

Note from the Attorney General's Office:

2006 Op. Att'y Gen. No. 2006-034 was followed by 2016 Op. Att'y Gen. No. 2016-024 and was subsequently also followed by 2016 Op. Att'y Gen. No. 2016-028.

OPINION NO. 2006-034**Syllabus:**

A person may not hold within the same county the positions of member of a city legislative authority and chief deputy treasurer or deputy treasurer for the county treasurer when the chief deputy treasurer or deputy treasurer may serve in place of the county treasurer on the county budget commission or a hearing board of the county board of revision.

To: James J. Mayer, Jr., Richland County Prosecuting Attorney, Mansfield, Ohio

By: Jim Petro, Attorney General, July 24, 2006

You have requested an opinion whether a member of a city legislative

authority may serve within the same county as a chief deputy treasurer for the county treasurer when the chief deputy treasurer may serve in place of the county treasurer on the county budget commission and a hearing board of the county board of revision. You also wish to know whether a member of a city legislative authority may serve within the same county as a deputy treasurer for the county treasurer when the assigned duties of the deputy treasurer include serving in place of the county treasurer on a hearing board of the county board of revision.

For the reasons that follow, a person may not hold within the same county the positions of member of a city legislative authority and chief deputy treasurer or deputy treasurer for the county treasurer when the chief deputy treasurer or deputy treasurer may serve in place of the county treasurer on the county budget commission or a hearing board of the county board of revision.

Both your questions concern the propriety of a member of a city legislative authority holding simultaneously within the same county a position in the county treasurer's office. We will, therefore, consider your two questions together.

A person may not serve simultaneously as a member of a city legislative authority and chief deputy treasurer or deputy treasurer for the county treasurer when the person is subject to impermissible conflicts of interest. *See* 2003 Op. Att'y Gen. No. 2003-010 at 2-70; 2002 Op. Att'y Gen. No. 2002-039 at 2-249. Impermissible conflicts of interest occur when a person is "subject to divided loyalties and conflicting duties or exposed to the temptation of acting other than in the best interest of the public." 1985 Op. Att'y Gen. No. 85-021 at 2-82; *accord* 2003 Op. Att'y Gen. No. 2003-006 at 2-32 and 2-33.

Resolution of your questions thus requires us to first review the powers, duties, and responsibilities of a member of a city legislative authority, chief deputy treasurer, and deputy treasurer. This review will enable us to determine whether there are any conflicts of interest between the positions of member of a city legislative authority and chief deputy treasurer or deputy treasurer when a person exercises the powers, duties, and responsibilities in either or both positions. *See* 2003 Op. Att'y Gen. No. 2003-006 at 2-33. If the review discloses any conflicts of interest, we must next determine the immediacy of the conflicts to see whether the conflicts may be sufficiently avoided or eliminated entirely so as to allow the person to serve simultaneously in both positions. *Id.* The pertinent factors used in making this determination include, but are not limited to, the probability of the conflicts, the ability of the person to remove himself from the conflicts (should the conflicts arise), whether the person exercises decision-making authority in both positions, and whether the conflicts relate to the primary functions of each position, or to financial or budgetary matters. *Id.*

The powers, duties, and responsibilities of a member of a city legislative authority relate primarily to exercising the legislative power of the city, R.C. 731.01; R.C. 731.05, managing and controlling the property and finances of the city, R.C. 715.01; R.C. 723.01; R.C. 731.47, and providing for the safety of persons in the city, *see, e.g.*, R.C. 9.60; R.C. 737.021; R.C. 737.04; R.C. 737.051; R.C. 737.21; R.C. 737.28; R.C. 737.37. In order to perform these vital functions, a city legislative

authority may pass ordinances and resolutions, *see, e.g.*, R.C. 715.01; R.C. 715.03; R.C. 731.17, acquire, hold, possess, and dispose of city property, *see, e.g.*, R.C. 715.01; R.C. 715.011; R.C. 723.121, invest city moneys, R.C. 135.14; R.C. 731.56, adopt technical codes, R.C. 731.231, and establish police and fire departments, R.C. 715.05. As to financial and budgetary matters, the legislative authority of a city is designated as the city's taxing authority for purposes of R.C. Chapters 133 (uniform public securities law) and 5705 (tax levy law). *See* R.C. 133.01(NN)(2); R.C. 5705.01(C). In this capacity, the legislative authority issues securities for the purpose of providing funds with which to pay one or more final judgments rendered against the city, R.C. 133.14, issues securities for the purpose of paying all or any portion of the costs of any permanent improvement that the city is authorized to acquire, improve, or construct, R.C. 133.15, prepares the city's annual tax budget, R.C. 5705.28, and levies taxes and assessments on real property within the city, R.C. 133.56; R.C. 5705.03; R.C. 5705.07; R.C. 5705.19.

We will now examine the duties and responsibilities of a chief deputy treasurer and deputy treasurer for the county treasurer. The duties and responsibilities of these positions are assigned by the county treasurer. *See* R.C. 3.06; R.C. 321.04; R.C. 325.17; *see also* R.C. 325.27. The duties and responsibilities of these two positions generally include keeping accounts of all moneys received and disbursed by the treasurer, R.C. 321.07, receiving taxes and assessments collected by the treasurer, R.C. 321.08; R.C. 323.12; R.C. 323.132; R.C. 323.14; R.C. 323.15, and providing statements to the county auditor concerning the amount and crediting of taxes collected by the treasurer, R.C. 321.09-.10. In addition, either of these positions may be responsible for redeeming warrants, R.C. 321.16, depositing redeemed warrants with the county auditor, R.C. 321.20, settling with the county auditor for all taxes and assessments that the treasurer has collected, R.C. 321.24; *see* R.C. 321.29, accepting liquidated claims and certificates, R.C. 323.02-.05, and enforcing tax liens, R.C. 323.25. A deputy chief treasurer or deputy treasurer may also serve in place of the treasurer on the county budget commission or the county board of revision.¹ *See* R.C. 3.06; R.C. 5715.02; 1934 Op. Att'y Gen. No. 3605, vol. III, p. 1721; *see also* 1943 Op. Att'y Gen. No. 6186, p. 363.

You have provided us with a job description for the positions of chief deputy treasurer and deputy treasurer in question. The job description for the chief deputy treasurer position states that the responsibilities and duties of this position are as follows:

JOB RESPONSIBILITIES: Under administrative direction, assists County Treasurer in managing, planning and directing Treasurer's Office operation, supervises assigned personnel; provides input into development of departmental policy and procedures; acts on behalf of the Treasurer in [his] absence.

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¹ The county treasurer is a member of the county budget commission, R.C. 5705.27, and the county board of revision, R.C. 5715.02.

ILLUSTRATIVE DUTIES:....

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... 1) Coordinates and assists Treasurer in directing office operations; Supervises assigned personnel; assigns work, provides direction, Schedules work, and ensures completed work, adheres to departmental policy and procedures. Coordinates and monitors training of employees.

... 2) Provides informational input into development of departmental policy. Modifies and updates existing procedures, develops new procedures for office as necessary.

... 3) Performs duties and responsibilities of Treasurer in [his] absence: Speaks as official departmental representative, signs documents, Makes investments, directs work activities, makes bank deposits, etc.

... 4) Posts real estate, escrow, personal property, manufactured home taxes and vendor and cigarette licenses, payins, warrants, investments and balance sheets into computer terminal.

... 5) Balances daily statement of Treasurer's office with the Auditor's office to ensure accuracy; compares redeemed warrants, transfers, payins, etc.

... 6) Answers questions and provides information to general public on the phone and in person regarding tax records or procedures.

... 7) Maintains information of a confidential nature.

... 8) Performs various other related tasks (e.g., run business errands for Treasurer, opens and closes Treasurer's office; opens and closes [office vault; in the absence of Treasurer, performs any Function necessary in the operation of the office.]

The job description of the deputy treasurer in question states that the responsibilities and duties of this position include the following:

JOB RESPONSIBILITIES: Under general supervision, prepares, mails and collects tax bills; assists general public with tax inquiries; balances monies daily and posts on computer money received from personal property, manufactured home, real estate taxes and vendors and cigarette licenses and all monies paid into the county; maintains accurate updated records.

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ILLUSTRATIVE DUTIES:....

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... 1) Performs various tasks in County Treasurer's Office, to issue tax bills for real estate, personal property, manufactured homes; re-

spond to inquiries from general public relating to taxes; posts revisions and updates of tax information into computer; maintain thorough and accurate records.

... 2) Contacts delinquent tax payers by mail and phone. Writes payment plans. Forwards taxpayer to Prosecutor for foreclosure. Sits on the Board of Revision for the Treasurer.

... 3) Collects tax payments (e.g. accepts cash and checks; stamps tax bill paid, issues receipts, etc.); posts tax payments to computer and proper ledgers; receives and verifies daily pay-ins; balances and reconciles daily the amount of money received against business taken in and records information on required forms.

... 4) Prepares and records bank deposits and verifies bank balance with daily statement.

... 5) Performs various other related tasks, (e.g. run business errands for Treasurer; opens and closes Treasurer's Office; opens and closes office vault; in absence of Treasurer and Chief Deputy, performs any Function necessary in the operation of the office.

A review of the powers, duties, and responsibilities of the respective positions discloses situations in which impermissible conflicts of interest could exist between the positions of member of a city legislative authority and chief deputy treasurer or deputy treasurer for the county treasurer. First, a chief deputy treasurer or deputy treasurer may be required to serve in place of the county treasurer on the county budget commission. *See* R.C. 3.06; 1934 Op. Att'y Gen. No. 3605, vol. III, p. 1721; *see also* 1943 Op. Att'y Gen. No. 6186, p. 363. If this occurs, the chief deputy treasurer or deputy treasurer may participate in reviewing annual tax budgets and information submitted to the commission by various subdivisions² and the revision and adjustment of the estimate of balances and receipts from all sources for each fund within those tax budgets and information.³ *See* R.C. 5705.31-.32; R.C. 5705.34.

² Except as provided in R.C. 5705.28(B) and R.C. 5705.281, the taxing authority of each subdivision is required to prepare, adopt, and submit an annual tax budget to the county budget commission. R.C. 5705.28(A); *see also* R.C. 5705.29-.32. *See generally* R.C. 5705.28(B)(2)(a) (the taxing authority of a taxing unit that does not levy a tax is not required to adopt an annual tax budget under R.C. 5705.28); R.C. 5705.281 (a county budget commission may waive the requirement that the taxing authority of a subdivision adopt an annual tax budget under R.C. 5705.28 and require instead that the taxing authority provide such information to the commission as may be required by the commission to perform its duties under R.C. Chapter 5705).

³ 2006 Op. Att'y Gen. No. 2006-006 at 2-58 summarized the duties and responsibilities of a county budget commission as follows:

A city legislative authority, as the taxing authority of a subdivision,⁴ is required to prepare, adopt, and submit an annual tax budget to the county budget commission unless the commission requires the city legislative authority to provide such tax information to the commission as may be required by the commission to perform its duties under R.C. Chapter 5705. *See* note two, *supra*. *See generally* R.C. 5705.32(E)(2) (a city legislative authority may have a representative appear before the county budget commission to further explain the city's financial needs). Any revisions and adjustments made by the county budget commission to a city's or another subdivision's funds affects the amount of tax money generated within the ten-mill limitation⁵ that will be allotted to the city. 2004 Op. Att'y Gen. No. 2004-051 at 2-441. Accordingly, a chief deputy treasurer or deputy treasurer who serves as a member of the legislative authority of a city and who serves in place of the county treasurer on the county budget commission within the same county is subject to a conflict of interest when he participates in the revision and adjustment of the estimate of the city's and other subdivisions' balances and receipts from all sources for each fund within their tax budgets and information. *See* 2004 Op. Att'y Gen. No. 2004-019 at 2-160; 1989 Op. Att'y Gen. No. 89-007 at 2-29 and 2-30; 1983 Op. Att'y Gen. No. 83-035 at 2-136; *see also* 1999 Op. Att'y Gen. No. 99-045 at 2-281; 1959 Op. Att'y Gen. No. 999, p. 686, at 697.

In addition, a county budget commission is responsible for reviewing the budget of a city so as to determine the amount of money to appropriate to the city

Under R.C. 5705.28-.31, the county budget commission receives from the county auditor tax budgets and other information submitted by the various subdivisions and taxing authorities within the county, including cities. 2005 Op. Att'y Gen. No. 2005-002 at 2-18. The county budget commission is responsible for reviewing the budgets and information, R.C. 5705.31, adjusting tax levies as required by law, R.C. 5705.31; R.C. 5705.32, and certifying appropriate taxes for collection, R.C. 5705.34. 2005 Op. Att'y Gen. No. 2005-002 at 2-18. When the county budget commission has completed its work, taxing authorities, such as city legislative authorities, authorize the necessary tax levies and certify them to the county auditor. R.C. 5705.34.

⁴ For purposes of R.C. Chapter 5705 (tax levy law), a city is a "subdivision," R.C. 5705.01(A), and the legislative authority of a city is a "taxing authority," R.C. 5705.01(C).

⁵ In Ohio no property may be taxed in excess of one percent of its true value in money for all state and local purposes, except when approved by the voters or provided for by a municipal charter. Ohio Const. art. XII, § 2; 1999 Op. Att'y Gen. No. 99-015 at 2-115 n.2. This is commonly known as the "ten-mill limitation." 2001 Op. Att'y Gen. No. 2001-019 at 2-107 n.1; *see* R.C. 5705.02; R.C. 5705.03; R.C. 5705.07. For the purpose of paying the current operating expenses of a subdivision, the subdivision's taxing authority may levy property taxes within the ten-mill limitation. R.C. 5705.03(A); 2001 Op. Att'y Gen. No. 2001-019 at 2-107.

from the undivided local government fund and the undivided local government revenue assistance fund.⁶ As such, a chief deputy treasurer or deputy treasurer who serves as a member of the legislative authority of a city and who serves in place of the county treasurer on the county budget commission within the same county is also subject to a conflict of interest when he participates in matters that may affect the amount of money to be allocated to the city from the undivided local government fund or the undivided local government revenue assistance fund. *See generally State ex rel. Baden v. Gibbons*, 17 Ohio Law Abs. 341, 344, 1934 Ohio Misc. LEXIS 1224 (Ct. App. Butler County 1934) (a conflict of interest results when the duties of one position may be administered in such a way as to result in favoritism and preference being accorded to the other position).

If either of the aforementioned conflicts arises, it would be difficult for a chief deputy treasurer or deputy treasurer who serves as a member of a city legislative authority and who serves within the same county in place of the county treasurer on the county budget commission to set aside his loyalty to the city legislative authority when making determinations that affect the city's finances or the amount of moneys to be allotted to the city from the undivided local government fund, the undivided local government revenue assistance fund, or revenue generated within the ten-mill limitation. Such a predisposition of loyalty could prevent a chief deputy treasurer or deputy treasurer who serves in place of the county treasurer on the county budget commission from making completely objective and disinterested determinations in matters concerning the city's budget or result in preferential treatment being accorded the city in the disbursement of moneys during the budgeting process. *See generally* 1989 Op. Att'y Gen. No. 89-007 at 2-29 (“[a] member of the county budget commission has a duty to render unbiased determinations”); 1958 Op. Att'y Gen. No. 1962, p. 215, at 217-18 (in the preparation of the annual tax budget it may well occur that any proposed modifications or reductions with respect to one subdivision's budget could be detrimental to another subdivision's budget).

Another conflict of interest may occur because a chief deputy treasurer or deputy treasurer may be required to serve in place of the county treasurer on a hearing board of the county board of revision.⁷ R.C. 5715.02 states that a county treasurer may appoint one qualified employee from his office to serve in his place and

⁶ R.C. 5747.50-.55 and R.C. 5747.61-.63 set forth provisions governing the creation of, and distribution of moneys from, the undivided local government fund and the undivided local government revenue assistance fund, respectively. For purposes of R.C. 5747.50-.55 and R.C. 5747.62-.63, a city is a “subdivision,” R.C. 5747.01(Q)(1); R.C. 5747.62(A), entitled to moneys from the undivided local government fund and the undivided local government revenue assistance fund. *See* R.C. 5747.51-.53; R.C. 5747.62-.63.

⁷ Each county is required to have a county board of revision, R.C. 5715.01(B), which shall consist of the county treasurer, county auditor, and the president of the board of county commissioners, R.C. 5715.02.

stead on a hearing board of the county board of revision⁸ for the purpose of hearing complaints and rendering decisions as to the value of real property.⁹ While serving in place of the county treasurer on a hearing board of the county board of revision, a chief deputy treasurer or deputy treasurer who serves as a member of a city legislative authority may hear complaints and render decisions as to the value of real property located within the city. *See* R.C. 5715.02; R.C. 5715.11; R.C. 5715.19(C); *see also* R.C. 5715.01(B).

Adjustments made by a hearing board of the county board of revision as to the value of real property located within a city directly affect the amount of tax moneys the city is entitled to receive under various tax levies. *See* R.C. 319.28; R.C. 319.30; R.C. 5705.02; R.C. 5705.03; R.C. 5705.49; *see also* note five, *supra*. *See generally* R.C. Chapter 5713 (setting forth provisions for determining the value of real property for tax purposes). Thus, a chief deputy treasurer or deputy treasurer who serves as a member of a city legislative authority and who serves in place of the county treasurer on a hearing board of the county board of revision within the same county is subject to a conflict of interest when he hears complaints and renders decisions as to the value of real property located within the city. *See generally* 1980 Op. Att’y Gen. No. 80-035 at 2-149 (a conflict of interest occurs when a person’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”).

When such conflicts occur it would be difficult for a chief deputy treasurer or deputy treasurer who serves as a member of a city legislative authority and who serves in place of the county treasurer on a hearing board of the county board of revision within the same county to set aside his loyalty to the city while hearing complaints and rendering decisions as to the value of real property located within the city. As a result, a person in such situations may have a predisposition toward an outcome in proceedings to determine the value of real property located within the city. *See generally* 1969 Op. Att’y Gen. No. 69-059 (a member of a county board of revision may not participate in the hearing of a complaint when there is an overriding natural inclination to prejudge the complaint).

⁸ The county board of revision may provide for one or more hearing boards when the county board of revision deems the creation of such boards to be necessary to the expeditious hearing of valuation complaints. R.C. 5715.02.

⁹ R.C. 5715.11 requires the county board of revision to hear complaints relating to the valuation or assessment of real property as the same appears upon the tax duplicate of the then current year. *See* R.C. 5715.01(B); R.C. 5715.19(C); *see also* R.C. 5715.13 (“[t]he county board of revision shall not decrease any valuation unless a party affected thereby or who is authorized to file a complaint under [R.C. 5715.19] makes and files with the board a written application therefor, verified by oath, showing the facts upon which it is claimed such decrease should be made”). After investigating the complaint, the board may increase or decrease any such valuation or correct any assessment complained of, or order a reassessment by the original assessing officer. R.C. 5715.11.

An examination of the foregoing conflicts of interest discloses that the conflicts can not be sufficiently avoided or eliminated entirely when a chief deputy treasurer or deputy treasurer serves in place of the county treasurer on the county budget commission or a hearing board of the county board of revision.¹⁰ Taxing and budgeting issues routinely come before a city's legislative authority and the county budget commission. It is also likely that a hearing board of the county board of revision will hear complaints and render decisions as to the value of real property located throughout the entire county, including real property located within a city. Therefore, conflicts of interest will occur when a chief deputy treasurer or deputy treasurer who serves within the same county as a member of a city legislative authority serves in place of the county treasurer on the county budget commission or a hearing board of the county board of revision.

In addition, these conflicts of interest involve matters that impact the finances and tax budget of the city and relate to a primary duty of city legislative authorities, county budget commissions, and hearing boards of county boards of revision. As summarized previously, a city legislative authority is statutorily responsible for preparing and adopting the city's tax budget and controlling the city's finances. R.C. 731.47; R.C. 5705.28; *see also* R.C. 5705.281. On the other hand, the county budget commission and a hearing board of the county board of revision are statutorily required to make adjustments to city tax budgets, R.C. 5705.31-.32, and the value accorded to real property located within a city for tax purposes, R.C. 5715.02; R.C. 5715.11; R.C. 5715.19(C); *see also* R.C. 5715.01(B), respectively. The decisions of the county budget commission and a hearing board of a county board of revision thus have a direct bearing on the amount of tax moneys that will be made available to the city.

Finally, a person who serves as a member of a city legislative authority and chief deputy treasurer or deputy treasurer for the county treasurer is unable to abstain from the conflicts when the chief deputy treasurer or deputy treasurer is required to serve in certain instances in the county treasurer's place on the county budget commission or a hearing board of the county board of revision. When the county treasurer delegates this authority to the chief deputy treasurer or a deputy treasurer, the chief deputy treasurer or deputy treasurer is required to serve in place of the county treasurer on the county budget commission or a hearing board of the county board of revision under the conditions prescribed by the county treasurer. *See generally* 1992 Op. Att'y Gen. No. 92-053 at 2-218 ("a township clerk cannot avoid appearing before the county budget commission if the township trustees

¹⁰ Whether a chief deputy treasurer or deputy treasurer may serve in place of the county treasurer on the county budget commission or a hearing board of the county board of revision is a question of fact that must be answered at the local level. In your particular situation, the job descriptions you have provided us indicate that the chief deputy treasurer may serve in place of the county treasurer on the county budget commission or a hearing board of the county board of revision when the county treasurer is absent and that the deputy treasurer is required to serve in place of the county treasurer on a hearing board of the county board of revision.

require him to defend the township tax budget”). In other words, the chief deputy treasurer or deputy treasurer may not decline to take the place of the county treasurer on the county budget commission or a hearing board of the county board of revision.

A chief deputy treasurer or deputy treasurer who serves in place of the county treasurer on the county budget commission or a hearing board of the county board of revision also may not continually abstain from participating in matters before the commission or board that may directly or indirectly affect the city. If this were permitted, a chief deputy treasurer or deputy treasurer could not discharge competently the duties bestowed upon the county treasurer by virtue of his membership on the county budget commission or county board of revision. *See generally* 2004 Op. Att’y Gen. No. 2004-051 at 2-450 (when a county commissioner continually removes himself from potential conflicts of interest, the county’s affairs may, in general, suffer or go unattended. In addition, the county commissioner may not perform in a competent manner the important duties the citizens of the county entrust to him).

Similarly, a member of a city legislative authority may not continually abstain from participating in discussions, deliberations, negotiations, and votes concerning the city’s tax budget and finances since the making of decisions involving city budgetary and financial matters is a primary duty of a city legislative authority. As a member of a city legislative authority, a person is obligated to participate in discussions, deliberations, negotiations, and votes concerning the city’s tax budget and finances. *See* R.C. 5705.28; *see also* R.C. 5705.281. If a member of a city legislative authority continually abstains from participating in matters involving the city’s budget or finances, the member does not perform in a competent manner an important function entrusted to him as a member of the city’s legislative authority. A person who serves simultaneously within the same county as a member of a city legislative authority and chief deputy treasurer or deputy treasurer for the county treasurer thus is unable to remove himself from the conflicts of interest that exist when the chief deputy treasurer or deputy treasurer is required in certain circumstances to serve in place of the county treasurer on the county budget commission or a hearing board of the county board of revision.

In light of the factors used for determining the immediacy of conflicts of interest, we believe that the conflicts that occur because a chief deputy treasurer or deputy treasurer may serve in place of the county treasurer on the county budget commission or a hearing board of the county board of revision can not be satisfactorily avoided or eliminated entirely. Impermissible conflicts of interest thus prohibit a member of a city legislative authority from holding within the same county the position of chief deputy treasurer or deputy treasurer for the county treasurer when the chief deputy treasurer or deputy treasurer may serve in place of the county treasurer on the county budget commission or a hearing board of the county board of revision. *See generally* 1982 Op. Att’y Gen. No. 82-042 at 2-119 (“a deputy county treasurer may carry out the duties of the county treasurer on the budget commission. In so doing, he would be reviewing the budget of the municipality in which he serves as mayor . . . Such a conflict between two positions must result in a conclusion that one individual cannot serve in both capacities”).

In conclusion, it is my opinion, and you are hereby advised that a person may not hold within the same county the positions of member of a city legislative authority and chief deputy treasurer or deputy treasurer for the county treasurer when the chief deputy treasurer or deputy treasurer may serve in place of the county treasurer on the county budget commission or a hearing board of the county board of revision.