

June 18, 2014

The Honorable Bradford W. Bailey
Hardin County Prosecuting Attorney
One Courthouse Square
Suite 50
Kenton, Ohio 43326-1575

SYLLABUS:

2014-022

1. The position of administrator of the Hardin County Court of Common Pleas is incompatible with the positions of official court reporter and assistant deputy jury commissioner of the Hardin County Court of Common Pleas.
2. A person may not serve simultaneously as court administrator, official court reporter, and assistant deputy jury commissioner of the Hardin County Court of Common Pleas while serving as a township fiscal officer.
3. A person may serve simultaneously as official court reporter and assistant deputy jury commissioner of the Hardin County Court of Common Pleas while serving as a township fiscal officer, provided that it is physically possible for one person to hold these three positions.
4. A person may serve simultaneously as administrator of a court of common pleas and a township fiscal officer, provided that it is physically possible for one person to hold both positions.



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OPINION NO. 2014-022

The Honorable Bradford W. Bailey
Hardin County Prosecuting Attorney
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Suite 50
Kenton, Ohio 43326-1575

Dear Prosecutor Bailey:

We have received your request for an opinion whether a person may serve as a township fiscal officer¹ while holding multiple positions with the Hardin County Court of Common Pleas. You explain that in the Hardin County Court of Common Pleas, the positions of court administrator, official court reporter, and assistant deputy jury commissioner are held by one person.² This person would now like to seek election to the office of fiscal officer of a township located in Hardin County.³

¹ Your letter refers to the position of “township clerk.” The General Assembly has renamed the office of “township clerk” as “township fiscal officer.” *See* 2005-2006 Ohio Laws, Part I, 406, 458 (Sub. S.B. 107, eff. Dec. 20, 2005).

² Your letter also indicates that this person serves as court bailiff for the Hardin County Court of Common Pleas. In subsequent conversations with a member of my staff, you informed us that she does not perform duties of a court bailiff but rather has been given the title of bailiff as an honorary title. *See generally* R.C. 2301.12(B) (appointment of a criminal bailiff by a court of common pleas); R.C. 2301.15-.17 (duties of a criminal bailiff); R.C. 2701.07 (appointment of court constables, commonly referred to as bailiffs, by a court of common pleas). Because she does not perform the statutory duties of a bailiff, we will not consider the compatibility of a bailiff with the other four positions that you have asked about.

³ Pursuant to R.C. Chapter 504, townships that meet certain qualifications are authorized to adopt a limited home rule government. R.C. 504.01. A limited home rule township contrasts with a statutory township, which is a township that has not adopted this limited home rule form of township government. As a practical matter, R.C. Chapter 504 permits a limited home rule township to exercise a greater measure of authority, in a greater number of matters, than the authority granted to townships generally by the other provisions of Title 5 of the Revised Code. *See, e.g.*, R.C. 504.04. No township in Hardin County has adopted this form of government, and, therefore, this opinion does not address the compatibility of a fiscal officer of a limited home rule township.

Accordingly, you wish to know whether the positions of township fiscal officer, court administrator, official court reporter, and assistant deputy jury commissioner of a court of common pleas are compatible.

The following analysis is used to determine whether a person may serve simultaneously in multiple public positions:

1. Are any of the positions in the classified service for purposes of R.C. 124.57?
2. Does a constitutional provision or statute prohibit holding the positions at the same time?
3. Is one position subordinate to, or in any way a check upon, another position?
4. Is it physically possible for one person to discharge the duties of the various positions?
5. Is there an impermissible conflict of interest between the positions?
6. Are there local charter provisions, resolutions, or ordinances that are controlling?
7. Is there a federal, state, or local departmental regulation applicable?

2007 Op. Att’y Gen. No. 2007-023, at 2-228; 2003 Op. Att’y Gen. No. 2003-041, at 2-335 to 2-336; *see also* 2011 Op. Att’y Gen. No. 2011-029, at 2-234 to 2-235. Before addressing these questions, it is helpful to begin with a brief overview of each of the four positions in question.

A township fiscal officer is elected to serve a four year term of office. R.C. 507.01. She is responsible for recording the proceedings of the board of township trustees, R.C. 507.04(A), notifying the board of elections of vacancies in township elective offices and of township boundary changes, R.C. 507.051, and administering oaths and certifying affidavits that pertain to the business of the township, R.C. 507.06. Additionally, a township fiscal officer has various duties related to the financial affairs of the township. *See, e.g.*, R.C. 133.19(A) (certifies to the board of township trustees the estimate of the maximum maturity of bonds for permanent improvements and that all permanent improvements have an estimated life or period of usefulness of at least five years); R.C. 133.27(A)(4) (signs R.C. Chapter 133 securities issued on behalf of the board of township trustees). These duties include maintaining an accurate record of the township’s accounts and transactions, R.C. 507.04(A), countersigning all orders for payment of township monies, R.C. 507.11(B), and serving as the township’s fiscal officer for purposes of R.C. Chapter 5705 (tax levy law), R.C. 5705.01(D).

A court administrator is appointed by the judges of the court of common pleas and holds her position at the will of the judges. R.C. 2301.12(E).⁴ She serves under the direction and supervision of the judges and assumes duties, other than judicial, that are delegated to her by the judges. *Id.* You have provided us with a job description for the position of court administrator of the Hardin County Court of Common Pleas. According to this job description, the court administrator's duties include:

[o]verseeing the daily operation of the Court, including budget management, payroll, and employee vacation and sick time accumulation; managing court personnel; scheduling cases and issuing hearing notices; document production; data entry; assist[ing] in case management; handling and indexing evidence in all divisions; preparation of the monthly Supreme Court Reports; attending and recording court hearings; handling of jurors and their needs during trial and deliberations ... and any other tasks that may be required from time to time to carry out the above functions and as directed by the Common Pleas Court General Division Judge.

Thus, the court administrator is responsible for overseeing the court's day-to-day operations and performing various administrative tasks on behalf of the court.

An official court reporter is appointed by a court of common pleas for a term not exceeding three years. R.C. 2301.18. Pursuant to R.C. 2301.20, all civil and criminal actions in the court of common pleas must be recorded. The official court reporter must "take accurate notes of or electronically record the oral testimony." R.C. 2301.20. You have informed us that the official court reporter of the Hardin County Court of Common Pleas electronically records the court's proceedings. If the court or either party to a criminal or civil suit requests written transcripts of any portion of the proceeding, the official court reporter "shall make full and accurate transcripts of the notes or electronic recording" of the proceeding. R.C. 2301.23. An official court reporter is also responsible for recording testimony of witnesses before a grand jury, *see* R.C. 2301.25, and may be appointed as a referee to take and report evidence in causes pending in any of the courts of this state, R.C. 2301.26.

Finally, an assistant deputy jury commissioner is appointed by the court of common pleas' commissioners of jurors. R.C. 2313.02(A). An assistant deputy jury commissioner may be authorized to perform any duty or class of duties that a commissioner of jurors may perform. R.C. 2313.02(B); *see also* R.C. 3.06(A) ("[a] deputy, when qualified, may perform any duties of his principal"). These duties include making annual and supplementary jury lists, selecting a sufficient number of electors from such lists to constitute the required number of prospective jurors, and notifying prospective jurors that they have been drawn for jury duty. R.C. 2313.06-.10; *see also* R.C. 1901.25 (municipal court may provide that county jury commissioners summon jurors for municipal court); R.C. 1907.28 (county court may provide that county jury commissioners summon jurors for

⁴ Pursuant to R.C. 2301.12(E), a court administrator may be appointed by the court of common pleas "[i]n counties having a population in excess of three hundred thousand as ascertained by the last preceding federal census[.]"

county court); R.C. 2101.30 (commissioners of jurors shall draw jurors for probate court); R.C. 2939.02 (commissioners of jurors shall draw jurors for grand jury); 1965 Op. Att’y Gen. No. 65-51, at 2-96 to 2-97 (discussing duties of a jury commissioner).

Discussion of R.C. 124.57

The first question of the compatibility analysis concerns the application of R.C. 124.57 to each of the positions you have asked about. R.C. 124.57 prohibits, except as provided therein, an officer or employee in the classified service of the state, the several counties, cities, city school districts, and civil service townships from holding partisan political offices and employments. 2009 Op. Att’y Gen. No. 2009-018, at 2-128. We must determine whether the positions of township fiscal officer, court administrator, official court reporter, or assistant deputy jury commissioner are in the classified civil service and, thus, subject to R.C. 124.57’s prohibition.

The position of township fiscal officer is in the unclassified civil service because, *inter alia*, it is an elected position. See R.C. 124.11(A)(1) (the unclassified service includes “[a]ll officers elected by popular vote or persons appointed to fill vacancies in those offices”); R.C. 507.01 (election of township fiscal officer); 1999 Op. Att’y Gen. No. 99-045, at 2-279. See also generally 2003 Op. Att’y Gen. No. 2003-041, at 2-337 to 2-338 (explaining that R.C. 124.57’s prohibition does not apply to officers and employees in the service of a township that is not a civil service township and, further, that the classified service of a civil service township is limited to persons employed by civil service township police and fire departments having ten or more full-time paid employees).

Pursuant to R.C. 2301.12(E), an administrator of a court of common pleas holds her position at the will of the judges appointing her. Accordingly, an administrator of a court of common pleas is a member of the unclassified civil service. See 2012 Op. Att’y Gen. No. 2012-018, at 2-162 (“[u]nclassified employees serve at the pleasure of the appointing authority and ‘have no vested property interest in continued employment’” (quoting *Garvey v. Montgomery*, 128 Fed. Appx. 453, 465 n.9 (6th Cir. 2005))); see also 1976 Op. Att’y Gen. No. 76-031, at 2-99 (the fact that employees of the domestic relations division of a court of common pleas may be dismissed by the judge supports the conclusion that such employees are unclassified civil servants). An official court reporter is also in the unclassified civil service. R.C. 124.11(A)(10) (the unclassified civil service includes, *inter alia*, bailiffs, constables, and official stenographers of courts of record). Finally, you have informed us that the position of assistant deputy jury commissioner of the Hardin County Court of Common Pleas is in the unclassified civil service. Because none of the positions that you have asked about are in the classified civil service, R.C. 124.57 does not prevent a person from holding these positions simultaneously.

Applicability of Constitutional Provisions or Statutes, Local Charter Provisions, Regulations, or Ordinances, or Federal, State, or Local Departmental Regulations

For ease of discussion, we will address the second, sixth, and seventh questions of the compatibility analysis together. The second question asks whether a constitutional provision or statute prohibits a person from holding the positions simultaneously. We are not aware of any constitutional

provisions or statutes that prohibit a person serving as a township fiscal officer, court administrator, official court reporter, or assistant deputy jury commissioner from holding another public position.

Questions six and seven concern the applicability of local charter provisions, resolutions, or ordinances and federal, state, and local regulations. We find no federal or state regulation prohibiting a person from simultaneously serving in the positions in question.⁵ Whether an applicable local charter provision, resolution, ordinance, or departmental regulation prohibits a person from serving in these positions simultaneously is a question for local officials to answer. For purposes of this opinion, we assume that no local charter provision, resolution, ordinance, or departmental regulation prohibits such service.

Physical Ability to Hold and Serve in the Positions

The fourth question asks whether it is physically possible for one person to discharge the duties of the various positions. This is a factual question that is best addressed by local officials because they may determine more accurately the time constraints and demands imposed upon the positions in question. *See* 2007 Op. Att’y Gen. No. 2007-023, at 2-231. We caution that a township fiscal officer, as an elected township officer, is required to perform statutory duties and, where the nature of such duties requires the fiscal officer to be present at a particular time or place, or act in a particular manner, the fiscal officer must be able to do so. *But see* 1986 Op. Att’y Gen. No. 86-057 (syllabus, paragraph 1) (“[t]o the extent that a township clerk’s [now township fiscal officer’s] statutory duties consist of functions that need not, by their nature, be performed at a particular time or place or in a particular manner, the board of township trustees does not have authority to regulate the time, place, or manner in which such duties are performed”). Similarly, a court administrator, official court reporter, and assistant deputy jury commissioner must be able to carry out the duties of her position 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 duties of each of the positions.

Subordination and Control and Conflicts of Interest

We will address the remaining two questions of the compatibility analysis together. The third question asks whether one position is subordinate to, or in any way a check upon, another. As explained by the Ohio Supreme Court:

⁵ Pursuant to 5 U.S.C.A. § 1502(a)(3) (West 2007 & Supp. 2014), a “[s]tate or local officer or employee,” *see* 5 U.S.C.A. § 1501(4) (West Supp. 2014), may not be a candidate for elective office if that officer or employee’s salary is paid completely, directly or indirectly, by loans or grants made by the federal government. This prohibition is commonly known as the Hatch Act. Assuming that the salaries of the positions of court administrator, official court reporter, and assistant deputy jury commissioner are not paid entirely with federal loan or grant money, the Hatch Act will not prevent a person serving in these positions from seeking election to the office of township fiscal officer.

“One of the most important tests as to whether offices are incompatible is found in the principle that incompatibility is recognized whenever one office is subordinate to the other in some of its important and principal duties, *or is subject to supervision or control by the other * * * or is in any way a check upon the other*, or where a contrariety and antagonism would result from an attempt by one person to discharge the duties of both. * * *

One person may not hold two public offices where the duties of one may be so administered that favoritism and preference may be accorded the other, and result in the accomplishment of purposes and duties of the second position which otherwise could not be effected.”

State ex rel. Hover v. Wolven, 175 Ohio St. 114, 116-17, 191 N.E.2d 723 (1963) (quoting 44 Ohio Jur. 2d Public Officers § 37, at 524) (emphasis added).

Question five of the analysis asks whether impermissible conflicts of interest exist between the positions.⁶ A person may not hold two or more public positions simultaneously if she would be subject to divided loyalties, conflicting duties, or the temptation to act other than in the public’s best interest. *See* 2003 Op. Att’y Gen. No. 2003-010, at 2-70. If a review of the powers, duties, and responsibilities of the respective positions discloses potential conflicts of interest, we must then determine whether the conflicts may be avoided sufficiently or eliminated entirely, thus allowing the person to hold the positions simultaneously. 2006 Op. Att’y Gen. No. 2006-047, at 2-451. The factors weighed in making this determination include the probability of the conflict occurring, the ability of the person to remove herself from the conflict should it arise, whether the person exercises decision-making authority in each position, and whether the conflict relates to the primary functions of each position or to financial or budgetary matters. *Id.*

A. The Position of Court Administrator is Incompatible with the Positions of Official Court Reporter and Assistant Deputy Jury Commissioner

We will first consider the positions of court administrator, official court reporter, and assistant deputy jury commissioner. We must determine whether any of these positions is subordinate to, or in any way a check upon, another. An administrator of a court of common pleas is appointed by, and thus accountable to, the judges of the court of common pleas. *See* R.C. 2301.12(E) (an administrator of a court of common pleas “hold[s] his position at the will of the judges appointing him, and under the direction and supervision of the judges”). Likewise, an official court reporter is appointed by the

⁶ The Ohio Ethics Commission is authorized to issue advisory opinions concerning the ethics and conflict of interest provisions of R.C. Chapter 102 and R.C. 2921.42-.43. R.C. 102.08. In light of this grant of authority, we believe it is proper to refrain from interpreting such provisions by way of a formal opinion and recommend that you consult with the Ohio Ethics Commission for advice and interpretations concerning these statutory provisions.

court of common pleas, R.C. 2301.18, and an assistant deputy jury commissioner is appointed by the court's jury commissioners, R.C. 2313.02(A). According to the job description that you have provided us, the administrator of the Hardin County Court of Common Pleas oversees the daily operation of the court, handles payroll and employee vacation and sick time accumulation, and manages court personnel. Thus, the court administrator is responsible for overseeing and managing both the official court reporter and assistant deputy jury commissioner. Additionally, the court administrator handles payroll and vacation and sick time accumulation for both of these positions. Because the court administrator supervises, and administers the compensation and benefits of, the official court reporter and assistant deputy jury commissioner of the court of common pleas, the administrator of the Hardin County Court of Common Pleas may not serve simultaneously in either of these positions. *See generally State ex rel. Baden v. Gibbons*, 17 Ohio Law Abs. 341, 344 (Ct. App. Butler County 1934) (“[i]t has long been the rule in this state that one may not hold two positions of public employment when the duties of one may be so administered and discharged that favoritism and preference may be accorded the other”). Accordingly, we find the positions of court administrator, official court reporter, and assistant deputy jury commissioner of the Hardin County Court of Common Pleas incompatible.

B. One Person May Not Serve Simultaneously as Court Administrator, Official Court Reporter, Assistant Deputy Jury Commissioner, and Township Fiscal Officer

Because we have found the positions of court administrator, official court reporter, and assistant deputy jury commissioner incompatible, it follows that one person may not simultaneously hold these three positions and that of township fiscal officer. Accordingly, we find that a person may not serve simultaneously in the four positions that you have asked about. We will, however, proceed to examine whether a person may hold three or fewer of these positions at the same time.

C. A Township Fiscal Officer May Serve Simultaneously as an Official Court Reporter and Assistant Deputy Jury Commissioner of a Court of Common Pleas

We now turn to whether the positions of township fiscal officer, official court reporter, and assistant deputy jury commissioner are subordinate to, or in any way a check upon, each other. A township fiscal officer is elected by, and responsible to, the township's electorate. *See* R.C. 507.01. An official court reporter is appointed by the court of common pleas, R.C. 2301.18, and an assistant deputy jury commissioner is appointed by the court's jury commissioners, R.C. 2313.02(A). The three positions operate independently of each other and are not required to assign duties to or supervise each other. Accordingly, the positions of township fiscal officer, official court reporter, and assistant deputy jury commissioner are in no way subordinate to, or in any way a check upon, each other.

We must also consider the fifth and final question of the compatibility analysis, whether impermissible conflicts of interest exist between the positions. Our review of the powers, duties, and responsibilities of an official court reporter and an assistant deputy jury commissioner reveals no conflicts of interest between the positions. As explained above, an official court reporter is

responsible for taking accurate notes or electronically recording the court's proceedings and preparing transcripts when requested. R.C. 2301.20; R.C. 2301.23. An assistant deputy jury commissioner assists in the preparation of jury lists and the selection of prospective jurors. *See* R.C. 2313.02; R.C. 2313.06-.10. While the positions are related in that they both perform functions on behalf of the court of common pleas, their duties do not overlap or conflict. Accordingly, the positions of official court reporter and assistant deputy jury commissioner of a court of common pleas are compatible.

Our review of the powers, duties, and responsibilities of a township fiscal officer, however, discloses potential conflicts of interest that may arise when a person serves as township fiscal officer, official court reporter, and assistant deputy jury commissioner of a court of common pleas. First, the person may be subject to a conflict of interest in her roles with the court should a matter involving the township come before the court of common pleas. *See* R.C. 503.01 (a township is a body politic and corporate that may sue and be sued). If a matter involving the township comes before the court of common pleas with which the township fiscal officer holds additional public positions, the person may find herself subject to divided loyalties.

Of the many legal actions involving a township that may come before a court of common pleas, of particular concern here are annexation and detachment proceedings involving the township. *See generally* R.C. Chapter 709 (annexation and detachment). Pursuant to R.C. 709.07, certain individuals and political subdivisions are authorized to file an appeal in the court of common pleas from a resolution of the board of county commissioners granting or denying a petition for annexation of township property. Similarly, under certain circumstances, a petition for detachment may be filed in the court of common pleas. R.C. 709.41. Resolution of such actions may ultimately affect the township fiscal officer's compensation, which is directly related to the size of the township's budget. *See* R.C. 507.09(A) (establishing the compensation of a township fiscal officer based on the size of the township's budget). This is because when a township gains or loses territory in annexation or detachment proceedings, the township's tax base and tax revenue are either increased or decreased accordingly. *See* 2007 Op. Att'y Gen. No. 2007-023, at 2-234. *See generally* *Washington Twp. Bd. of Trs. v. McLaughlin*, 117 Ohio App. 3d 570, 577, 690 N.E.2d 1348 (Montgomery County 1997) (loss of tax base and tax revenue are common to all annexations). In such a situation, the township's budget is increased or decreased correspondingly. *See* 2007 Op. Att'y Gen. No. 2007-023, at 2-234 to 2-235. Such a change in the township's budget could ultimately increase or decrease the township fiscal officer's compensation, which is determined based on the size of the township's budget. *See* R.C. 507.09(A). Accordingly, a conflict of interest exists between the positions of township fiscal officer, official court reporter, and assistant deputy jury commissioner of a court of common pleas because a matter involving the township, including a matter involving annexation or detachment, may come before the court of common pleas with which the person serves, thus subjecting the person to conflicting interests.

We believe, however, that this potential conflict is insufficient to render the positions of township fiscal officer, official court reporter, and assistant deputy jury commissioner of a court of common pleas incompatible. An official court reporter and an assistant deputy jury commissioner do not have the ability to influence the outcome of any particular case before the court of common pleas because they do not have ultimate decision-making authority. Rather, an official court reporter and an

assistant deputy jury commissioner perform largely ministerial duties. *See, e.g.*, R.C. 2301.20 (court reporter shall take accurate notes of or electronically record oral testimony); R.C. 2313.06 (duty of jury commissioners to annually compile a new and complete jury source list). Further, should an action involving the township come before the court of common pleas with which the person serves as official court reporter and assistant deputy jury commissioner, we will presume that she will perform her duties in a regular and lawful manner in the absence of evidence to the contrary. *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 ... will be presumed to have properly performed their duties in a regular and lawful manner and not to have acted illegally or unlawfully”). Accordingly, the fact that legal actions involving the township may come before the court of common pleas does not render the positions of township fiscal officer, official court reporter, and assistant deputy jury commissioner incompatible.

Additional conflicts of interest exist between these positions because of budgetary and taxing issues. First, a conflict of interest may exist because of competition between the township and the county for tax moneys generated within the ten-mill limitation.⁷ Except as provided in R.C. 5705.28(B) or R.C. 5705.281,⁸ the taxing authority of a township is required to prepare, adopt, and submit an annual tax budget to the county budget commission. R.C. 5705.28(A). With respect to funding for a court of common pleas, the court must annually submit a written request for an appropriation to the board of county commissioners. R.C. 307.01(B); *see also* R.C. 5705.28(C)(1) (to assist the board of county commissioners in the preparation of the tax budget, “the head of each department, board, commission, and district authority entitled to participate in any appropriation or revenue of [the county] shall file with the [board] ... before the forty-fifth day prior to the date on which the budget must be adopted, an estimate of contemplated revenue and expenditures for the ensuing fiscal year”). The board of county commissioners is the taxing authority of the county and therefore must prepare, adopt, and submit to the county budget commission an annual tax budget for the county, which includes the court of common pleas’ necessary operating expenses for the ensuing fiscal year. *See* R.C. 5705.29(A)(1); *see also* R.C. 5707.02 (a board of county commissioners may levy an annual tax for the purpose of creating a judicial and court fund; tax revenues from this fund shall be expended for payment of expenses of the various courts of the county, including the court of common pleas).

⁷ In Ohio, property may not be taxed in excess of one percent of its true value in money for state and local purposes unless approved by the voters or as provided for by a municipal charter. Ohio Const. art. XII, § 2. This is known as the “ten-mill limitation.” *See* R.C. 5705.02-.03; *see also* 2011 Op. Att’y Gen. No. 2011-008, at 2-64 n.3.

⁸ R.C. 5705.28(B)(2)(a) provides that “[t]he taxing authority of a taxing unit that does not levy a tax is not required to adopt a tax budget pursuant to [R.C. 5705.28(A)].” R.C. 5705.281 authorizes the county budget commission to waive the requirement that the taxing authority of a subdivision adopt a tax budget pursuant to R.C. 5705.28(A).

After the annual tax budgets are submitted, the county budget commission revises and adjusts the estimates of balances and receipts from all sources for each fund within the township and county budget and adjusts the levies of the township and the county within the limits of the law. R.C. 5705.31; R.C. 5705.32. A county competes with every other subdivision in the county, including townships, for a finite amount of the revenue generated within the ten-mill limitation. 2012 Op. Att’y Gen. No. 2012-008, at 2-54. Likewise, a township competes with every other subdivision in the county, including the county itself, for a finite amount of the revenue generated within the ten-mill limitation. *Id.* at 2-54 to 2-55. Because revisions and adjustments made by the county budget commission directly affect the amount of tax money generated within the ten-mill limitation that will be allotted to townships and the county, both townships and the county are permitted to have representatives appear before the county budget commission to explain their financial needs. R.C. 5705.32(E). A person who serves as a township fiscal officer may be required to assist in preparing the township’s annual tax budget and explaining it to the county budget commission. 2007 Op. Att’y Gen. No. 2007-023, at 2-239. A township fiscal officer who also serves as an official court reporter and assistant deputy jury commissioner with the county’s court of common pleas may be subject to influences that could prevent her from making completely objective, disinterested decisions when explaining the township’s financial needs to the county budget commission. This is because an argument that the township is entitled to a certain level of funds means a reduced level of funds available for the county’s potential use, which in turn may mean that fewer funds will be available to the county’s court of common pleas.

A similar conflict of interest exists because of the competition between a township and the county for moneys from the undivided local government fund. *See* R.C. 5747.50-.55. Because both townships and counties are “subdivisions” for purposes of R.C. 5747.50-.55, both may receive disbursements of money from the undivided local government fund. *See* R.C. 5747.01(Q)(1); 2012 Op. Att’y Gen. No. 2012-008, at 2-56. Townships and the county are provided an opportunity to appear before the budget commission to establish their need for moneys from this fund. R.C. 5747.51(B); 2012 Op. Att’y Gen. No. 2012-008, at 2-56. A township fiscal officer who also serves as official court reporter and assistant deputy jury commissioner of a court of common pleas may be subject to divided loyalties if she were required to explain to the county budget commission the township’s need for moneys from the undivided local government fund. Advocating for additional moneys for the township could mean fewer funds for the county, which is responsible for funding the court of common pleas. *See* R.C. 307.01.

The foregoing tax and budgetary conflicts may, however, be sufficiently avoided. First, an official court reporter and an assistant deputy jury commissioner do not prepare or adopt an annual tax budget that is submitted to the county budget commission nor do they appear before the county budget commission. Thus, the person will not be responsible for preparing or presenting competing tax budgets to the county budget commission. Further, a township fiscal officer is not statutorily required to prepare the township’s tax budget or present it to the county budget commission. 2007 Op. Att’y Gen. No. 2007-023, at 2-239. Rather, R.C. 5705.28 requires the township’s taxing authority to adopt an annual tax budget. As used in R.C. Chapter 5705, “taxing authority” means the board of township

trustees in the case of a township. R.C. 5705.01(C). Accordingly, “a township fiscal officer is not subject to conflicts of interest involving the township’s budget or obtaining moneys from the county budget commission.” 2007 Op. Att’y Gen. No. 2007-023, at 2-239.

A board of township trustees may, however, require the township fiscal officer to appear before the county budget commission and defend the township’s budget. *See* 1992 Op. Att’y Gen. No. 92-053, at 2-218. Even if the township fiscal officer is required to appear before the county budget commission, the fact that she holds additional public positions with a political subdivision that competes with the township for moneys generated within the ten-mill limitation and moneys from the undivided local government fund is, by itself, an insufficient reason to find that the township fiscal officer is subject to an impermissible conflict of interest. *Cf.* 2000 Op. Att’y Gen. No. 2000-025, at 2-172 (fact that township trustee holds an additional employment with a political subdivision that competes with the township for an appropriation of tax proceeds from the county budget commission is an insufficient reason to find that the trustee is subject to an impermissible conflict of interest). If this were deemed a sufficient reason, a township fiscal officer would be prevented from holding any employment or office with a political subdivision that competes with the township for tax moneys generated within the ten-mill limitation or moneys from the undivided local government fund. Moreover, while the township and county each prepare and submit a tentative tax budget and request moneys from the undivided local government fund, it is the county budget commission that actually allocates to the township and the county tax proceeds within the ten-mill limitation and moneys from the undivided local government fund. *See, e.g.,* R.C. 5705.31; R.C. 5705.32; R.C. 5747.51-.53. Accordingly, we find the conflicts of interest involving tax budgets and allocation of moneys from the undivided local government fund insufficient to render the positions of township fiscal officer, official court reporter, and assistant deputy jury commissioner of a court of common pleas incompatible.

A final budgetary conflict may exist between these positions because of competition between the township and the county for tax moneys in excess of the ten-mill limitation. As taxing authorities of partially coextensive subdivisions, *see* R.C. 5705.01(C), a board of township trustees and a board of county commissioners are permitted to place levies on the ballot for taxes in excess of the ten-mill limitation. R.C. 5705.07; *see also* R.C. 5705.19. A board of county commissioners is authorized to place a tax levy on the ballot for the purpose of providing financial support to the court of common pleas. *See* R.C. 307.45(A)(2); R.C. 5705.19(LL). Where both the township and county contemplate asking the voters for a tax levy for additional funding, a person who serves simultaneously as township fiscal officer and with the court of common pleas might find herself subject to divided loyalties and influences that may prevent her decisions, as township fiscal officer, from being completely objective and disinterested. For example, if the county has authorized a tax levy for the financial support of the court of common pleas, the person as township fiscal officer might be apprehensive about advocating in favor of placing a township levy on the ballot for fear that the levy for the support of the court of common pleas may be rejected in favor of the township levy.

We believe, however, that this conflict of interest is also insufficient to render the positions of township fiscal officer, official court reporter, and assistant deputy jury commissioner of a court of common pleas incompatible. It is unlikely that the township will contemplate placing a tax levy on

the ballot every time the county has a levy for the support of the court of common pleas on the ballot. Thus, this conflict of interest should arise infrequently. Furthermore, while a township fiscal officer may be involved in determining whether a township tax levy is necessary, it is the board of township trustees, and not the township fiscal officer, that ultimately decides whether to place a tax levy before the voters. *See* R.C. 5705.07; *see also* R.C. 5705.01(C).

In sum, we find no impermissible conflicts of interest between the positions of township fiscal officer, official court reporter, and assistant deputy jury commissioner of a court of common pleas. Because all seven questions of the compatibility analysis may be answered in favor of compatibility with regard to these positions, we conclude that a person may serve simultaneously as official court reporter and assistant deputy jury commissioner of the Hardin County Court of Common Pleas while serving as a township fiscal officer, provided that local officials determine it is physically possible for one person to hold these three positions.

D. A Township Fiscal Officer May Serve Simultaneously as an Administrator of a Court of Common Pleas

Finally, we must apply the remaining questions of the compatibility analysis, questions three and five, to the positions of township fiscal officer and court administrator to determine whether a person may simultaneously hold these two positions. Question three asks whether one position is subordinate to, or in any way a check upon, the other. A township fiscal officer is elected by, and responsible to, the township's electorate. *See* R.C. 507.01. An administrator of a court of common pleas is appointed by, and thus accountable to, the judges of the court of common pleas. *See* R.C. 2301.12(E). The positions thus serve different masters and are not subordinate to each other. They also operate independently of each other and are not required to assign duties to, or supervise, the other.

A review of the powers, duties, and responsibilities of the positions, however, discloses that a person who serves as a township fiscal officer and administrator of a court of common pleas may be subject to the same conflicts of interest discussed above with respect to a person who serves simultaneously as a township fiscal officer, official court reporter, and assistant deputy jury commissioner of a court of common pleas. Nevertheless, we find that these conflicts are insufficient to render the positions of township fiscal officer and administrator of a court of common pleas incompatible.

First, the fact that a legal action involving the township may come before the court of common pleas with which the person serves as court administrator does not render the positions incompatible. Like an official court reporter and an assistant deputy jury commissioner, a court administrator does not have the power to influence the outcome of any particular case before the court of common pleas. A court administrator does not exercise any decision-making authority in legal actions before the court. Rather, a court administrator oversees the court's daily operations and performs a variety of administrative tasks on behalf of the court. Therefore, this conflict does not render the two positions incompatible.

That the township and the county compete with each other for moneys generated within the ten-mill limitation and moneys from the undivided local government fund is also an insufficient reason to find these two positions incompatible. A court administrator does not prepare or adopt an annual tax budget that is submitted to the county budget commission. Likewise, a township fiscal officer is not statutorily required to prepare the township's tax budget, which is adopted by the board of township trustees pursuant to R.C. 5705.28. *See also* R.C. 5705.01(C). Even if the township fiscal officer is required to appear before the county budget commission to defend the township's budget, the person will not be presenting competing tax budgets to the county budget commission because a court administrator is not responsible for appearing before the county budget commission. Finally, ultimate responsibility for allocating tax revenues within the ten-mill limitation and moneys from the undivided local government fund rests with the county budget commission, and not a township fiscal officer.

Likewise, the fact that the township and county compete with each other for tax moneys in excess of the ten-mill limitation does not render the positions of township fiscal officer and administrator of a court of common pleas incompatible. While a township may consider placing a tax levy before the voters at the same election that a county proposes a tax levy for support of the court of common pleas, it is unlikely that this will occur at every election. Further, it is the board of township trustees, and not the township fiscal officer, that decides whether to place a tax levy before the township's electorate. *See* R.C. 5705.07; *see also* R.C. 5705.01(C).

Accordingly, we find that the previously mentioned conflicts of interest do not render the positions of township fiscal officer and administrator of a court of common pleas incompatible. A person may serve simultaneously in these positions, provided that it is physically possible for one person to hold both positions.

Conclusions

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

1. The position of administrator of the Hardin County Court of Common Pleas is incompatible with the positions of official court reporter and assistant deputy jury commissioner of the Hardin County Court of Common Pleas.
2. A person may not serve simultaneously as court administrator, official court reporter, and assistant deputy jury commissioner of the Hardin County Court of Common Pleas while serving as a township fiscal officer.
3. A person may serve simultaneously as official court reporter and assistant deputy jury commissioner of the Hardin County Court of Common Pleas while serving as a township fiscal officer, provided that it is physically possible for one person to hold these three positions.

4. A person may serve simultaneously as administrator of a court of common pleas and a township fiscal officer, provided that it is physically possible for one person to hold both positions.

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