

## OPINION NO. 83-016

**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 trustee and member of a county board of education are compatible. (1933 Op. Att'y Gen. No. 1926, vol. III, p. 1817, and 1931 Op. Att'y Gen. No. 2896, vol. I, p. 145, approved and followed.)

**To: Roger L. Kline, Pickaway County Prosecuting Attorney, Circleville, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, March 25, 1983**

I have before me your request for my opinion concerning the compatibility of the position of township trustee and the position of county board of education member. This precise question has previously been addressed on two separate occasions. See 1933 Op. Att'y Gen. No. 1926, vol. III, p. 1817; 1931 Op. Att'y Gen. No. 2896, vol. I, p. 145. In both instances it was concluded that the two positions were compatible. In 1931 Op. No. 2896 (which was approved and followed in 1933 Op. No. 1926), one of my predecessors reasoned that since there were no statutory inhibitions against one person both holding the office of township trustee and serving as a member of a county board of education, and since the two positions were not incompatible under the common law test set forth in State ex rel. Attorney General v. Gebert, 12 Ohio C.C. (n.s.) 274 (Cir. Ct. Franklin County 1909), it was permissible for one individual to hold both positions.

In 1979 Op. Att'y Gen. No. 79-111, however, a somewhat more elaborate seven-question analysis was set forth for determining the compatibility of different public positions. In light of this more recent compatibility analysis, a reevaluation of the compatibility of the positions of township trustee and county board of education member is appropriate. In order to conclusively determine that two positions are compatible, it is necessary to consider the following seven questions:

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 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?

R.C. 124.57 does not apply to either of the positions at issue since neither position is a classified employment.

The second question concerns the limiting effect of the empowering statutes governing either position. Neither the statutes governing a board of education member nor those governing a township trustee limit the scope of permissible outside employment in such a manner as to prevent one person from serving both as a member of a county board of education and as a township trustee. See, e.g., R.C. 505.011 (permitting township trustee to serve as volunteer fireman); R.C. 3313.13

("[n]o prosecuting attorney, city director of law, or other official acting in a similar capacity shall be a member of a board of education").

The third question asks whether one position is subordinate to or a check upon the other. I have been unable to ascertain any way in which a member of a county board of education would be either subordinate to or a check upon a township trustee. See generally R.C. Chapter 505; R.C. Chapter 3313. A county board of education operates independently of the supervision of a township and its trustees. In like manner, a township trustee performs his powers and duties free from the authority of a county board of education. I conclude, therefore, that neither position is subordinate to or a check upon the other.

The fifth question deals with the possibility of a conflict of interest between the two positions. A resolution of this question involves an examination of the duties required to be performed in each capacity. The duties of township trustees are prescribed in R.C. Chapter 505 and related provisions. A township is, under R.C. 503.01, a body politic and corporate. Township trustees are vested by statute with various powers and duties related to the government of the township. E.g., R.C. 505.26 (may provide office space, township hall, parks); R.C. 505.27 (may contract for garbage disposal); R.C. 505.37 (may provide for fire protection); R.C. 505.72 (may adopt building code). In contrast, a county board of education has supervisory powers over the local school districts within the county school district. See R.C. 3311.05 (county school district excludes territory in city or exempted village school district); R.C. 3311.08-.10. See generally R.C. Chapter 3313.

I have been unable to locate any area in which the duties and interests of both a township trustee and a member of a county board of education would be involved. As previously discussed in 1931 Op. No. 2896, at p. 146, a "county board of education is not a tax levying body and does not receive funds for its purpose from the budget commission," as is the case with regard to a township. See, e.g., R.C. 3317.11 (county board of education submits its budget to state board of education and obtains funds from the state and from the various school districts within the county school district); R.C. 5705.01(A) ("subdivision" includes all school districts except county school districts); R.C. 5705.28-.32. Thus, there is no possibility of disputes arising as to the disposition of public moneys between a county school district and a township which would place the two in the position of adversaries. Compare 1966 Op. Att'y Gen. No. 66-060 (finding the positions of township trustee and member of the board of education of a local school district incompatible because the two bodies may be in competition for available funds).

Questions four and six, concerning physical impossibility and local charter and ordinance provisions, are issues which have traditionally been left to the discretion of local officials in the belief that these individuals are more familiar with the subject matter and, therefore, better equipped to resolve these issues. Thus, I am assuming for the purpose of this opinion that questions four and six will, after consideration by your office, be found to raise no issues of incompatibility.

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 both township trustee and member of a county board of education.

As the above analysis indicates, examination of the seven questions has revealed no situation where the positions in question would be incompatible. 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 trustee and member of a county board of education are compatible. (1933 Op. Att'y Gen. No. 1926, vol. III, p. 1817, and 1931 Op. Att'y Gen. No. 2896, vol. I, p. 145, approved and followed.)