

**OPINION NO. 81-087****Syllabus:**

If it is physically possible for one person to hold both positions and if the holding of both positions is not prohibited by local law, the positions of township clerk and treasurer's assistant for a local board of education are compatible.

---

**To: John A. Pfefferle, Erie County Pros. Atty., Sandusky, Ohio**  
**By: William J. Brown, Attorney General, December 16, 1981**

I have before me your request for my opinion concerning the compatibility of the position of treasurer's assistant for a board of education and the position of township clerk. It is my understanding, based on information furnished by your office, that the woman who seeks to hold these positions is a treasurer's assistant for a local board of education which includes within its district the township in which she has been elected clerk.

In 1979 Op. Att'y Gen. No. 79-III, I set forth the seven questions which must be addressed in any compatibility analysis. Those seven questions read as follows:

1. Is either of the positions a classified employment within the terms of R.C. 124.57?
2. Do the empowering statutes of either position limit the outside employment permissible?
3. Is one office subordinate to, or in any way a check upon, the other?
4. Is it physically [im]possible for one person to discharge the duties of both positions?
5. Is there a conflict of interest between the two positions?
6. Are there local charter provisions or ordinances which are controlling?
7. Is there a federal, state, or local departmental regulation applicable?

In order for the position at issue to be compatible, each of the seven questions must be answered in the negative. If even one of the questions receives an affirmative response, the positions are incompatible.

R.C. 124.57, the subject of the first question, prohibits a classified civil servant from taking part in specified forms of political activity. Neither the position of township clerk nor that of treasurer's assistant for a local board of education is a classified employment. Thus, the prohibition found in R.C. 124.57 is inapplicable and the first question may be answered in the negative.

The second question concerns the limiting effect of the empowering statutes governing either position. Neither the statutes governing a board of education and its employees nor those governing a township clerk limit the scope of permissible outside employment in such a manner as to prevent one person from serving both as a school board treasurer's assistant and as a township clerk. See generally R.C. Chapter 3313; R.C. Chapter 507. Consequently, the second question may also be answered in the negative.

The third question asks whether one position is subordinate to or a check upon the other. I have been unable to discover any way in which a school board treasurer's assistant would be either subordinate to or a check upon a township clerk. A local board of education and its employees operate independently of the supervision of a township and its clerk. In like manner, a township clerk performs his duties free from the interference of a local board of education. I conclude, therefore, that the third question may be answered in the negative.

The fifth question concerns the potential for a conflict of interest between the two positions. It is my understanding, based on information furnished by your office and the local board of education, that the position of school board treasurer's assistant is in the nature of a clerical post. The primary duties of the school board treasurer's assistant consist of bookkeeping and the reconciliation of accounts. This information is then transmitted to the treasurer of the board of education for his use. The treasurer's assistant has no duty which involves the township in question. The responsibilities of the township clerk include the recording of the proceedings of the township trustees, R.C. 507.04, the making of a statement of the receipts and expenditures of the township, R.C. 507.07, the recording of bonds, R.C. 507.08, and the administering of oaths and the certification of affidavits, R.C. 507.06. It is only with regard to the administration of oaths and the certification of affidavits that a conflict might arguably exist. R.C. 507.06 provides that "[t]he township clerk may administer oaths, and take and certify affidavits which pertain to the business. . . of the board of education of his local school district, or are connected with the official business of the local school district, including the official oaths of. . . school officers." Thus, the individual in question could, in her capacity as township clerk, be called upon to administer oaths to, or certify the affidavits of, school officials with whom she works on a daily basis. The potential for a conflict in such a situation is readily apparent. However, the fact that a conflict may arise does not necessarily mean that the positions are incompatible. Rather, a further inquiry into the immediacy of the conflict must be made. "[W]here possible conflicts are remote and speculative, the common law incompatibility or conflict of interest rules are not violated." 1979 Op. Atty Gen. No. 79-III at 2-372.

It is my belief that the conflict in this instance is remote and speculative. R.C. 507.06 states that the township clerk may administer oaths and certify affidavits of school officials. Thus, R.C. 507.06 is permissive rather than mandatory in nature. Dennison v. Dennison, 165 Ohio St. 146, 149, 134 N.E.2d 574, 576 (1956) ("Ordinarily, the word, 'shall,' is a mandatory one, whereas 'may' denotes the granting of discretion."). The township clerk could, therefore, withdraw from the conflict without neglecting a statutory duty. Moreover, I note that the functions discussed in R.C. 507.06 may be performed by any notary public. R.C. 147.07. Thus, the failure of the township clerk to administer oaths to, or certify the affidavits of, school officials would not result in great hardship for those

persons. Due to the fact that the only potential conflict between the positions under consideration is remote and speculative, question five may also be answered in the negative.

Physical impossibility and the applicability of local charter and ordinance provisions, the subjects of questions four and six, have traditionally been left to the discretion of local officials who are familiar with the facts and subject matter. Therefore, I am assuming, for the purposes of this opinion, that questions four and six will, after consideration by your office, also receive negative responses.

Question seven concerns the effect of federal, state and local departmental regulations. I am not aware of any such regulations which would prevent one individual from serving as township clerk and treasurer's assistant for a local board of education.

As the above analysis indicates, each of the seven questions has been answered in the negative. Therefore, it is my opinion, and you are advised, that if it is physically possible for one person to hold both positions and if the holding of both positions is not prohibited by local law, the positions of township clerk and treasurer's assistant for a local board of education are compatible.