

May 3, 2022

The Honorable Dennis Watkins
Trumbull County Prosecuting Attorney
4th Floor Administration Building
160 High Street N.W.
Warren, Ohio 44481-1092

SYLLABUS:

2022-007

The positions of township fiscal officer and member of a board of education for a local school district within the same geographical area are compatible, provided that: (1) the township fiscal officer refrains from assisting in the preparation or presentation of the township's budget; (2) the person, as both a township fiscal officer and a board of education member, refrains from voting on, approving, negotiating, or discussing contracts involving the served township and school district; and (3) the person, as both a township fiscal officer and a board of education member, does not partake in determining if or when to issue a tax abatement that impacts the served township and school district. (1961 Op. Att'y Gen. No. 2480, p. 532; 1911 Op. Att'y Gen. No. 256, vol. II, p. 1204, *followed*).



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OPINION NO. 2022-007

The Honorable Dennis Watkins
Trumbull County Prosecuting Attorney
4th Floor Administration Building
160 High Street N.W.
Warren, Ohio 44481-1092

Dear Prosecutor Watkins:

You have requested an opinion regarding the compatibility of two public positions within the same geographical area. I have framed your question as follows:

May a person serve simultaneously as a township fiscal officer and board of education member for a local school district within the same township?

Two previous Attorney General opinions, in 1961 and 1911, found that the positions of township clerk (the previous title of the township fiscal officer) and local board of education member are compatible. 1961 Op. Att’y Gen. No. 2480, p. 532, and 1911 Op. Att’y Gen. No. 256, vol. II, p. 1204; *see* 1912 Op. Att’y Gen. No. 212, vol. I, p. 481; *see also* 2014 Op. Att’y Gen. No. 2014-022, Slip Op. at 1, n.1; 2-195, n.1 (“The General Assembly has renamed the office of ‘township clerk’ as ‘township fiscal officer’”). Because some duties of the

positions have changed since these opinions were issued, I revisit the question.

For the reasons that follow, I find that the positions are compatible, provided that: (1) the township fiscal officer refrains from assisting in the preparation or presentation of the township's budget; (2) the person, as both a township fiscal officer and a board of education member, refrains from voting on, approving, negotiating, or discussing contracts involving the served township and school district; and (3) the person, as both a township fiscal officer and a board of education member, does not partake in determining if or when to issue a tax abatement that impacts the served township and school district. So long as the person complies with the aforementioned abstentions, a person may serve simultaneously as a township fiscal officer and as a member of a board of education for a local school district within the same township.

I

“An issue of compatibility arises whenever one person wishes to hold simultaneously two or more positions of public service.” *E.g.*, 2022 Op. Att’y Gen. No. 2022-003, Slip Op. at 3. A seven-part test was developed in 1979 for addressing issues of compatibility between two or more positions of public service. The questions ask:

1. Is either position in the classified services for purposes of R.C. 124.57?

2. Does a constitutional provision or statute prohibit a person from serving in both positions at the same time?
3. Is one position subordinate to, or, in any way, a check upon the other position?
4. Is it physically possible for one person to discharge the duties of both positions?
5. Is there an impermissible conflict of interest between the two positions?
6. Are there local charter provisions, resolutions, or ordinances that are controlling?
7. Is there a federal, state, or local departmental regulation applicable?

2022 Op. Att’y Gen. No. 2022-003, Slip Op. at 3-4; 2021 Op. Att’y Gen. No. 2021-005, Slip Op. at 2; 2-19 to 2-20; *see* 1979 Op. Att’y Gen. No. 79-111, at 2-367 to 2-368. For two or more public positions to be compatible, all seven questions must be answered in favor of compatibility.

II

Since a determination of compatibility requires that each of the seven questions be answered in favor of compatibility, I must address all seven questions.

A

Question one deals with classified service. Essentially, R.C. 124.57 “prohibits an officer or employee in the classified service from running for or holding a partisan political office, or engaging in other partisan political activities, and it prevents a partisan political officeholder from serving simultaneously as an officer or employee in the classified service.” 2003 Op. Att’y Gen. No. 2003-006, at 2-31; 2022 Op. Att’y Gen. No. 2022-003, Slip Op. at 4 (“If one of the positions is in the classified service, the other position may not constitute partisan activity”).

“The position of township fiscal officer is in the unclassified civil service because, *inter alia*, it is an elected position.” 2014 Op. Att’y Gen. No. 2014-022, Slip Op. at 4; 2-198; *see* R.C. 124.11(A)(1) and R.C. 507.01. The position of member of a board of education for a local school district is also in the unclassified service. *See, e.g.*, 2011 Op. Att’y Gen. No. 2011-043, at 2-351 to 2-352 (stating that R.C. 124.57 does not reference officers or employees of a local school district and that the position of a board member is elected); *see also* R.C. 3313.01 and R.C. 124.11(A)(1) (“All officers elected by popular vote or persons appointed to fill vacancies in those offices” are in the unclassified service). Since both positions at issue are in the unclassified service, question one is answered in favor of compatibility.

B

Question two asks if a statute or constitutional provision prohibits the simultaneous holding of both

positions. There are no statutes or constitutional provisions prohibiting someone from simultaneously serving as a township fiscal officer and board of education member for a local school district within the same geographical area. Question two, therefore, is answered in favor of compatibility.

C

Question three asks if one position is subordinate to, or a check upon, the other. Because a township fiscal officer and a board of education member serve different subdivisions, neither position acts as a subordinate to, or a check upon, the other. *See* 1911 Op. Att’y Gen. No. 256, vol. II, p. 1204, at 1205 (although a township fiscal officer may take oaths and affidavits pertaining to the members or business of a local school district, this does not make the positions incompatible); *see also* R.C. 507.06 (G.C. 3303 is now R.C. 507.06). Thus, question three is answered in favor of compatibility.

D

Question four asks if it is physically possible for one person to discharge the duties of both positions. This is a factual determination, and the Attorney General leaves such determination to the local parties involved. 2022 Op. Att’y Gen. No. 2022-003, Slip Op. at 8; 2010 Op. Att’y Gen. No. 2010-020, at 2-131; 1989 Op. Att’y Gen. No. 89-022, at 2-105. After all, the parties involved are in the best position to both know the time requirements of each position and the feasibility of someone carrying out the duties of both positions. Since question four is left to the local parties involved,

for purposes of this opinion's analysis, question four is answered in favor of compatibility.

E

Question five deals with impermissible conflicts of interests. "A person may not serve simultaneously in two positions when an impermissible conflict of interest exists between the positions." 2021 Op. Att'y Gen. No. 2021-027, Slip Op. at 2; 2-97. "A conflict of interest exists 'when an individual's 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.'" 2021 Op. Att'y Gen. No. 2021-027, Slip Op. at 2; 2-97, quoting *e.g.*, 1989 Op. Att'y Gen. No. 89-052, at 2-220. Thus, a review of the two positions at issue is necessary.

A township fiscal officer "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." 2014 Op. Att'y Gen No. 2014-022, Slip Op. at 2; 2-196. A township fiscal officer also handles multiple financial matters for the township and serves as "fiscal officer" for purposes of R.C. Chapters 133 and 5705. *See* R.C. 133.01(L)(9) and R.C. 5705.01(D); *see also* R.C. 507.04(A); R.C. 507.11(B)(1); *see generally* R.C. Chapters 133 and 5705.

“A board of education of a local school district is responsible for governing the public schools in the district and handling the district’s fiscal and budgetary matters.” *E.g.*, 2011 Op. Att’y Gen. No. 2011-043, at 2-353; R.C. 133.01(NN)(3) and R.C. 5705.01(C); *see generally* R.C. Chapters 133 and 5705; *see also* 2008 Op. Att’y Gen. No. 2008-024, at 2-254; *see also* 2003 Op. Att’y Gen. No. 2003-010, at 2-70.

Upon examining the duties and responsibilities of a township fiscal officer and member of a board of education for a local school district within the same geographical area, I find multiple potential conflicts. But upon review, I find that the potential conflicts are sufficiently avoidable.

1

The first potential conflict regards competition over funding generated within the ten-mill limitation. For “[b]oth a board of township trustees and a board of education for a local school district are designated ‘taxing authorities’ for their respective subdivisions.” 2021 Op. Att’y Gen. No. 2021-029, Slip Op. at 3; 2-105 to 2-106; *see* R.C. 5705.01(C). These two taxing authorities are responsible for adopting and submitting a tax budget to the county auditor who then submits it to the county budget commission. 2021 Op. Att’y Gen. No. 2021-029, Slip Op. at 3; 2-106; *see* R.C. 5705.28, R.C. 5705.30, and R.C. 5705.31. “The county budget commission examines the submitted tax budgets and then makes the necessary modifications in order to bring the required tax levies within the limits of the law.” 2021 Op. Att’y Gen. No. 2021-029, Slip Op. at 3; 2-106; *see* R.C.

5705.31 and R.C. 5705.32; *see also* 1990 Op. Att’y Gen. No. 90-083, at 2-355. “The determination of the budget commission directly affects the potential revenue of each subdivision.” 2021 Op. Att’y Gen. No. 2021-029, Slip Op. at 3; 2-105 to 2-106, quoting, *e.g.*, 1990 Op. Att’y Gen. No. 90-083, at 2-355.

The above process places the two taxing authorities in adverse positions. *E.g.*, 2021 Op. Att’y Gen. No. 2021-029, Slip Op. at 3; 2-106; *see* 2017 Op. Att’y Gen. No. 2017-017, Slip Op. at 8; 2-175 (“The tax budgets of all the subdivisions in the county compete for the limited inside millage available”). The competition over the same funding means that someone preparing the budget for both subdivisions would suffer from divided loyalty, and thus a conflict of interest, because the person serving in both positions is trying to obtain the greatest share of funding available for each served subdivision. 2021 Op. Att’y Gen. No. 2021-029, Slip Op. at 3; 2-105 to 2-106; 1990 Op. Att’y Gen. No. 90-083, at 2-355; 1981 Op. Att’y Gen. No. 81-010, at 2-33. Despite R.C. 5705.31(D) setting a minimum allocation of funds to a school district, the conflict remains because the two public positions at issue compete with one another over budgetary matters. *E.g.*, 2021 Op. Att’y Gen. No. 2021-029, Slip Op. at 3-4; 2-16; *see* 1988 Op. Att’y Gen. No. 88-011, at 2-42.

While the above conflict creates an impermissible conflict of interest for someone serving as a member of both the board of township trustees and the board of education for a local school district within the same geographical area, *see* 2021 Op. Att’y Gen. No. 2021-029, at syllabus, a township fiscal officer is not part of the

township's taxing authority. *Compare* R.C. 5705.01(C) *with* R.C. 5705.01(D); *but see* R.C. 5705.37 (if the board of township trustees is dissatisfied with an action of the budget commission, through the fiscal officer, the board may appeal to the board of tax appeals). "[A] township fiscal officer is not statutorily required to prepare the township's tax budget or present it to the county budget commission." *E.g.*, 2014 Op. Att'y Gen. No. 2014-022, at Slip Op. 10; 2-204; *see* 1999 Op. Att'y Gen. No. 99-046, at 2-290 ("it is speculative whether this person, as either township clerk [now called township fiscal officer] or as clerk of the board of county commissioners, will be required to prepare the township's or county's annual tax budget or present it to the county budget commission"). Thus, an impermissible conflict is not immediately apparent on the side of the township fiscal officer.

The adoption of a local school district's budget is a primary function of the board of education, and it is not practical for a board member to constantly abstain from budgetary matters. *See* 2017 Op. Att'y Gen. No. 2017-017, Slip Op. at 9; 2-176. But given that a board of education consists of five members, any undue influence brought about by one board of education member serving as a township fiscal officer is mitigated by the presence of four other board members. *See id.*; *see also* R.C. 3313.01. Moreover, it is the county budget commission, not the board of education, that has the final say over the local school district's budget derived from the inside millage. *See, e.g.*, 2017 Op. Att'y Gen. No. 2017-017, Slip Op. at 10; 2-177. Thus, an impermissible conflict is also not immediately apparent on the side of the board of education member.

An impermissible conflict would exist, however, if a township fiscal officer was required to participate in the preparation of the township's budget or presentation of the budget to the county budget commission. *E.g.*, 2007 Op. Att'y Gen. No. 2007-023, at 2-240; *see* 1992 Op. Att'y Gen. No. 92-053, at 2-217 (stating that a township clerk, as the "fiscal officer" designated in R.C. 5705.01(D), might be ordered to appear before the county budget commission). Provided that the township fiscal officer does not partake in the preparation or presentation of the tax budget, such conflict can be avoided. *E.g.*, 2007 OP. Att'y Gen. No. 2007-023, at 2-240; *see* 2004 Op. Att'y Gen. No. 2004-025, at 2-227 to 2-228 (board of education member and village clerk-treasurer are compatible with restrictions); *see also* 2003 Op. Att'y Gen. No. 2003-006, at 2-36 (township clerk and member of board of county commissioners are compatible with restrictions).

2

The second potential conflict regards competition over funding generated outside the ten-mill limitation. As two partially coextensive subdivisions, the board of township trustees and the board of education for a local school district may place levies on the same ballot for taxes in excess of the ten-mill limitation. *E.g.*, 2021 Op. Att'y Gen. No. 2021-029, Slip Op. at 4; 2-106; *see also* R.C. 5705.03(B), R.C. 5705.07, R.C. 5705.19, *et seq.*, and R.C. 5705.21, *et seq.* And both boards may submit any general obligation bond under R.C. Chapter 133 to the electors. *See* R.C. 133.18; *see generally* R.C. Chapter 133; *see also* 2021 Op. Att'y Gen. No. 2021-029, Slip Op. at 4; 2-106. If both boards choose to place levies or

bond issues on the ballot at the same time, a person serving both subdivisions would suffer from divided loyalties. 2021 Op. Att’y Gen. No. 2021-029, Slip Op. at 4; 2-106; *see* 1990 Op. Att’y Gen. No. 90-083, at 2-356.

The outside ten-mill conflict is mitigated by the fact that the township fiscal officer is not required to determine if or when to place a township levy or bond issue on the ballot. The board of township trustees, as the taxing authority for the township, is given that discretion. *See* R.C. 133.01(NN)(7) and R.C. 5705.01(C). Nevertheless, a person serving as a fiscal officer for a township and as a member of the board of education for a local school district could suffer from divided loyalties. *See, e.g.*, 2022 Op. Att’y Gen. No. 2022-005, Slip Op. at 7. To avoid such division of loyalty, a person serving in both positions must refrain from matters regarding the placing of levies or bond issues on the ballot. *See id.*; *see also* 2004 Op. Att’y Gen. No. 2004-025, at 2-228.

3

A third potential conflict comes from the fact that a township and board of education may enter into contracts with one another. *See, e.g.*, R.C. 3313.95, R.C. 505.66, R.C. 3313.41, and R.C. 3313.59. “If the same person is involved with contracting for both sides of a contract, the ability of the parties to negotiate at arm’s length is compromised, and is an impermissible conflict of interest.” 2022 Op. Att’y Gen. No. 2022-005, Slip Op. at 7; *see* 2004 Op. Att’y Gen. No. 2004-025, at 2-229.

The potential contracting conflict is avoidable because the fiscal officer is not obligated to negotiate or deliberate on contracts entered into by the board of township trustees and the board of education for a local school district. *See* R.C. 3313.95 (stating that the board of education and the board of township trustees may enter into a contract); *see also* R.C. 505.66 (fee payment for snow removal service is done between the board of education and the board of township trustees); *see also* R.C. 3313.41(C) (stating that a board of education may sell property to a taxing authority as defined in R.C. 5705.01, which is a board of township trustees. *see* R.C. 5705.01(C)); *see also* 1990 Op. Att’y Gen. No. 90-083, at 2-358 (stating that the contract conflict associated with R.C. 3313.59 is between a board of education and a board of township trustees). Also, the duties of a township fiscal officer related to contracts are ministerial in nature. 2007 Op. Att’y Gen. No. 2007-023, at 2-236 (“when a township fiscal officer certifies the availability of money payable under a public contract or disburses township moneys payable under a public contract, the township fiscal officer performs a ministerial duty”); *see* R.C. 5705.41 and R.C. 507.11. A fiscal officer does not exhibit decision-making authority when conducting a ministerial duty. 2007 Op. Att’y Gen. No. 2007-023, at 2-236; *see* 1999 Op. Att’y Gen. No. 99-046, at 2-292. Absent evidence to the contrary, there is a presumption that a township fiscal officer will perform ministerial duties in a regular and lawful manner. *E.g.*, 2007 Op. Att’y Gen. No. 2007-023, at 2-236.

Furthermore, there are steps that the person, as a board of education member, can take to avoid conflicts of interests resulting from the board of education

contracting with the served township, including abstaining from any discussions, debates, or votes regarding the contract. *See generally* R.C. 3313.33(C). I note, however, that an impermissible conflict of interest would arise if the person, as a board of education member, participated in discussions or negotiations for a contract with the served township. *See* 2004 Op. Att’y Gen. No. 2004-025, at 2-229; *see also* 2003 Op. Att’y Gen. No. 2003-006, at 2-37. But this conflict can be avoided—provided that the person, as a board of education member, complies with R.C. 3313.33(C).

4

A fourth potential conflict comes from potential tax exemptions granted by and involving the township and the impact on and involvement of a local school district. *See, e.g.*, R.C. 505.57; R.C. 5709.63(G); R.C. 5709.631; R.C. 5709.632(F); R.C. 5709.634; R.C. 5709.73-.75; R.C. 5709.78(D)(2) and (3); R.C. 5709.82-.83.

While both a township and a local school district have an interest in tax exemptions, the parties involved in making decisions are the board of education for a local school district and the board of township trustees—not the township fiscal officer. Nevertheless, a township fiscal officer has an interest in whether or not tax exemptions are granted. *See, e.g.*, 2007 Op. Att’y Gen. No. 2007-023, at 2-234 to 2-235 (the township fiscal officer’s compensation is related to the size of the township budget, and the granting of tax exemptions could impact the fiscal officer’s compensation); *see also* R.C. 507.09. So, the person, as a board of education member, must abstain from tax exemption matters that

impact the served township. *See* 2004 Op. Att’y Gen. No. 2004-025, at 2-229 (if a board of education member for an exempt village school district who also serves as village clerk-treasurer is required to partake in tax exemption matters regarding the served village, it might be difficult for the board of education member to perform her duties and exercise her discretion in a completely objective and disinterested manner). Provided that the person serving as a township fiscal officer and board of education member abstains from tax exemption matters involving the served township and school district, no impermissible conflict exists. *See, e.g.*, 1998 Op. Att’y Gen. No. 98-017, at syllabus (finding that the positions of mayor of a nonchartered village and member of a board of education of an exempted village school district are compatible, provided that the person, in both roles, abstains from tax exemption matters involving the school district and village).

Unlike in recently issued 2022 Op. Att’y Gen. No. 2022-005, the fiscal officer position at issue here is on the side of the tax-exempting entity. *Compare* 2022 Op. Att’y Gen. No. 2022-005, Slip Op. at 8-9 (noting that a conflict of interest results from the fact that the board of county commissioners, which the person was a member of, has the authority to issue a tax exemption that impacts the local school district in which the person serves as fiscal officer). In this case, the person is not directly in control of deciding if or when to issue tax exemptions. Due to this distinction, and for the reasons stated above, the tax abatement conflict is avoidable.

*

Since the aforementioned potential conflicts of interests are avoidable, question five is answered in favor of compatibility. But this answer only holds true if the person simultaneously serving as a township fiscal officer and member of a board of education for a local school district within the same geographical area adheres to the abstention measures set forth above.

F

Addressing questions six and seven together, I find no state or federal regulation preventing someone from simultaneously holding the positions of township fiscal officer and board of education member for a local school district within the same geographical area. Regarding the parts of questions six and seven that relate to local provisions and regulations, such determination is left to local officials to answer. *E.g.*, 2022 Op. Att’y Gen. No. 2022-003, Slip Op. at 4. Thus, for purposes of this opinion’s analysis, questions six and seven are answered in favor of compatibility.

*

Since the positions pass all seven parts of the compatibility test, I conclude that the two positions are compatible. This conclusion is contingent upon local officials also finding that questions four, six, and seven favor compatibility.

Conclusion

Accordingly, it is my opinion, and you are hereby advised that:

The positions of township fiscal officer and member of a board of education for a local school district within the same geographical area are compatible, provided that: (1) the township fiscal officer refrains from assisting in the preparation or presentation of the township's budget; (2) the person, as both a township fiscal officer and a board of education member, refrains from voting on, approving, negotiating, or discussing contracts involving the served township and school district; and (3) the person, as both a township fiscal officer and a board of education member, does not partake in determining if or when to issue a tax abatement that impacts the

served township and school district.
(1961 Op. Att'y Gen. No. 2480, p. 532;
1911 Op. Att'y Gen. No. 256, vol. II, p.
1204, *followed*).

Respectfully,

A handwritten signature in blue ink that reads "Dave Yost". The signature is written in a cursive style with a large, looping "D" and "Y".

DAVE YOST
Ohio Attorney General