

OPINION NO. 81-078

Syllabus:

A township trustee may serve as the holder of a certificate of competency as an electrical safety inspector privately employed in the business of conducting electrical inspections, provided that he removes himself from any situation involving self-dealing or conflict of interest.

To: Gregory A. White, Lorain County Pros. Atty., Elyria, Ohio
By: William J. Brown, Attorney General, December 4, 1981

I am in receipt of your letter in which you request my opinion with regard to whether an individual may serve as a certified electrical safety inspector in the same township in which he holds the office of township trustee.

I understand that a question has been raised by a township trustee concerning the propriety of his conducting for a private individual an electrical inspection within a home; the house is located on a lot which may be in violation of Columbia Township zoning provisions because of insufficient frontage. The potential violation was brought to the attention of the township trustee by a zoning inspector subsequent to the electrical inspection; further, the violation was unknown to the township trustee at the time of the electrical inspection. Township trustees have broad authority over township zoning pursuant to R.C. Chapter 519, and this authority presents a suggested incompatibility with the township trustee's employment as an electrical safety inspector.

More specifically, you ask whether the positions of township trustee and certified electrical safety inspector are compatible within the meaning of R.C. 3.11. R.C. 3.11 states: "No person shall hold at the same time by appointment or election more than one of the following offices: sheriff, county auditor, county treasurer, clerk of the court of common pleas, county recorder, prosecuting attorney, and probate judge." Clearly, neither a township trustee nor a certified electrical safety inspector fits within the specific language of this statute. Thus, a consideration of R.C. 3.11 is unnecessary to an analysis of your question.

However, the question still remains whether the above mentioned positions may be analyzed under the compatibility scheme provided by 1979 Op. Att'y Gen. No. 79-111. In Op. No. 79-111, I set forth the seven questions which must be considered as part of the analysis of whether two public positions are compatible. I opined in Op. No. 79-111 that a compatibility analysis is applicable where an individual holds concurrently two public offices or a public employment and a public office. However, the need for a compatibility analysis will not arise where an individual holds concurrently a public office and a private employment: "The question of compatibility of offices does not actually arise if one of the offices involved is a private rather than a public office." 1970 Op. Att'y Gen. No. 70-168 at 2-335. See 1973 Op. Att'y Gen. No. 73-016; 1971 Op. Att'y Gen. No. 71-057; 1965 Op. Att'y Gen. No. 65-150; 1942 Op. Att'y Gen. No. 5350, p. 522; 1938 Op. Att'y Gen. No. 3440, vol. III, p. 2320.

Thus, an initial consideration must be whether a township trustee and a certified electrical safety inspector are both public positions.

Considering the position of township trustee, in a 1979 opinion I recited a test for determining whether a position is a public office:

The chief and most decisive characteristic of a public office is determined by the quality of the duties with which the appointee is invested, and by the fact that such duties are conferred upon the

appointee by law. If official duties are prescribed by statute, and their performance involves the exercise of continuing, independent, political, or governmental functions, then the position is a public office and not an employment. State ex rel. Landis v. Commissioners, 95 Ohio St. 157, 159 (1917). See also Pistole v. Wiltshire, 22 Ohio Op. 2d 464 (C.P. Scioto Co., 1961); State ex rel. Louthan v. Taylor, 12 Ohio St. 130 (1861); 1972 Op. Att'y Gen. No. 72-014.

1979 Op. Att'y Gen. No. 79-049 at 2-154. The position of township trustee is clearly a public office. Pistole v. Wiltshire, 90 Ohio L. Abs. 525, 533 (1961). R.C. Chapter 505 prescribes a township trustee's duties, which involve the use of independent political judgment. 1973 Op. Att'y Gen. No. 73-035. See generally 1955 Op. Att'y Gen. No. 5565, p. 328.

As defined in R.C. 3783.01(A), an "[e]lectrical safety inspector" is "a person who is certified as provided in [R.C.] Chapter 3783." R.C. 3783.03(A) authorizes the Board of Building Standards to "issue a certificate of competency as an electrical safety inspector to any person whom it determines to be of good moral character and who successfully passes an examination. . . or who qualifies for renewal." Pursuant to R.C. 3783.06, only a person who holds such a certificate may "engage in the practice of electrical inspection in this state." The practice of electrical inspection is defined by R.C. 3783.01(B) as follows:

The "practice of electrical inspection" includes any ascertainment of compliance with the Ohio building code, or the electrical code of a political subdivision of this state by a person, who, for compensation, inspects the construction and installation of electrical conductors, fittings, devices, and fixtures for light, heat or power services equipment, or the installation, alteration, replacement, maintenance, or repair of any electrical wiring and equipment that is subject to any of the aforementioned codes.
(Emphasis added.)

See also 4 Ohio Admin. Code 4101:2-93-02(E).

Clearly, an individual who is hired by the state or a political subdivision to inspect electrical equipment and wiring and to ascertain whether it complies with the Ohio Building Code¹ or a local electrical code holds a public employment. However, the possession of a certificate of competency as an electrical safety inspector does not, in itself, constitute a public office or employment; rather, it merely qualifies the person to obtain employment in such capacity, if he chooses to do so. Unless an electrical safety inspector is actually hired by a public body, he has no authority to ascertain whether there is compliance with applicable electrical codes, and he cannot be said to hold a public office or employment. See R.C. 307.13 (board of county commissioners may contract for services of an electrical safety inspector); 4 Ohio Admin. Code 4101:2-1-31 (necessity for inspection by a building official).

¹R.C. 3783.01(C) states:

"Ohio building code" means the rules and regulations adopted by the board of building standards under Chapter 3781. of the Revised Code.

It is my understanding that the individual in question has not been hired by the state or any political subdivision in the capacity of electrical safety inspector. Rather, in this instance, the individual conducted an electrical inspection for a private homeowner. The purpose of the electrical inspection was to determine whether the private dwelling met the standards of compliance under the National Electrical Code for an electric utility company to initiate electrical service. Hence, the electrical inspection was not undertaken on behalf of a public body, and the individual in question did not perform such inspection in conjunction with any public office or employment.

It is fair to state that your request originally assumed that an issue arose for my consideration as a result of the potential incompatibility of two public offices or of a public office (township trustee) and a public employment (certified electrical safety inspector for the State of Ohio). However, as explained above, because it appears that the possession of a certificate of competency as an electrical safety inspector, in itself, represents a private status, rather than public employment or a public office, a compatibility analysis is inappropriate in determining whether one person may hold the position of township trustee and also be certified as an electrical safety inspector.

Despite my conclusion that your question is not susceptible of analysis within the framework of Op. No. 79-111 because one position is a private employment, "the questions of conflict of interest and [self-dealing] by public officers would apply whether or not the other position . . . is a public or private office." Op. No. 70-16 at 2-335.

Considering questions of self-dealing and conflict of interest, one of my predecessors has stated:

Any public officer owes an undivided duty to the public. It is contrary to public policy for a public officer to be in a position which would subject him to conflicting duties or expose him to the temptation of acting in any manner other than the best interest of the public. (Citation omitted.)

Op. No. 70-168 at 2-336. I am aware of no relationship between the public office of township trustee and a private employment as a holder of a certificate of competency as an electrical safety inspector which might cause the township trustee to act in a manner contrary to the best interests of the public. Further, I can see no interconnection between township zoning, see R.C. Chapter 519, and the township trustee's private status as the holder of a certificate of competency as an electrical safety inspector.

This is clearly a situation unlike the one considered in 1932 Op. Att'y Gen. No. 4021, vol. I, p. 150, where a district board of health plumbing inspector was found to have a conflict of interest with his private employment in the plumbing business because of the potential for being placed in the position of being an inspector of his own work. Here, the township trustee is not in the position of passing judgment on work he may have performed in his private employment as the holder of a certificate of competency as an electrical safety inspector.

Nor is this a situation like the one presented in a 1938 opinion where one of my predecessors cautioned a member of a county child welfare board, who also served as a member of a private welfare agency, against any self-dealing or action that might pose a conflict of interest:

I cannot avoid commenting that inasmuch as a county welfare board member must approve payment of accounts with agencies and persons rendering services to the board, and must as a matter of official duty inspect and pass upon all homes and institutions wherein children under care of the Board are placed, it is at least an act of bad taste and questionable public policy for a board member to permit

contractual relationships with a private agency of which he is a member. By such action he would certainly lay himself open to the suspicion of having used his official connection to further his private interests. Certainly this should be avoided to say nothing of any situation which would prevent the unhampered and responsible exercise of his duties as to examination and inspection of all places where children under care of the board are placed.

1938 Op. Att'y Gen. No. 3440, vol. III, p. 2320 at 2322. I do not see any contractual relationships between the township trustees and the privately employed holder of certificate of competency as an electrical safety inspector which would constitute self-dealing nor any situation that might pose a conflict of interest. Following the clear warning of the aforementioned 1938 opinion, I would caution the township trustee who holds a certificate of competency as an electrical safety inspector to avoid any situations of self-dealing or conflict of interest which might arise. See [1980-1981 Monthly Record] Ohio Admin. Code 4101:2-93-09 at 870 to 871 (imposing ethical and conflict of interest standards upon electrical safety inspectors). Nevertheless, I find, in the present setting, no apparent conflict of interest or division of loyalties between the public position of a township trustee and privately employed holder of a certificate of competency as an electrical safety inspector.

I note, for your information, that certain potential conflict of interest questions are clearly within the purview of the Ohio Ethics Commission pursuant to R.C. Chapter 102 and R.C. 2921.42. The Ohio Ethics Commission has established regulations and will issue advisory opinions with regard to such matters. Also under R.C. 3783.07 and rule 4101:2-93-09, the Board of Building Standards will consider complaints concerning conflicts of interest regarding electrical safety inspectors.

It is, therefore, my opinion, and you are accordingly advised, that a township trustee may serve as the holder of a certificate of competency as an electrical safety inspector privately employed in the business of conducting electrical inspections, provided that he removes himself from any situation involving self-dealing or conflict of interest.

OPINION NO. 81-079

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 Brunswick city planning commission member and board of health member are compatible.

To: Gregory W. Happ, Medina County Pros. Atty., Medina, Ohio

By: William J. Brown, Attorney General, December 4, 1981

I have before me your request for my opinion in response to the following question:

Does a conflict of interest or incompatibility arise between the position of a member of the City Planning Commission of the Charter City of Brunswick with a member of the Board of Health of a Medina County Combined General Health District?