

OPINION NO. 89-101

Syllabus:

The positions of superintendent of a county school district with more than one local school district and trustee of a township which is located within the county school district are incompatible.

To: P. Randall Knece, Pickaway County Prosecuting Attorney, Circleville, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, December 29, 1989

I have before me your request for my opinion as to whether the positions of township trustee and superintendent of a county school district are compatible. In a telephone conversation with a member of my staff you stated that the township is located in the county school district and that such district contains three local school districts.¹

The powers and duties of township trustees are statutorily provided in R.C. Chapter 505 and related provisions. A township, pursuant to R.C. 503.01, is a body politic and corporate. Township trustees are vested by statute with various powers and duties related to the government of the township. *See, e.g.*, R.C. 505.07 (may publish and distribute newsletters); R.C. 505.10 (may accept and sell property); R.C. 505.15 (may provide and operate airports); R.C. 505.17 (may regulate vehicle parking); R.C. 505.26 (may provide office space, township hall, and parks); R.C. 505.262 (may issue notes to finance purchases and construction); R.C. 505.27 (may contract for solid waste disposal); R.C. 505.34 (may compound or release a debt due the township); R.C. 505.37 (may provide for fire protection); R.C. 505.75 (may adopt and enforce a building code); R.C. 5731.48 (may disburse estate tax moneys to a board of education).

A superintendent of a county school district is the executive officer for the board of education in such district. R.C. 3319.01. As superintendent of a county school district, an individual is required "to administer the schools under his supervision in conformity with the adopted policies of the board, the rules and regulations of the state board, and the provisions of law, to present to the board such information as is needed in the formation of school policies, and to perform 'such other duties as the board determines.'" Robert T. Baker & K. Carey, *Baker's 1989-90 Handbook of Ohio School Law* 125 (1989). County superintendents, in accordance with the foregoing, are, thus, vested by statute with various powers and duties related to the administration of schools. *See, e.g.*, R.C. 149.41 (serves as a member of the school district records commission); R.C. 3301.0712(C) (submits to the state board of education a plan for correcting any violations identified by such board); R.C. 3317.03 (certifies to the state board of education the average daily membership figures); R.C. 3319.01 (directs and assigns teachers and other employees, assigns pupils to the proper schools and grades, and provides recommendations for the employment or reemployment of local superintendents); R.C. 3319.07 (nominates teachers for employment in local school districts); R.C. 3319.32 (maintains school records); R.C. 3319.34 (prepares and transmits to the state board of education an annual abstract of local school statistics); R.C. 3321.04 (grants excuses from attendance). In addition, a superintendent of a county school district also performs the duties of treasurer² of the board of education, provided that such board is neither the taxing authority of a county school financing district that

¹ When there is only one local school district contained in a county school district, the superintendent of such district has all the powers and duties of the local superintendent. R.C. 3311.051. Since you have indicated that the county school district in question contains more than one local school district, I will address specifically the compatibility of a superintendent of a county school district with more than one local school district and a trustee of a township which is located within such district.

² The treasurer of the board of education was formerly known as the clerk of the board of education. *See* 1977-1978 Ohio Laws, Part II, 3966,

levies a tax for the district, pursuant to R.C. 5705.21(B), nor the governing board of such district pursuant to R.C. 135.01(D). R.C. 3313.22.

In 1979 Op. Att'y Gen. No. 79-111, my predecessor set forth seven criteria for determining whether two public positions are incompatible. Two public positions are incompatible if, *inter alia*, a person holding both positions would be subject to conflicting interests or divided loyalties. *See generally* 1985 Op. Att'y Gen. No. 85-042 at 2-150 ("[o]ne person may not simultaneously hold two public positions if he would be subject to divided loyalties and conflicting duties or exposed to the temptation of acting other than in the best interest of the public"); 1980 Op. Att'y Gen. No. 80-035 at 2-149 ("[a]n individual who serves in dual public positions faces a situation which poses a conflict of interests when his responsibilities in one position are such as to influence the performance of his duties in the other position, thereby subjecting him to influences which may prevent his decisions from being completely objective"); 1970 Op. Att'y Gen. No. 70-168 at 2-336 (a public servant "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"), *overruled on other grounds*, 1981 Op. Att'y Gen. No. 81-100.

I note that there is one area in which the duties and responsibilities of a township trustee and superintendent of a county school district come into conflict. R.C. 5731.48, which authorizes the use of certain estate tax moneys by a township or board of education, provides, in part:

If a decedent dies prior to July 1, 1991, and on or after the effective date of the amendments made to this section by Amended Substitute House Bill No. 111 of the 118th general assembly, sixty-four per cent of the gross amount of taxes levied and paid under this chapter, or if a decedent dies on or after July 1, 1991, sixty-seven per cent of the gross amount of taxes levied and paid under this chapter, shall be for the use of the municipal corporation or township in which the tax originates, and shall be credited as follows:

....
(C) To the general revenue fund or to the board of education of the school district of which the township is a part, for school purposes, as the board of township trustees by resolution may approve, in the case of a township.

A person serving as a township trustee is, thus, in a position of considering and helping to determine whether any of the township's estate tax moneys should be disbursed to the board of education of the school district of which the township is a part. If such person also serves as a superintendent of a county school district, he would clearly be placed in a position of divided loyalties. Past opinions of the Attorney General which have considered the compatibility of two public positions when a statute imposes upon one of the positions the responsibility of allocating moneys to the two positions, have consistently concluded that "where one public position has the power to appropriate funds to a second position, one person may not serve in both positions." 1985 Op. Att'y Gen. No. 85-029 at 2-107; *accord* 1988 Op. Att'y Gen. No. 88-033; 1986 Op. Att'y Gen. No. 86-029; 1985 Op. Att'y Gen. No. 85-006; 1983 Op. Att'y Gen. No. 83-035. More specifically, in Op. No. 85-006, in a similar situation, I concluded that the positions of member of a board of education of a local school district and trustee of a township which is located within such school district are incompatible since R.C. 5731.48 authorizes a board of township trustees to make available to the board of education of the local school district of

3973 (Am. H.B. 1285, eff. June 30, 1978) ("[a]s used in the Revised Code, the "clerk of the board of education" means the treasurer appointed under this section [R.C. 3313.22]").

which the township is a part moneys that would otherwise belong to the township.³ The opinion states, in part:

Where, as in the case of R.C. 5731.48, a statute gives a member of a particular public body the authority to participate directly in a determination as to whether that public body or a different public body is to obtain the benefit of certain funds, I believe that it must be concluded, as a matter of law, that an individual may not serve in positions of trust and authority with respect to both bodies. A township trustee who also served as a member of a local board of education would suffer from conflicting loyalties if he were placed in the position, as trustee, of participating in a decision as to whether the township or the board of education should receive funds under R.C. 5731.48.

Op. No. 85-006 at 2-19.

I reach a similar conclusion with respect to the positions of superintendent of a county school district and trustee of a township located within the county school district. As stated above, a superintendent is the executive officer for the board of education which appoints him. R.C. 3319.01. As the executive officer for the board of education, a superintendent, like the member of the board of education under consideration in Op. No. 85-006, holds a position of trust and authority with respect to the board that appoints him. Consequently, his ability, as trustee, to exercise clear and independent judgment on behalf of the township in determining whether the township or the board of education should receive the estate tax moneys would be drawn into question, since he holds a position of trust and authority with the board of education. Additionally, a person who holds both positions may not vote, as trustee, in the best interests of the township or other school districts of which the township is a part, with regard to the distribution of estate tax funds for fear of reprisals in his position as superintendent by the board of education which employs him. I find, accordingly, that the positions of superintendent of a county school district and trustee of a township located within such district are subject to an impermissible conflict of interest.

It is my opinion, and you are hereby advised, that the positions of superintendent of a county school district with more than one local school district and trustee of a township which is located within the county school district are incompatible.

³ Since the issuing of 1985 Op. Att'y Gen. No. 85-006, R.C. 5731.48 has been amended. *See generally* Am. Sub. H.B. 111, 118th Gen. A. (1989) (eff. July 1, 1989). No substantive changes were made, however, which would affect the conclusion reached in Op. No. 85-006.