

**Note from the Attorney General's Office:**

1988 Op. Att'y Gen. No. 88-049 was clarified by  
2001 Op. Att'y Gen. No. 2001-027.

**OPINION NO. 88-049****Syllabus:**

An assistant prosecuting attorney may not serve upon a board of township trustees for which the prosecuting attorney acts as legal adviser and counsel pursuant to the terms of R.C. 309.09(A).

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**To: Steve C. Shuff, Seneca County Prosecuting Attorney, Tiffin, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, July 6, 1988**

I have before me your request for my opinion regarding the compatibility of two public offices. Specifically, you wish to know whether the positions of assistant prosecuting attorney and township trustee are compatible.

I note initially that because an assistant prosecuting attorney is empowered to act for, and in place of, the prosecuting attorney in most matters, *see* R.C. 309.06 ("[t]he prosecuting attorney may appoint such assistants...as are necessary for the proper performance of the duties of his office"), the assistant is subject to the same limitations as the prosecuting attorney and may not hold any office that the prosecuting attorney may not hold. *See* 1986 Op. Att'y Gen. No. 86-035; 1983 Op. Att'y Gen. No. 83-030; 1971 Op. Att'y Gen. No. 71-050; 1971 Op. Att'y Gen. No. 71-037; 1971 Op. Att'y Gen. No. 71-025; 1963 Op. Att'y Gen. No. 25, p. 113; 1945 Op. Att'y Gen. No. 184, p. 163. Thus, statutory, as well as common law, restrictions on a prosecuting attorney's outside activities have been held applicable to assistant prosecuting attorneys. 1970 Op. Att'y Gen. No. 70-022. Accordingly, if the positions of prosecuting attorney and township trustee are incompatible, the positions of assistant prosecuting attorney and township trustee are, as a general

matter, also incompatible. Consequently, in considering the compatibility of the two positions about which you have inquired I must consider the compatibility of the positions of prosecuting attorney and township trustee.

In 1979 Op. Att'y Gen. No. 79-111, a seven-question analysis was set forth for determining the compatibility of different public positions. In particular, question number five of the compatibility analysis asks whether a conflict of interest may exist between the two public positions, and thus requires an examination of whether an individual serving simultaneously in those two positions will thereby be subject to such conflict of interest. As was stated in 1970 Op. Att'y Gen. No. 70-168 (overruled on other grounds by 1981 Op. Att'y Gen. No. 81-100) at 2-336, one in the public service "owes an undivided duty to the public. It is contrary to public policy for a public officer to be in a position which would subject him to conflicting duties or expose him to the temptation of acting in any manner other than the best interest of the public."

It is readily apparent that a prosecuting attorney who also serves as a township trustee will, in that circumstance, be subject to a conflict of interest. In this regard, the prosecuting attorney is designated by statute to serve as legal counsel to the board of township trustees. R.C. 309.09(A) (the prosecuting attorney "shall be the legal adviser for all township officers"); *Kline v. Board of Township Trustees*, 13 Ohio St. 2d 5, 7-8, 233 N.E.2d 515, 517 (1968) ("the prosecuting attorney of a county is the legal adviser and counsel of a board of township trustees within the county and is required to prosecute and defend any action which may affect such board"). Prior attorney general opinions have concluded that an individual who functions as the legal adviser to a particular public board of which he is also a member would be subject, *inter alia*, to conflicting duties and interests in both capacities. See Op. No. 71-037 at 2-123; 1957 Op. Att'y Gen. No. 1380, p. 715, at 716; 1948 Op. Att'y Gen. No. 4130, p. 594. Thus, for example, 1948 Op. No. 4130 states as follows at 597:

It appears very clear that the person who is by law the legal adviser of a board could not be appointed by that board to a responsible position without violating the generally accepted rules as to incompatibility of offices. As such legal adviser it would manifestly be within his power to advise the board in his own interest and while he could not be said to hold a direct check or control over himself, as such officer, he would be subjected to the temptation to mold his advice to further his own interests.

See also Op. No. 83-030 at 2-113 ("[n]either a prosecutor nor an assistant prosecutor may serve on a board when the prosecutor has the duty to advise such board," because "if a prosecutor or his assistant were able to serve as a county board member, he would be able to advise the board in his own interests"). Thus, a prosecuting attorney may not serve upon a board of township trustees for which he also acts as legal adviser and counsel pursuant to R.C. 309.09(A). Similarly, it follows that an assistant appointed by such prosecuting attorney pursuant to R.C. 309.06 also may not serve upon such board of township trustees.

Accordingly, it is my opinion, and you are advised that an assistant prosecuting attorney may not serve upon a board of township trustees for which the prosecuting attorney acts as legal adviser and counsel pursuant to the terms of R.C. 309.09(A).