire or police department if the department has ten or more full-time paid employees and does not extend to any other township employees”); 1980 Op. Att’y Gen. No. 80-019 at 2-80 (the jurisdiction of a township civil service commission is limited to employees of the township fire or police department if the department has ten or more full-time paid employees). The classified service of a civil service township thus does not include the position of township trustee or member of a township board of zoning appeals since a person serving in either of these positions is not employed by a civil service township police or fire department. *See* R.C. 505.01 (providing for the election of township trustees); R.C. 519.13 (members of a township board of zoning appeals are appointed by the board of township trustees). *See generally Fort Hamilton-Hughes Mem’l Hosp. Center v. Southard*, 12 Ohio St. 3d 263, 265, 466 N.E.2d 903 (1984) (“[i]t is a basic doctrine of construction that the express enumeration of specific classes of persons in a statute implies that the legislature intended to exclude all others”). R.C. 124.57’s prohibition, therefore, does not apply to a township trustee or a member of a township board of zoning appeals in the service of a civil service township.

In light of the foregoing, none of the positions is in the classified service of the state, or of a county, city, city school district, or civil service township for purposes of R.C. 124.57. Accordingly, this statute does not apply when a member of the county planning commission serves simultaneously as a township trustee or a member of a township board of zoning appeals.

Statutes Prohibiting the Holding of Another Public Position

Question two of the analysis asks whether the empowering statutes of either position limit a person from being employed in another public position or holding another public office. Also, in some situations, a provision in the Ohio Constitution may prohibit a person from serving in two public positions simultaneously.

Our research discloses no constitutional provision or statute that prohibits a member of the county planning commission from serving simultaneously as a township trustee or member of a township board of zoning appeals. Therefore, question two may be answered in the negative.

¹⁰R.C. 124.40(B) provides that “[t]he board of trustees of a township with a population of ten thousand or more persons residing within the township and outside any municipal corporation and which has a police or fire department of ten or more full-time paid employees may appoint three persons who shall constitute the township civil service commission.”

¹¹Pursuant to R.C. 124.11(A)(17), fire chiefs and chiefs of police in civil service townships appointed by boards of township trustees under R.C. 505.38 or R.C. 505.49 are in the unclassified service. R.C. 124.11(C) states that “[a] municipal or civil service township civil service commission may place volunteer firefighters who are paid on a fee-for-service basis in either the classified or the unclassified civil service.”

Subordination and Control

Question three of the analysis asks whether one position is subordinate to, or in any way a check upon, the other. A township trustee, as an elected officer, R.C. 505.01, serves and is responsible to the township's electorate. Members of a township board of zoning appeals are appointed by the board of township trustees, R.C. 519.13, and also serve the township's electorate unless removed for cause by the board of township trustees, *id*; *see* R.C. 519.04. On the other hand, the members of the county planning commission are appointed by the county executive, *see* Summit County Charter, art. II, § 2.03(2); Section 141.01 of the Codified Ordinances of Summit County, Ohio; *see also* R.C. 713.22, and are accountable to the citizens of the county. The position of member of the county planning commission thus serves a different constituency than, and is not subordinate to, the positions of township trustee and member of a township board of zoning appeals. Also, a member of a county planning commission is not required to assign duties to, or supervise, township trustees or members of a township board of zoning appeals.

Similarly, the positions of township trustee and member of a township board of zoning appeals are not subordinate to a county planning commission. The positions of township trustee and member of a township board of zoning appeals operate independently of a county planning commission, and neither of these positions is required to supervise the activities of, or assign duties to, a county planning commission. Accordingly, the position of member of a county planning commission is not subordinate to, or in any way a check upon, the position of township trustee or member of a township board of zoning appeals. Also, the positions of township trustee and member of a township board of zoning appeals are not subordinate to, or in any way a check upon, the position of member of a county planning commission.

Physical Ability to Hold and Serve in Both Positions

Question four of the analysis asks whether it is physically possible for one person to perform the duties of both positions. This is a factual question that is best answered by the interested persons at the local level because they may more precisely determine the time constraints imposed by each position. 2000 Op. Att'y Gen. No. 2000-025 at 2-168.

It should be noted, however, that in order to serve simultaneously as a member of the county planning commission and a township trustee or member of a township board of zoning appeals a person must be certain that he will be able to carry out the duties of both positions in a competent and timely manner. This means that there may not be a direct conflict between the times when the person is needed to carry out the responsibilities of county planning commissioner and township trustee or member of a township board of zoning appeals. *See* 2003 Op. Att'y Gen. No. 2003-006 at 2-32.

Conflicts of Interest

The final question of the analysis asks whether there is a conflict of interest between the two positions.¹² A person may not hold two public positions simultaneously if he would

¹²R.C. 102.08 authorizes the Ohio Ethics Commission to render advisory opinions regarding the ethics and conflict of interest provisions of R.C. Chapter 102 and R.C. 2921.42-.43. In light of this authority, the Attorney General will refrain from interpreting such provisions by way of a formal opinion. 1987 Op. Att'y Gen. No. 87-033 (syllabus, paragraph three). Therefore, questions concerning the application of these provisions in the situation in which

be subject to divided loyalties and conflicting duties or be exposed to the temptation of acting other than in the best interest of the respective agencies he serves. 2003 Op. Att'y Gen. No. 2003-006 at 2-32 and 2-33.

In order to determine whether a person who holds two public positions simultaneously is subject to a conflict of interest, we must review the powers, duties, and responsibilities conferred upon the person in each position. This review will enable us to determine whether the person will confront an impermissible conflict of interest when he exercises the powers, duties, and responsibilities in either or both positions. If this review discloses any such conflicts, we must then determine the immediacy of each conflict. Where it can be demonstrated that the conflicts may be sufficiently avoided or eliminated entirely, the person may serve in both positions. Factors to be considered in that regard include the probability of the conflict, the ability of the person to remove himself from the conflict (should it arise), whether the person exercises decision-making authority in both positions, and whether the conflict relates to the primary functions of each position, or to financial or budgetary matters. *Id.*

Each township that adopts zoning regulations pursuant to R.C. Chapter 519 is required to have a township board of zoning appeals. R.C. 519.13. A township board of zoning appeals is required to hear appeals filed "by any person aggrieved¹³ or by any officer of the township affected by any decision of the administrative officer." R.C. 519.15 (footnote added); *see* R.C. 519.14(A). In addition, a township board of zoning appeals may authorize variances from the terms of zoning resolutions, grant conditional zoning certificates for the use of land, buildings, or other structures, and revoke authorized variances or conditional zoning certificates granted for the extraction of minerals.

The duties of the county planning commission include making studies, maps, plans, recommendations, and reports concerning the physical, environmental, social, economic, and governmental characteristics, functions, services, and related aspects of the county or areas outside the county that affect the development and welfare of the county.¹⁴ R.C. 713.23(A). The commission may also prepare plans, including studies, maps, recommendations, and reports on:

- (a) Regional goals, objectives, opportunities, and needs, and standards, priorities, and policies to realize such goals and objectives;
- (b) Economic and social conditions;
- (c) The general pattern and intensity of land use and open space;

a person serves simultaneously as a member of a county planning commission and township trustee or member of a township board of zoning appeals should be addressed to the Ohio Ethics Commission.

¹³An "aggrieved person," as used in R.C. 519.15, is one who is "able to demonstrate a present interest in the subject matter of the litigation which has been prejudiced' by the judgment appealed from." *Midwest Fireworks Mfg. Co. v. Deerfield Township Bd. of Zoning Appeals*, 91 Ohio St. 3d 174, 177, 743 N.E.2d 894 (2001), quoting *Willoughby Hills v. C.C. Bar's Sahara, Inc.*, 64 Ohio St. 3d 24, 26, 591 N.E.2d 1203 (1992).

¹⁴Section 141.01(a) of the Codified Ordinances of Summit County, Ohio, states that the county planning commission "shall continue to exercise the powers and duties established by general law."

(d) The general land, water, and air transportation systems, and utility and communication systems;

(e) General locations and extent of public and private works, facilities, and services;

(f) General locations and extent of areas for conservation and development of natural resources and the control of the environment;

(g) Long-range programming and financing of capital projects and facilities.

R.C. 713.23(B)(1).

In addition, a county planning commission may recommend administrative and regulatory measures to implement its plans; collect, process, and analyze social and economic data; provide planning assistance to other units of local government; review plans concerning land use and public facility projects; and undertake other studies and conduct experimental or demonstration projects found necessary in the development of plans for the county. R.C. 713.23(B). A planning commission may also carry out all of the functions and duties of a director of economic development, R.C. 713.23(B)(8); *see* R.C. 307.07(A)(1), approve plats of subdivisions of land, R.C. 711.10, and adopt general rules governing plats and subdivisions of land, *id.*

Given the respective duties of the positions of member of the county planning commission and member of a township board of zoning appeals, it is our view that there are no inherent conflicts of interest between these two positions.¹⁵ *See generally Holiday Homes, Inc. v. Butler County Bd. of Zoning Appeals*, 35 Ohio App. 3d 161, 165-66, 520 N.E.2d 605 (Butler County 1987) (“[w]ithin R.C. Chapter 303 [county rural zoning], we can find no provision giving a county planning commission power to interfere with or subvert the authority of the county board of zoning appeals to grant conditional use permits”). Accordingly, a person who serves simultaneously in these two positions will not confront any inherent conflicts of interest that are otherwise impermissible.

We will now turn to the powers, duties, and responsibilities conferred upon a board of township trustees. Township trustees are responsible for governing the township. As the governing body of the township, the trustees are delegated by statute various powers and duties related to the government of the township. *See generally* R.C. Chapter 505 (setting forth the general administrative powers and duties of a board of township trustees). A board

¹⁵R.C. 511.13 provides, in part, that, “[n]o member of the board of township trustees or any officer or employee thereof shall be interested in any contract entered into by such board.” (Emphasis added.) Members of a county planning commission “serve without pay.” R.C. 713.22(C). The compensation of members of a township board of zoning appeals is set by R.C. 519.13. A member of a township board of zoning appeals thus would not have a pecuniary interest in any contract or agreement between the board of township trustees and a county planning commission. In addition, service as a county planning commissioner and member of a township board of zoning appeals is not contingent upon the existence of an agreement or contract between the township and planning commission. A person who serves simultaneously in these two positions would have no interest in procuring or maintaining any contracts between the township and planning commission in order to maintain his position on the board of zoning appeals or planning commission.

of township trustees handles the township's fiscal and budgetary matters, *see, e.g.*, R.C. 135.04(C); R.C. 135.14, and is designated as the taxing authority of the township for purposes of R.C. Chapters 133 (uniform public securities law) and 5705 (tax levy law), *see* R.C. 133.01(NN)(7); R.C. 5705.01(C). In addition, R.C. Chapter 519 confers various powers and duties concerning the implementation and enforcement of township zoning regulations upon a board of township trustees.

Our review of the powers, duties, and responsibilities of a township trustee and member of a county planning commission discloses potential conflicts of interest between these two positions. First, a primary function of a county planning commission is to prepare plans and make recommendations concerning the physical, environmental, social, economic, and governmental characteristics, functions, services, and related aspects of the county or areas outside the county that affect the development and welfare of the county. R.C. 713.23; *see also* R.C. 303.05; R.C. 519.05. These plans and recommendations may have a direct bearing upon the development of a township. For instance, a county plan prepared by the county planning commission pursuant to R.C. 713.23 may be adopted by the board of county commissioners so far as it relates to nonmunicipal territory. R.C. 713.25. When this occurs, "no public building, roadway, bridge, viaduct, or other public improvement or utility, publicly or privately owned, whose construction or location would constitute a departure from the plan, shall be constructed or authorized by the board except by unanimous vote." *Id.* In addition, prior to the adoption or amendment of a township zoning plan, a county planning commission, if there is one, is permitted to suggest changes to, and recommend the approval or disapproval of, the plan. R.C. 519.07; R.C. 519.12. Because township trustees are responsible for the construction of township buildings, roads, and other public improvements, *see, e.g.*, R.C. 505.26; R.C. 5571.01, and approving township zoning plans and amended plans, *see* R.C. 519.10; R.C. 519.12, a member of a county planning commission who is also a township trustee may be subject to divided loyalties when preparing plans or making suggestions or recommendations on plans affecting the development of the township which he serves as a trustee.

Also, a county planning commission may carry out all of the functions and duties of a director of economic development under R.C. 307.07(B). R.C. 713.23(B)(8); *see also* R.C. 307.07(A)(1). A county planning commission performing the functions and duties of a director of economic development may enter into agreements with townships to carry out the functions and duties of the office of director of economic development, R.C. 307.07(B)(3), make loans or grants and provide other forms of financial assistance to townships for the purpose of economic development, R.C. 307.07(B)(5), and receive and accept grants, gifts, and contributions of money, property, labor, and other things from townships on the terms and conditions the commission determines, R.C. 307.07(B)(6), *see also* R.C. 505.703. If a member of a county planning commission who serves as a township trustee were required to deliberate, discuss, negotiate, or vote on any such matters, it might be difficult for the commission member to perform his duties and exercise his discretion in a completely objective and disinterested manner because of his service to the township as trustee. Similarly, it might be difficult for the person as a township trustee to make completely objective decisions with regard to any such agreements, loans, or grants between the township and planning commission because of his membership on the planning commission.

Finally, a township trustee who serves on a county planning commission may be required to review and vote on a township zoning plan prepared by the planning commission, *see* R.C. 519.05; R.C. 519.10, or review the recommendation of the planning commission to approve or deny an amendment to a township zoning resolution, R.C. 519.12. If the township trustee were required to deliberate, discuss, negotiate, or vote on such matters, it

could be difficult for the trustee to set aside his loyalty to the planning commission. Such a predisposition of loyalty could prevent the trustee from making disinterested decisions concerning the plan or amendment.

Although there are instances in which there are potential conflicts of interest between the positions of member of a county planning commission and township trustee, the General Assembly has determined that these potential conflicts are insufficient to render the two positions incompatible. Pursuant to R.C. 713.22(C), “[a]ny member of a county planning commission may hold any other public office.”

The following criteria are used for determining whether a position is a “public office” rather than one of public employment:

The usual criteria in determining whether a position is a public office are durability of tenure, oath, bond, emoluments, the independency of the functions exercised by the appointee, and the character of the duties imposed upon him.... The chief and most-decisive characteristic of a public office is determined by the quality of the duties with which the appointee is invested, and by the fact that such duties are conferred upon the appointee by law. 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.

....

... [I]t is manifest that the functional powers imposed must be those which constitute a part of the sovereignty of the state.

State ex rel. Landis v. Bd. of Comm'rs, 95 Ohio St. 157, 159-60, 115 N.E. 919 (1917); *accord State ex rel. Milburn v. Pethtel*, 153 Ohio St. 1, 90 N.E.2d 686 (1950).

A review of the duties and responsibilities conferred upon a township trustee indicates that a township trustee is a public officer under the common law criteria. 1980 Op. Att’y Gen. No. 80-035 at 2-148; 1977 Op. Att’y Gen. No. 77-083 at 2-282. A township trustee is elected for a definite term of office, R.C. 505.01, and is required to post a bond, R.C. 505.02, and take an oath of office, *see* Ohio Const. art. X, § 2; Ohio Const. art. XV, § 7; R.C. 3.22. A township trustee’s duties are prescribed by statute, *see, e.g.*, R.C. Chapter 505, and involve such governmental functions as levying taxes, Ohio Const. art. X, § 2; R.C. Chapter 5705, and governing the township, *see* R.C. Chapter 505.

Because the position of township trustee is a public office, a member of a county planning commission is permitted by R.C. 713.22(C) to hold that position, regardless of the potential conflicts between the two positions.¹⁶ *See* 2000 Op. Att’y Gen. No. 2000-018 at

¹⁶Pursuant to R.C. 511.13, a member of a board of township trustees may not “be interested in any contract entered into by [his] board.” Because county planning commissioners “serve without pay,” R.C. 713.22(C), and the compensation of members of a board of township trustees is set by R.C. 505.24, a member of a board of township trustees does not have a pecuniary interest in any contract or agreement entered into between his board and a county planning commission. In addition, service as a county planning commissioner and township trustee is not contingent upon the existence of an agreement or contract between the township and planning commission. A person who serves simultaneously as a township trustee and county planning commissioner thus would have no interest in procuring or

2-115; *see also* 1984 Op. Att’y Gen. No. 84-018 at 2-62 (“[t]he General Assembly [by enacting R.C. 505.011(A)]¹⁷ has evidently deemed that the potential conflicts of interest which might arise between a township trustee and volunteer firefighter ... are outweighed by the need for firefighters”); 1977 Op. Att’y Gen. No. 77-034 at 2-123 (“it was the manifest intent of the General Assembly that despite any conclusion of incompatibility arising from the common law analysis, a member of a regional planning commission may also hold any other public office.... [R.C. 713.21]¹⁸ would appear to reflect a policy of encouraging intergovernmental cooperation”). *See generally also* R.C. 519.04 (“[w]here there is a county or regional planning commission the board [of township trustees] may appoint qualified members of such commission to serve on the township zoning commission”).

As a final matter, prior opinions of the Attorneys General and Ohio Ethics Commission have advised that it is inappropriate for a person who serves in two public positions to participate in a matter that results in a violation of the ethics or conflict of interest provisions of R.C. Chapter 102, R.C. 2921.42, or R.C. 2921.43. Ohio Ethics Comm’n, Advisory Op. No. 92-014; Ohio Ethics Comm’n, Advisory Op. No. 91-001; 1990 Op. Att’y Gen. No. 90-037; *see* 1997 Op. Att’y Gen. No. 97-061; Ohio Ethics Comm’n, Advisory Op. No. 88-005; Ohio Ethics Comm’n, Advisory Op. No. 85-006. Moreover, this principle applies when a statute authorizes the person to hold both positions. Ohio Ethics Comm’n, Advisory Op. No. 92-014; Ohio Ethics Comm’n, Advisory Op. No. 91-001; 1990 Op. Att’y Gen. No. 90-037.

Accordingly, a person who serves simultaneously in the positions of township trustee and county planning commission member should abstain from participating in any deliberations, discussions, negotiations, or votes concerning matters in which the person has a conflict of interest that is prohibited by applicable statutes governing conflicts of interest. If a person has questions concerning the permissibility of particular actions under R.C. Chapter 102, R.C. 2921.42, or R.C. 2921.43, the person may seek guidance from the Ohio Ethics Commission. R.C. 102.08; *see note twelve, supra*.

In light of the foregoing, a person who serves as a member of the Summit County Planning Commission and township trustee or member of a township board of zoning appeals is not subject to any impermissible conflicts of interest. Accordingly, a member of the Summit County Planning Commission may serve simultaneously as a member of a township board of zoning appeals. In addition, a member of the planning commission may serve as a township trustee, provided that as a township trustee and planning commission

maintaining any contracts between the township and planning commission in order to maintain his position as trustee or commissioner. Moreover, by authorizing a township trustee to serve on a county planning commission, *see* R.C. 713.22(C), the General Assembly has implicitly sanctioned any interest a township trustee may have in any contract between the township and the county planning commission. *See* 1990 Op. Att’y Gen. No. 90-037 at 2-153; *see also* Ohio Ethics Comm’n, Advisory Op. No. 91-001.

¹⁷R.C. 505.011(A) provides:

A member of a board of township trustees may be appointed as a volunteer fireman and in such capacity be considered an employee of the township, or he may be a member of a private fire company which has entered into an agreement to furnish fire protection for the township of which such member is a trustee; provided that such member shall not receive compensation for his services as a volunteer fireman.

¹⁸R.C. 713.21 states that “[a]ny member of a regional planning commission may hold any other public office.”

member he does not participate in any deliberations, discussions, negotiations, or votes concerning matters in which he has a conflict of interest that is prohibited by applicable statutes governing conflicts of interest.

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised as follows:

1. A person may serve simultaneously as a township trustee and member of the Summit County Planning Commission, provided that as a township trustee and planning commission member he does not participate in any deliberations, discussions, negotiations, or votes concerning matters in which he has a conflict of interest that is prohibited by applicable statutes governing conflicts of interest.
2. A person may serve simultaneously as a member of a township board of zoning appeals and member of the Summit County Planning Commission.

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