

OPINION NO. 77-037

Syllabus:

The position of township administrator is incompatible with that of township clerk.

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio
By: William J. Brown, Attorney General, July 12, 1977

I have before me your request for my opinion which asks the following question:

"Is the position of township administrator authorized by Section 505.031, Revised Code, compatible with the office of township clerk?"

R.C. 505.031, which became effective July 21, 1976, provides as follows:

"The board of township trustees may appoint a township administrator, who shall be the administrative head of the township under the direction and supervision of the board and who shall hold office at the pleasure of the board.

In the event that the township administrator is absent from his office by reason of illness, death, vacation, resignation, or removal, the chairman of the board or a qualified person designated by him with the approval of the board shall act as township administrator and perform all duties of such township office, until such time as the township administrator returns to his duties or the board appoints a new township administrator to fill the vacancy.

The board shall fix the salary of the township administrator and cause the same to be paid."

The powers and duties of a township administrator are set forth in R.C. 505.032 which states:

"The township administrator shall, under the direction of the board of township trustees:

- (A) Assist in the administration, enforcement and execution of the policies and resolutions of the board;
- (B) Supervise and direct the activities of the affairs of the divisions of township government under the control or jurisdiction of the board;
- (C) Attend all meetings of the board at which his attendance is required by that body;
- (D) Recommend measures for adoption to the board;
- (E) Prepare and submit to the board such reports as are required by that body, or as he considers advisable;
- (F) Keep the board fully advised on the financial conditions of the township, preparing and submitting a budget for the next fiscal year;

(G) Perform such additional duties as the board may determine by resolution.

The board of township trustees may assign to such township administrator any office, position, or duties under its control; such office, position and duties to be performed under the direction and supervision of the board and to be in addition to those set forth in this section."

The election of a township clerk and the duties associated with that office are provided for in Chapter 507, Revised Code. By virtue of R.C. 507.01, the township clerk is a public officer elected by the electorate in the township in which such clerk is to serve. Similarly, R.C. 505.031, as set forth above, indicates that a township administrator occupies a township office. Your question, then, requires an analysis of whether these two offices are in any way incompatible.

The duties performed by one occupying the relatively new office of township administrator are analogous to and derivative of those of the office of township trustee. R.C. 505.032, supra, vests discretion in the board of township trustees to assign to the township administrator any "office, position, or duties" under the trustees' control. In addition, pursuant to R.C. 505.031, the board of township trustees appoints and fixes the salary of the township administrator and the latter serves under the direction and at the pleasure of the board. Thus, the duties entrusted to a township administrator can be no greater than those conferred by statute on the board of township trustees. The issue, then, of whether the offices of township administrator and township clerk are compatible can only be resolved by considering the compatibility of the offices of township trustee and township clerk.

1904 Op. Atty. Gen. p. 204 was concerned with the question of whether a township trustee could concurrently hold the office of township clerk. My predecessor, in finding the two positions incompatible stated that since the township trustee has the statutory duty to approve the bond of the township clerk, were the same person to hold both offices, that person would be compelled to approve his own bond. I concur with this reasoning. Moreover, R.C. 507.04 requires the township clerk to keep an accurate record of the board's meetings, its accounts and transactions. Clearly the General Assembly intended the township clerk to serve in an independent capacity to insure the accuracy of the record and to preclude any possibility of collusion.

Other sections of the Revised Code imply the independency of the offices of township trustee and township clerk or indicate that the latter is subordinate to the former. R.C. 507.02 provides that the board shall adjust and determine the compensation to be paid the township clerk. While the precise amount of compensation due a clerk is restricted to the sums fixed by R.C. 507.09, subsection (B) of that Section does grant to the board of township trustees partial authority to determine that salary.

Under the traditional test for incompatibility in Gebert, supra, therefore, the office of township trustee is incompatible with the office of township clerk, since some of a clerk's duties are subordinate to those of a trustee. It follows that a township administrator, who by virtue of R.C. 505.032, may perform any duties under the control of the board of township trustees, may not concurrently occupy the office of township clerk.

Accordingly, it is my opinion and you are so advised that the position of township administrator is incompatible with that of township clerk.