

August 23, 2018

The Honorable Stephen J. Pronai
Madison County Prosecuting Attorney
59 North Main Street
London, Ohio 43140

SYLLABUS:

2018-020

A person appointed as a city's representative to the board of trustees of a joint ambulance district is not required to abstain from any discussions, deliberations, negotiations, or votes of the board of trustees solely because of the contemplated withdrawal of the city from the district. (1979 Op. Att'y Gen. No. 79-039 and 1994 Op. Att'y Gen. No. 94-035, overruled, in part, as a result of legislative enactment.)



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OPINION NO. 2018-020

The Honorable Stephen J. Pronai
Madison County Prosecuting Attorney
59 North Main Street
London, Ohio 43140

Dear Prosecutor Pronai:

You have requested an opinion whether a person appointed as a city's representative to the board of trustees of the Madison County Emergency Medical District faces a conflict of interest with respect to the board's deliberations and votes on issues pertaining to the contemplated withdrawal of the city from the district. The Madison County Emergency Medical District is a joint ambulance district created under R.C. 505.71. The district provides emergency medical services to the City of London and six townships in Madison County.¹ Your question pertains to the member of the board of trustees who was appointed by the legislative authority of the City of London.²

¹ 1979 Op. Att'y Gen. No. 79-039 (syllabus, paragraph 1) and 1994 Op. Att'y Gen. No. 94-035 (syllabus, paragraph 1) advise that a county prosecuting attorney has no authority to serve as legal counsel for a joint ambulance district created under R.C. 505.71. In 2005, the General Assembly amended R.C. 309.09 to add division (F), which authorizes a county prosecuting attorney to serve as legal adviser of a joint ambulance district created under R.C. 505.71. 2005-2006 Ohio Laws, Part III, 5261, 5262-5263 (Sub. H.B. 33, eff. Dec. 20, 2005). Accordingly, 1979 Op. Att'y Gen. No. 79-039 and 1994 Op. Att'y Gen. No. 94-035 are overruled, in part, as a result of legislative enactment.

² The member of the board of trustees of the Madison County Emergency Medical District who was appointed by the legislative authority of the City of London is an employee of the city and is in charge of the city's streets department. You ask whether a conflict of interest exists solely as a result of the city's contemplated withdrawal from the joint ambulance district. You have not asked us for an opinion whether the two public positions are compatible or whether a conflict of interest arises from the duties of the two positions. Consequently, this opinion does not address the compatibility of city employment and membership on the board of trustees of a joint ambulance district that includes the city.

This opinion also does not address the application of R.C. Chapter 102 and R.C. 2921.42-.43 to the member of the board of trustees of the joint ambulance district that is mentioned in your letter.

R.C. 505.71 authorizes the boards of township trustees of several townships and the legislative authority of a municipal corporation to create a joint ambulance district that comprises the municipal corporation and all or any part of the townships as are mutually agreed upon. A joint ambulance district is governed by a board of trustees that is made up of a representative appointed by each of the boards of township trustees and the legislative authority of the municipal corporation. R.C. 505.71. The board of trustees may levy taxes and issue bonds to provide services and equipment that the board deems are necessary for the district. *Id.* In addition, the board, on behalf of the joint ambulance district, “may purchase, lease, maintain, and use all materials, equipment, vehicles, buildings, and land necessary to perform [the joint ambulance district’s] duties.” *Id.*

A municipal corporation that is part of a joint ambulance district may withdraw from the district by adopting a resolution ordering withdrawal. R.C. 505.71. “On or after the first day of January of the year following the adoption of the resolution of withdrawal, the municipal corporation ... withdrawing ceases to be a part of the district[.]” *Id.* If the district incurred indebtedness prior to the withdrawal of the municipal corporation, “the district shall continue to levy and collect taxes for the payment of indebtedness within the territory of the district as it was comprised at the time the indebtedness was incurred.” *Id.* When a municipal corporation withdraws from the district, “the county auditor shall ascertain, apportion, and order a division of the funds on hand, moneys and taxes in the process of collection, except for taxes levied for the payment of indebtedness, credits, and real and personal property, either in money or in kind, on the basis of the valuation of the respective tax duplicates of the withdrawing municipal corporation ... and the remaining territory of the district.” *Id.*

“A public office is a public trust and the prosecution of such a trust must always be consonant with the fiduciary and confidential relationship that the office imposes.” *Halliday v. Norfolk & W. Ry. Co.*, 2d Dist. No. 3767, 62 N.E.2d 716, 719 (Franklin County 1945); *accord* 2017 Op. Att’y Gen. No. 2017-036, at 2-353; 2016 Op. Att’y Gen. No. 2016-011, at 2-112. A public officer “has a duty to abstain from participating in any matter that would impair his objectivity.” 2003 Op. Att’y Gen. No. 2003-006, at 2-37 to 2-38. “In order to faithfully perform the duties of his office, a public officer must refrain from acting in situations where he has a conflict of interest.” 2006 Op. Att’y Gen. No. 2006-022, at 2-197. A public officer faces a conflict of interest when he is “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.” *Id.* (quoting 1970 Op. Att’y Gen. No. 70-168, at 2-336, overruled on other grounds by 1981 Op. Att’y Gen. No. 81-100); 1998 Op. Att’y Gen. No. 98-033, at 2-188 to 2-189 (“a conflict of interest exists when a public servant is subject to divided loyalties and conflicting duties or exposed to the temptation of acting other than in the best interest of the public”). In other words, “[w]hen a person in a public office is subject to influences that may prevent him from acting in a completely objective manner, a conflict of interest exists.” 2016 Op. Att’y Gen. No. 2016-011, at 2-112.

Insofar as the Ohio Ethics Commission is authorized to render advisory opinions concerning questions relating to R.C. Chapter 102 and R.C. 2921.42-43, R.C. 102.08, the Attorney General refrains from interpreting those provisions in a formal opinion.

A member of the board of trustees of a joint ambulance district is appointed to govern the district while representing the interests of the political subdivision that appointed him. *See* R.C. 505.71 (“[t]he governing body of a [joint ambulance] district shall be a board of trustees, which shall include one representative appointed by each board of township trustees and one representative appointed by the legislative authority of each municipal corporation in the district”). Insofar as the board of trustees of a joint ambulance district is composed of members appointed to represent the interests of their appointing political subdivisions, the potential for conflicting policy concerns or interests is inherent in many decisions made by the individual members of the board of trustees. Every action by a member of the board of trustees of the district is informed by the interests of the political subdivision that appointed him. Those conflicting policy concerns or interests are part of operating a unified joint ambulance district that provides services to political subdivisions with varying needs, resources, and budgets. Although there may be differences among the interests of the individual political subdivisions that are part of a joint ambulance district, the interests of the individual political subdivisions are tempered by the overriding interest in ensuring that the joint ambulance district provides optimal service to all of the political subdivisions that are part of that district.

After the legislative authority of a municipal corporation has decided to withdraw from the district, one may question whether the opinions held by the representative of that municipal corporation will serve solely the interests of that municipal corporation, without the tempering effect of an overriding concern about the quality of service provided by the joint ambulance district. Although that situation may present a potential conflict of interest, we cannot conclude that the representative is required to abstain from discussions, deliberations, negotiations, or votes of the board of trustees of the joint ambulance district solely because of the municipal corporation’s contemplated withdrawal from the joint ambulance district.

Pursuant to R.C. 505.71, a municipal corporation’s withdrawal from a joint ambulance district does not take effect until at least the first day of January of the year following the adoption of the withdrawal resolution. Accordingly, the withdrawing municipal corporation continues to be a part of the joint ambulance district and the board member that represents the withdrawing municipal corporation continues to serve on the board of trustees of the joint ambulance district even after it is known that the municipal corporation is withdrawing from the district. Depending upon when a resolution ordering withdrawal is adopted, the continued service of the board member after it has become known that the municipal corporation intends to withdraw from the joint ambulance district may be days, weeks, or months. In delaying the effect of a withdrawal, the General Assembly contemplated that for some period of time after the resolution ordering withdrawal of the municipal corporation has been adopted, the representative of that municipal corporation would continue to serve on the board of trustees. At the same time, however, the General Assembly did not restrict the participation of the representative of a withdrawing political subdivision on the board of trustees of the joint ambulance district. Despite the possibility that a representative of a withdrawing political subdivision may face a conflict of interest, the General Assembly implicitly authorized the continued full participation of the trustee in all joint ambulance district matters.

In situations where the General Assembly has authorized a person to serve despite the potential for a conflict of interest, the person is not prohibited from serving and is not required to take any actions to mitigate a conflict of interest. *See, e.g.*, 2012 Op. Att’y Gen. No. 2012-040, at 2-351 (“[b]ecause the General Assembly has authorized a person to serve simultaneously as a township trustee and member of the governing board of a county land reutilization corporation even though conflicts of interest may exist between the two positions, we do not find it necessary to consider whether any conflicts do in fact exist.... Accordingly, the positions ... are not rendered incompatible because of the possibility of conflicts of interest”); 2009 Op. Att’y Gen. No. 2009-039, at 2-293 n.6 (“[t]he fact that R.C. 5577.13 expressly authorizes the deputization of ‘patrolmen’ indicates that the General Assembly has decided to accept the risk of conflict in the circumstances covered by R.C. 5577.13”); 1989 Op. Att’y Gen. No. 89-063, at 2-285 (overruled, in part, on other grounds by 2015 Op. Att’y Gen. No. 2015-004) (“[i]t is reasonable, therefore, to assume, in light of the purposes of R.C. Chapter 167 and absent manifest intent to the contrary, that the General Assembly did not intend that the conflict of interest provisions of R.C. 340.02 would prevent community mental health board members or employees from representing the board on a regional council of governments”); 1984 Op. Att’y Gen. No. 84-018, 2-62 (“the General Assembly by enacting R.C. 505.011 [which permits appointment of a township trustee as a volunteer firefighter for the township] has implicitly sanctioned this use of appointive powers. The General Assembly 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”). Therefore, we conclude that a person appointed as a city’s representative to the board of trustees of a joint ambulance district is not required to abstain from discussions, deliberations, negotiations, or votes of the board of trustees of the district, including issues pertaining to the contemplated withdrawal of the city from the district, solely because of the city’s contemplated withdrawal from the district.

Nevertheless, the member of the board of trustees who represents the withdrawing municipal corporation has a continuing obligation to perform his duties lawfully and in good faith. *See State ex rel. Speeth v. Carney*, 163 Ohio St. 159, 126 N.E.2d 449 (1955) (syllabus, paragraph 10) (“[i]n the absence of evidence to the contrary, public officials, administrative officers, and public authorities, within the limits of the jurisdiction conferred upon them by law, will be presumed to have properly performed their duties in a regular and lawful manner and not to have acted illegally or unlawfully”); *State ex rel. Maxwell v. Schneider*, 103 Ohio St. 492, 498, 134 N.E. 443 (1921) (“[t]he action of a public officer ... within the limits of the jurisdiction conferred by law, is not only presumed to be valid but it is also presumed to be in good faith and in the exercise of sound judgment”). As a member of the board of trustees of the joint ambulance district, he owes a fiduciary duty to the district so long as he is a member of the board of trustees and the municipal corporation is a part of the district. *See State ex rel. Cardinal Joint Fire Dist. v. Canfield Twp.*, 7th Dist. No. 03 MA 67, 2004-Ohio-5526, 2004 Ohio App. LEXIS 4971, at ¶ 36 (“at minimum, a trustee owes a fiduciary duty to the beneficiaries of the trust”); 2017 Op. Att’y Gen. No. 2017-036, at 2-360 (“[a] member ... of the Board of Trustees of the Clermont County Convention and Visitors Bureau owes a fiduciary duty to the Bureau and shall act in the best interests of the Bureau”).

Based on the foregoing, it is my opinion, and you are hereby advised that a person appointed as a city’s representative to the board of trustees of a joint ambulance district is not required to abstain

The Honorable Stephen J. Pronai

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from any discussions, deliberations, negotiations, or votes of the board of trustees solely because of the contemplated withdrawal of the city from the district. (1979 Op. Att'y Gen. No. 79-039 and 1994 Op. Att'y Gen. No. 94-035, overruled, in part, as a result of legislative enactment.)

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is written in a cursive, flowing style.

MICHAEL DEWINE
Ohio Attorney General