

**OPINION NO. 75-009****Syllabus:**

There is a conflict of interest when a member of a board of education becomes a land appraiser for the county auditor with the responsibility of assisting the auditor in determining the taxable value of real property within his own school district.

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**To: Lloyd E. Moore, Lawrence County Pros. Atty., Ironton, Ohio**  
**By: William J. Brown, Attorney General, February 12, 1975**

Your request for my opinion states the facts and poses the question in the following language:

"Recently the Commissioners of Lawrence County, Ohio, through the Auditor, hired a land appraiser. This employee is a member of the Rock Hill School Board. Therefore, part of his duties would be to appraise the school district of which he sits as a board member. This office would like an opinion as to whether there would be a legal conflict."

Under R.C. 5713.01 the county auditor is required to assess all real estate in the county for the purposes of taxation, and he is allowed to appoint such experts and employees as may be necessary to perform this function. In pertinent part the Section provides:

"\* \* \*The county auditor shall be the assessor of all the real estate in his county for purposes of taxation \* \* \*.

"The auditor shall assess all the real estate situated in the county at its taxable value \* \* \*. The auditor shall view and appraise, or cause to be viewed and appraised, each lot and parcel of real estate and the improvements located thereon at least once in each six-year period beginning with the year 1943 and the new values shall be placed on the auditor's tax list and on the county treasurer's duplicate. When the auditor so views and appraises he may enter each structure located thereon to determine by actual view what improvements have been made therein or additions made thereto since the next preceding valuation. The auditor shall re-value and assess at any time all or any part of the real estate in such county where he finds that the same has changed in value or is not on the tax list at its taxable value. He may increase or decrease the value of any lot or parcel of real estate in any township, municipal corporation, or other taxing district by an amount which will cause all real property on the tax list to be assessed at its taxable value or he may increase or decrease the aggregate value of the real property, or any class of real property, in the county, township, municipal corporation, or other taxing district, or in any ward or other division of a municipal corporation by a per cent or amount which will place such property on the tax list at its taxable value so that every class of real property shall be listed and valued for taxation by an equal and uniform rule.

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"The auditor, with the approval of the board of tax appeals, may appoint and employ such experts, deputies, clerks, or other employees as he deems necessary to the performance of his duties as assessor; \* \* \*

"Such experts, deputies, clerks, and other employees, in addition to their other duties, shall perform such services as the auditor directs in ascertaining such facts, description, location, character, dimensions of buildings and improvements, and other circumstances reflecting upon the value of real estate as will aid the auditor in fixing its true and taxable value. \* \* \*"

It is abundantly clear, from the quoted language, that the auditor is vested with the initial authority to value or to revalue, and to increase or decrease the taxable value of, all the real estate in the county or in any particular part of it. And, while it is true that the auditor may not delegate this duty to any of his employees, Boeckling Co. v. Schwer, 122 Ohio St. 40, 43-44 (1930), it is also perfectly clear that he must rely on those employees to provide him with the factual basis upon which to found his decision as to the taxable value of any particular lot or tract of real estate. Cf., Opinion No. 1310, Opinions of the Attorney General for 1957.

A board of education receives a large part of the funds necessary for the operation of its school district from the state's School Foundation Program. R.C. Chapter 3317. But the board is also a taxing district with authority to make a general levy for current expenses. R.C. 5705.01(A), (C), (D), R.C. 5705.05(F). There are other provisions for special levies. See, e.g., R.C. 5705.192 and 5705.194; and see 51 O. Jur. 2d, Taxation, Section 55. All such levies are based upon the taxable real and personal property in the taxing district. A member of a board of education has, therefore, an obvious interest in the taxable value of the real property within his school district. In the case you present, the county auditor has hired a member of a board of education as an appraiser. Part of the appraiser's duties will be to develop the facts upon which the auditor will determine the taxable value of the land within the school district in which the appraiser serves as a member of the board of education. I do not see how there can be any doubt that a conflict of interest will arise under such circumstances.

This conclusion is consistent with a number of prior opinions. In Opinion No. 72-109 it was held that a conflict exists between the position of township clerk and that of employee of the county highway department, since the clerk, in appearing before the county budget commission as the township fiscal officer, would be tempted to subordinate the township's interests to those of his employer, the county highway department. In Opinion No. 73-032 I held that the same individual could not be both director of a regional planning commission and a consultant to a parks commission. The functions of the two commissions with respect to the same areas would produce an inevitable conflict. See also, Opinion No. 65-88, Opinions of the Attorney General for 1965, and Opinion No. 69-167, Opinions of the Attorney General for 1969.

Somewhat similar situations in Opinion No. 72-014 and Opinion No. 74-071 are not applicable here. In each instance it was possible to avoid the conflict. Your letter states specifically, however, that the appraiser is to investigate the taxable values of the land within his own school district. Nor do I think that Opinion No. 255, Opinions of the Attorney General for 1915, which held that the offices of district assessor and member of a board of education were compatible, is in point here. At that time the district assessor was a public officer who performed the county auditor's present day function as assessor of the taxable value of real property. 103 Ohio Laws, 786-787. The question was whether two specific public offices could be held simultaneously by the same person and the opinion spoke in familiar terms of compatibility. In your case the appraiser is an employee of the auditor and the issue is

whether he will have conflicting interests by reason of his position as a member of the board of education.

I note that you state that the County Commissioners of Lawrence County hired the appraiser through the County Auditor. I am unable to find any statutory authority for such a procedure. As you will have seen from the quoted portions of R.C. 5713.01, supra, the authority to hire such assistants rests with the county auditor, with the approval of the board of tax appeals. The Board of County Commissioners may have acted under the mistaken impression that it had such authority under R.C. 307.06. But that Section clearly applies only where land is to be sold or acquired by the county itself and has nothing to do with appraisal to real property for purposes of taxation.

In specific answer to your question it is my opinion, and you are so advised, that there is a conflict of interest when a member of a board of education becomes a land appraiser for the county auditor with the responsibility of assisting the auditor in determining the taxable value of real property within his own school district.