

OPINION NO. 2000-025**Syllabus:**

A person may serve simultaneously as a township trustee and office manager of a park district created pursuant to R.C. Chapter 1545, provided that as a township trustee he does not participate in any deliberations, discussions, negotiations, or votes concerning the contribution of township moneys, supplies, equipment, office facilities, or other personal property or services to the park district, the transfer and conveyance of real property to the park district, contracts between the township and the park district, or an alternative method of apportioning the undivided local government fund or the undivided local government revenue assistance fund. As office manager of the park district, he may not participate in any deliberations, discussions, or negotiations concerning the park district's acceptance or purchase of materials, equipment, or supplies from the township.

To: Kevin J. Baxter, Erie County Prosecuting Attorney, Sandusky, Ohio
By: Betty D. Montgomery, Attorney General, April 24, 2000

You have requested an opinion regarding the compatibility of the positions of township trustee and office manager of a park district created pursuant to R.C. Chapter 1545. Your question is prompted, in part, by the fact that previous Attorney General opinions have concluded that the positions of township trustee and member of a board of park commissioners are incompatible. See 1988 Op. Att'y Gen. No. 88-033; 1939 Op. Att'y Gen. No. 1575, vol. III, p. 2346.

The prevailing seven questions for determining whether two public positions are compatible are 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 employment in another public position or the holding of another public office?
3. Is one position 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, resolutions, or ordinances which are controlling?
7. Is there a federal, state, or local departmental regulation applicable?

See 1979 Op. Att'y Gen. No. 79-111 at 2-367 and 2-368.

The sixth and seventh questions focus on the applicability of charter provisions, resolutions, ordinances, and federal, state, and local departmental regulations. There are no applicable charter provisions, ordinances, or state or federal regulations. Whether there is an applicable local departmental regulation or township resolution is a matter for local officials to determine. We will assume, for purposes of this opinion, that there is no local departmental regulation or township resolution that prohibits a person from serving simultaneously as township trustee and office manager of a park district created pursuant to R.C. Chapter 1545.

The first question asks whether either of the positions is a classified employment within the terms of R.C. 124.57. Under R.C. 124.57, a classified officer or employee of the state, the several counties, cities, city school districts, and civil service townships is prohibited from participating in political activity, other than to vote as he pleases and express freely his political opinions. The position of township trustee is in the unclassified civil service because it is an elected position. See R.C. 124.11(A)(1); R.C. 505.01. Because R.C. 124.57 does not expressly refer to officers or employees in the service of a park district created pursuant to R.C. Chapter 1545, the officers and employees of such districts are not in the classified civil service for purposes of R.C. 124.57. See 1934 Op. Att'y Gen. No. 2882, vol. II, p. 971; 1919 Op. Att'y Gen. No. 125, vol. I, p. 217. The prohibition of R.C. 124.57 thus does not apply.

The second question asks whether the empowering statutes of either position limit a person from being employed in another public position or holding another public office. No statutory provision prohibits a person from serving simultaneously in the positions of township trustee and office manager of a park district created pursuant to R.C. Chapter 1545. Question two of the compatibility test, therefore, may be answered in the negative.

The third question asks whether one position is subordinate to, or in any way a check upon, the other. A township trustee, as an elected township officer, see R.C. 505.01, serves and is responsible to the township electorate. The office manager of a park district created pursuant to R.C. Chapter 1545 is appointed by and serves at the pleasure of the park district's board of park commissioners. See R.C. 1545.07. The positions thus operate inde-

pendently of each other, and neither is required to assign duties to, or supervise, the other. Accordingly, neither position is subordinate to, or in any way a check upon, the other.¹

The fourth question asks whether it is physically possible for one person to perform the duties of both positions. This is a factual question that is best answered by the interested persons because they may more precisely determine the time constraints imposed by each position. 1999 Op. Att'y Gen. No. 99-027 at 2-177. It seems likely, however, that the duties of these two positions can be discharged competently by the same person if there is no direct conflict in the working hours of each position.

The fifth and final question asks whether there is a conflict of interest between the two positions. A person may not hold two public positions simultaneously if he would be subject to divided loyalties and conflicting duties or be exposed to the temptation of acting other than in the best interest of the respective agencies or offices he serves. 1985 Op. Att'y Gen. No. 85-042 at 2-150. Resolution of this question requires an examination of the powers, duties, and responsibilities of the respective positions.

A board of township trustees is responsible for governing a township. 1999 Op. Att'y Gen. No. 99-043 at 2-263. As the township's governing body, a board of township trustees is delegated by statute various powers and duties related to the government of the township. *See generally* R.C. Chapter 505 (setting forth the general administrative powers and duties of a board of township trustees). A board of township trustees also handles fiscal and budgetary matters on behalf of the township. *See, e.g.*, R.C. 135.04(C) (awards the township's active deposits of public moneys to an eligible institution); R.C. 135.14 (invests the township's interim moneys). A board of township trustees is designated as the taxing authority of the township for purposes of R.C. Chapters 133 (uniform public securities law) and 5705 (tax levy law). *See* R.C. 133.01(NN)(7); R.C. 5705.01(C). As a taxing authority, a board of township trustees is responsible for issuing securities for the purpose of providing funds with which to pay one or more final judgments rendered against the township, R.C. 133.14, issuing securities for the purpose of paying all or any portion of the costs of any permanent improvement that the township is authorized to acquire, improve, or construct, R.C. 133.15, preparing the township's annual tax budget, R.C. 5705.28, and levying tax levies, R.C. 133.56; R.C. 5705.03; R.C. 5705.19; *see also* R.C. 505.20; R.C. 505.29; R.C. 505.39; R.C. 505.56.

An office manager of a park district created pursuant to R.C. Chapter 1545 is appointed by and assigned his duties by the park district's board of park commissioners. R.C. 1545.07. Material provided with your letter states that the office manager position generally is responsible for supervising, coordinating, and performing secretarial, clerical, and record keeping duties on behalf of the board of park commissioners. In addition, this position recommends the hiring, firing, and disciplining of park district employees, coordinates the park district's annual inventory, coordinates the release of public information, and

¹A board of park commissioners of a park district created pursuant to R.C. Chapter 1545 may levy a tax on the real property within the district to provide funding for the district. R.C. 1545.21; R.C. 5705.03(A). Similarly, a board of township trustees may levy taxes on the real and personal property within the township for the purpose of paying the costs associated with operating the township. R.C. 5705.03; R.C. 5705.19; *see also* R.C. 505.20; R.C. 505.29; R.C. 505.39; R.C. 505.56. In addition, both a park district and township may receive moneys from the undivided local government fund, R.C. 5747.50-.55, and the undivided local government revenue assistance fund, R.C. 5747.61-.63. Thus, a park district has sources of funding independent of those of the townships that are a part of the park district.

purchases equipment, materials, and uniforms for the use of the park district and its employees.

A review of the powers, duties, and responsibilities of the respective positions discloses that there are several instances in which a person who serves as a township trustee and office manager of a park district created pursuant to R.C. Chapter 1545 could be subject to a conflict of interest. R.C. 511.37 authorizes a board of township trustees to contribute moneys, supplies, equipment, office facilities, and other personal property or services to a board of park commissioners established under R.C. Chapter 1545 for the expenses of park planning, acquisition, management, and improvement. Similarly, R.C. 505.10 and R.C. 505.104 authorize a board of township trustees to transfer and convey real property to a political subdivision such as a park district created pursuant to R.C. Chapter 1545.² If a person who serves as a township trustee and office manager of a park district were required, in either capacity, to discuss, or to deliberate, negotiate, or vote upon, the question of whether township moneys, supplies, equipment, office facilities, or other personal property or services should be contributed to or accepted by the park district, *see* R.C. 511.37, or whether township real property should be transferred or conveyed to the park district, *see* R.C. 505.10; R.C. 505.104, the person would be subject to influences that could prevent him from making completely objective decisions as a township trustee and park district office manager. *See* 1988 Op. Att'y Gen. No. 88-033 at 2-148.

In addition, a person who serves as a township trustee and office manager of a park district created pursuant to R.C. Chapter 1545 would be subject to influences that could prevent him from making disinterested decisions if he were required to negotiate and vote on any agreement or contract between the township and park district. There are several statutes that authorize a township and park district to contract with each other.

First, pursuant to R.C. 1545.14, a township and a park district may enter into an agreement concerning the control or use, development, improvement, and protection of parks or park lands. *See* 1988 Op. Att'y Gen. No. 88-033 at 2-149; 1966 Op. Att'y Gen. No. 66-007 (syllabus, paragraph four). Second, a township and park district may enter into a contract for the sale of materials, equipment, or supplies. R.C. 505.101. Third, a township may agree to provide police protection to a park district or obtain police protection from a park district. R.C. 505.43; R.C. 505.50; R.C. 1545.131. Fourth, a board of township trustees may enter into a contract with a park district for the provision of fire protection services. R.C. 9.60; R.C. 505.37. Finally, if a board of park commissioners decides to sell park district lands pursuant to R.C. 1545.12,³ a board of township trustees may agree to purchase such lands for a town hall, R.C. 511.03, for its use, R.C. 511.11, or for cemetery purposes, R.C. 517.01.

²In *Village of Willoughby Hills v. Board of Park Comm'rs*, 3 Ohio St. 2d 49, 51, 209 N.E.2d 162, 163 (1965), the Ohio Supreme Court determined that a park district organized under R.C. Chapter 1545 is "a political subdivision of the state of Ohio which performs a function of the state that is governmental in character." *See generally* 1972 Op. Att'y Gen. No. 72-035 (syllabus) ("[a] political subdivision of the State is a limited geographical area wherein a public agency is authorized to exercise some governmental function, as contrasted to an instrumentality of the State, which is a public agency with state-wide authority").

³R.C. 1545.12 states, that, "[i]f the board of park commissioners finds that any lands which they have acquired are not necessary for the purposes for which they were acquired by such board, it may sell and dispose of such lands upon such terms as the board deems advisable."

Although a person who holds two public positions simultaneously is subject to possible conflicts of interest, he may hold both positions if the possibility for such conflicts is not definite and immediate.⁴ 1979 Op. Att'y Gen. No. 79-111 at 2-372. The criteria for determining whether a conflict of interest is definite and immediate include the probability of the conflict, the ability of the person to remove himself from the potential conflict, whether the person exercises decision-making authority in both positions, whether the potential conflict involves the primary functions of each position, and whether the conflict relates to financial or budgetary matters. *Id.* at 2-372.

It is only speculative whether the township in question will contribute township moneys, supplies, equipment, office facilities, or other personal property or services to the park district, transfer and convey real property to the park district, or enter into a contract with the park district. Even if the board of township trustees contemplates any such transactions or contracts, this person, as township trustee, would be able to remove himself from any discussions, deliberations, negotiations, or votes upon such matters since a board of township trustees is capable of discharging its duties when one of its members abstains from a matter. *See generally State ex rel. Saxon v. Kienzle*, 4 Ohio St. 2d 47, 48, 212 N.E.2d 604, 605 (1965) (“[i]n the absence of a statute to the contrary, any action by a board requires that a quorum participate therein, and that a majority of the quorum concur”). The potential conflicts of interest also relate to only a small fraction of the duties of a township trustee. In addition, as office manager of the park district, this person is not statutorily responsible for entering into discussions, deliberations, negotiations, or votes upon any of the foregoing transactions or contracts. Instead, this responsibility is conferred upon the park district’s board of park commissioners. *See* R.C. 505.10; R.C. 505.37; R.C. 511.37; R.C. 1545.07; R.C. 1545.12; R.C. 1545.131; R.C. 1545.14.

However, as we have stated previously, the board of park commissioners has delegated to the park district’s office manager the authority to purchase equipment, materials, and uniforms for the park district. When a board of park commissioners contemplates accepting or purchasing such items from a township pursuant to R.C. 505.101 or 511.37, the office manager of the park district may be asked by the park commissioners to participate in discussions, deliberations, or negotiations associated with such transactions.⁵ However, as office manager of the park district, this person would not be permitted to participate in such discussions, deliberations, or negotiations since it is a fundamental principle that a public official has a duty to abstain from participating in any matter that would impair his objectivity. 1997 Op. Att’y Gen. No. 97-026 at 2-155; *see* note four, *supra*. The office manager of the park district may thus abstain from any discussions, deliberations, or negotiations concerning the park district’s acceptance or purchase of materials, equipment, or supplies from the township pursuant to R.C. 505.101 or 511.37. Accordingly, since the potential for these

⁴The authority to render opinions regarding the ethics and conflict of interest provisions of R.C. Chapter 102 and R.C. 2921.42-.43 is vested in the Ohio Ethics Commission. R.C. 102.08(A). In light of this grant of authority, we believe that it is proper to refrain from interpreting such provisions by way of a formal opinion. 1987 Op. Att’y Gen. No. 87-033 (syllabus, paragraph three). It is, therefore, recommended that you contact the Ohio Ethics Commission for advice concerning the application of these provisions in the situation you have described.

⁵The office manager of the park district would not be required to vote on any transfer or conveyance of township materials, equipment, or supplies to the park district pursuant to R.C. 505.101 or R.C. 511.37 since the board of park commissioners is responsible for voting on such transfers and conveyances. *See* R.C. 505.101; R.C. 511.37; R.C. 1545.07.

conflicts of interest is rare, and since this person, as township trustee and park district office manager, is able to remove himself from any such conflicts, it is reasonable to find that these potential conflicts are insufficient to render the positions about which you ask incompatible.

An additional potential conflict of interest exists because of the competition between a township and park district for tax revenues. R.C. 5747.50-.55 and R.C. 5747.61-.63 set forth provisions governing the creation and operation of the undivided local government fund and the undivided local government revenue assistance fund, respectively. Because both a township and park district are included within the definition of "subdivision," for purposes of R.C. 5747.50-.55 and R.C. 5747.62-.63, *see* R.C. 5747.01(Q)(1); R.C. 5747.62(A), each may be apportioned moneys from the undivided local government fund and the undivided local government revenue assistance fund. *See* 1988 Op. Att'y Gen. No. 88-033 at 2-150.

R.C. 5747.51 and R.C. 5747.52 set forth the method by which the moneys in the undivided local government fund are to be allocated to subdivisions. Provisions pertaining to the disbursement of moneys from the undivided local government revenue assistance fund are set out in R.C. 5747.62. Pursuant to R.C. 5747.51(B) and R.C. 5747.62(B), both a township and a park district are given the opportunity to appear before the county budget commission to establish their need for moneys from the undivided local government fund and the undivided local government revenue assistance fund. In this regard, both R.C. 5747.51(B) and R.C. 5747.62(B) require the county budget commission to permit a township and a park district to appear before the commission to explain their financial needs.

As a township trustee, this person may be required to explain the township's financial needs to the county budget commission. A township trustee who also serves as an employee of a park district that competes for moneys from the same funds could be subject to influences because of his employment with the park district that might prevent him from making completely objective decisions if he were required to explain to the county budget commission the township's financial needs.

A similar conflict of interest exists because of the competition for inside millage generated by the unvoted property tax. Both a board of township trustees and a board of park commissioners must prepare, adopt, and submit an annual tax budget to the county budget commission. *See* R.C. 5705.28-.32; 1992 Op. Att'y Gen. No. 92-053 at 2-216; 1988 Op. Att'y Gen. No. 88-033 at 2-150. *See generally* R.C. 5705.01(C), (H) (for purposes of R.C. Chapter 5705, a township is a "taxing authority" and a park district is a "taxing unit"). After the annual tax budgets are submitted, the county budget commission revises and adjusts the estimate of balances and receipts from all sources for each fund within the township's and park district's tax budget, R.C. 5705.32; *see* R.C. 5705.31, and adjusts the levies of the township and park district within the limits of the law, R.C. 5705.31. Accordingly, a township trustee who is an employee of a park district that competes for inside millage generated by the unvoted property tax could be subject to influences that might prevent him from making completely objective, disinterested decisions when preparing or explaining the township's annual tax budget to the county budget commission.

For the reasons that follow, we find that the conflicts of interest that arise from the competition for tax revenues are not definite and immediate. As a park district office manager, this person is not required to prepare and explain the park district's tax budget to the county budget commission and is not authorized to coordinate or perform secretarial, clerical, or record keeping functions for the park district's accounting department. Thus, as

park district office manager, this person is not subject to conflicts of interest involving the budget of the park district or obtaining tax moneys from the county budget commission.

Because the park district office manager is not responsible for preparing the park district's budget or explaining it to the county budget commission, this person will not be required to prepare and explain competing budgets to the commission. Moreover, the fact that a township trustee holds an additional employment with a political subdivision that competes for an appropriation of tax proceeds from the county budget commission is, in and of itself, an insufficient reason to find that the trustee is subject to an impermissible conflict of interest. *See* 1999 Op. Att'y Gen. No. 99-027 at 2-183. If this reason were deemed sufficient, a township trustee would not be permitted to hold any employment with a political subdivision that competes with the township for tax proceeds. Further, even though this person, as a township trustee, is required to prepare the township's tax budget, and may be required to explain it to the county budget commission, it is unlikely that he would use less than his best judgment in preparing the budget or explaining it to the commission. *See generally State ex rel. Speeth v. Carney*, 163 Ohio St. 159, 126 N.E.2d 449 (1955) (syllabus, paragraph ten) ("[i]n the absence of evidence to the contrary, public officials, administrative officers, and public authorities, within the limits of the jurisdiction conferred upon them by law, will be presumed to have properly performed their duties in a regular and lawful manner and not to have acted illegally or unlawfully"). This is especially true in light of the fact that while the township and park district each prepare and submit a tentative tax budget, it is the county budget commission that actually allocates tax moneys to the township and park district after adjusting the rates of taxation, fixing the amount of taxes to be levied, and adjusting the estimates of balances and receipts from available sources. *See, e.g.,* R.C. 5705.31-.32; R.C. 5747.51; R.C. 5747.62. Therefore, since the conflicts of interest involving the tax budgets of the township and park district are not definite and immediate, the possibility that such a conflict may occur does not prevent a park district office manager from serving as a township trustee.

A final potential conflict of interest exists because a county may use an alternative method of apportioning the undivided local government fund and the undivided local government revenue assistance fund. Instead of apportioning the undivided local government fund and the undivided local government revenue assistance fund in accordance with R.C. 5747.51-52 and R.C. 5747.62, respectively, a county budget commission may provide an alternate method of appropriation. Pursuant to R.C. 5747.53, before an alternative method of apportioning the undivided local government fund may be implemented, it must be approved by, *inter alia*, "a majority of the boards of township trustees ... in the county." Similarly, before an alternative method of apportioning the undivided local government revenue assistance fund may be instituted, R.C. 5747.63 requires that it be approved by, among others, "a majority of the boards of township trustees ... in the county."

The adoption of an alternative method of apportioning these funds may affect the amount of moneys that may be disbursed from these funds to a park district created pursuant to R.C. Chapter 1545. A board of township trustees, therefore, may be able to affect the amount of tax proceeds from the undivided local government fund and the undivided local government revenue assistance fund that will be distributed to a park district. In such a situation, a township trustee who serves as an employee of a park district could be subject to influences that might prevent him from making completely objective, disinterested decisions when deliberating, discussing, or voting upon an alternative method of apportioning the undivided local government fund or the undivided local government revenue assistance fund. *See* 1988 Op. Att'y Gen. No. 88-033 at 2-150.

Again, however, it is only speculative whether a board of township trustees will be required to discuss, deliberate, and vote upon an alternative method of apportioning the undivided local government fund or the undivided local government revenue assistance fund. It is likely that the occasions for such votes, deliberations, and discussions will be infrequent. Additionally, since such occasions will be rare, the person, as township trustee, should be able to abstain from participating in such deliberations, discussions, and votes. Further, such activities are not a part of the duties of the park district office manager. The conflict of interest, thus, does not involve the primary duties of either position. Accordingly, this potential conflict of interest does not render the positions of township trustee and office manager of a park district incompatible, provided that this person, as township trustee, does not participate in any deliberations, discussions, or votes pertaining to an alternative method of apportioning the undivided local government fund or the undivided local government revenue assistance fund.

In conclusion, it is my opinion, and you are hereby advised that a person may serve simultaneously as a township trustee and office manager of a park district created pursuant to R.C. Chapter 1545, provided that as a township trustee he does not participate in any deliberations, discussions, negotiations, or votes concerning the contribution of township moneys, supplies, equipment, office facilities, or other personal property or services to the park district, the transfer and conveyance of real property to the park district, contracts between the township and the park district, or an alternative method of apportioning the undivided local government fund or the undivided local government revenue assistance fund. As office manager of the park district, he may not participate in any deliberations, discussions, or negotiations concerning the park district's acceptance or purchase of materials, equipment, or supplies from the township.