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VIA ELECTRONIC MAIL

The Honorable Chip McConville
Knox County Prosecuting Attorney
117 E. High Street, Suite 234
Mt. Vernon, Ohio 43050

Dear Prosecutor McConville:

You have requested an informal opinion on whether two individuals elected as board members of a local school district may each simultaneously hold positions of employment with a joint vocational school that serves the same local school district. One individual is employed as a technology coordinator with the joint vocational school district. The second individual is employed as a marketing and communications employee with the joint vocational school district. You also provided detailed job descriptions for the two positions with your request.

A seven-question test is used to determine if two-public positions are compatible. *See* 1979 Op. Att’y Gen. No. 79-111, at 2-367 to 2-368. Here, the question regarding conflicts of interests is dispositive. Upon review, we conclude that the two individuals in question cannot serve as local school board members while simultaneously retaining their employment with a joint vocational school that serves the local school district.

As you note in your request, 2003 Op. Att’y Gen. No. 2003-010 addresses a similar-compatibility question. In that opinion, it was found that a person could not simultaneously serve as a member of the board of education of a local school district and principal of a school in a joint vocational school district that includes the territory of the local school district. Although the two positions you inquire about are not principals of a school in a joint vocational school district, we find that 2003 Op. Att’y Gen. No. 2003-010 provides numerous reasons for why the positions you inquire about are not compatible. We have set forth the key-reasons for concluding that the positions are incompatible below.

First, the board of education for 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.*, 2014 Op. Att’y Gen. No. 2014-012, Slip Op. at 2; 2-95; 2003 Op. Att’y Gen. No. 2003-010, at 2-70. As stated in the 2003 opinion, a local school district and a joint vocational school district may enter into contracts with one another. 2003 Op. Att’y Gen. No. 2003-010, at 2-71 to 2-72; R.C. 3311.212; R.C. 3313.84; R.C. 3313.841; R.C. 3313.842; R.C. 3313.91; R.C. 3313.92(A); R.C. 3323.08(B)(1) and (B)(2); R.C. 3327.04. So, both individuals while acting as members of the local

school board would negotiate and enter into contracts with the entity that employs them. Just as someone serving as a local school board member and principal of a school within a joint vocational school district would suffer from divided loyalties, an individual serving as a local school board member while simultaneously being employed by a joint vocational school would also suffer from conflicting loyalties. *See* 2003 Op. Att’y Gen. No. 2003-010, at 2-72.

Second, local school boards participating in the joint vocational school district may vote to dissolve the joint vocational school district. R.C. 3311.217; 2003 Op. Att’y Gen. No. 2003-010, at 2-73. Under the facts of this request, both individuals would have a personal interest and strong incentive to vote against a resolution to dissolve the joint vocational school district—even if the resolution to dissolve was well-founded and the best course of action.

Third, R.C. 3311.212 permits the board of education of a school district that is a part of a joint vocational school district to enter into an agreement with the joint vocational school board to allow the joint vocational school to use the school district’s buildings. As stated in the 2003 opinion: “Because a board of education of a local school district is required to provide vocational education to pupils in the district, R.C. 3313.90, the board of education may permit the joint vocational school district that provides such education to use the local school district’s buildings and equipment.” 2003 Op. Att’y Gen. No. 2003-010, at 2-73. A person serving as a local school board member and employee of a joint vocational school district may be tasked with considering the needs of the employing entity when acting as a member of the local school board. This would create a situation where conflicting loyalties could occur because the board member may be tempted to consider the needs of the employing joint vocational school above the needs of the served local school district. *See id.* at 2-73 to 2-74.

Fourth, a local school district and a joint vocational school district are taxing authorities. R.C. 5705.01(A) and (C). Both, absent exception found in R.C. 5705.28 and 5705.281, must submit their respective budgets to the county auditor who then submits it to the county budget commission. R.C. 5705.28; R.C. 5705.30; R.C. 5705.31. The county budget commission may make adjustments to the submitted budgets. *See* R.C. 5705.32; *see also* R.C. 5705.31; *e.g.*, 2021 Att’y Gen. No. 2021-029, Slip Op. at 3. Representatives from both a local school district and a joint vocational school district are permitted to go before the county budget commission in order to explain their financial needs. R.C. 5705.32(E)(2). “The determination of the budget commission directly affects the potential revenue of each subdivision.” 1990 Op. Att’y Gen. No. 90-083, at 2-355. So, because the funding available is finite, a joint vocational school district and a local school district are in adverse positions to one another. 2021 Op. Att’y Gen. No. 2021-029, Slip Op. at 3; 2003 Op. Att’y Gen. No. 2003-010, at 2-74; 1990 Op. Att’y Gen. No. 90-083, at 2-355. The adversarial positions of the two entities create divided loyalties for someone serving as a member of a local school board and employee of a joint vocational school because both entities are seeking funding from the same source. *See* 2003 Op. Att’y Gen. No. 2003-010, at 2-74.

Fifth, “both taxing authorities may place a levy on the ballot for taxes in excess of the ten-mill limitation.” 2021 Op. Att’y Gen. No. 2021-029, Slip Op. at 4; R.C. 5705.07; R.C. 5705.194; R.C. 5705.199; R.C. 5705.21 *et seq.*; *see* 2003 Op. Att’y Gen. No. 2003-010, at 2-74 to 2-75. Also, both taxing authorities may submit to the electors the question of whether to issue bonds. 2003 Op. Att’y Gen. No. 2003-010, 2-75; R.C. 133.18; R.C. 3311.20; R.C. 3311.21. “If both the board

of education for the local school district and the joint vocational school district contemplate submitting tax levies or bond issues for additional funding, it is conceivable” that a person simultaneously serving as a member of a local school board and employee of a joint vocational school “would be subject to divided loyalties while deliberating, discussing, or voting on the local school district’s proposed tax levy or bond issue.” 2003 Op. Att’y Gen. No. 2003-010, at 2-75; *see* 1990 Op. Att’y Gen. No. 90-083, at 2-356.

Given the number of conflicts of interests and the fact that the conflicts would repeatedly occur, we find that the two individuals in question cannot sufficiently avoid the conflicts of interests. “A board of education of a local school district that participates in a joint vocational school district is continually making decisions that either directly or indirectly affect the funding or operation of the joint vocational school district.” 2003 Op. Att’y Gen. No. 2003-010, at 2-76. Even if the two local school board members recuse themselves from matters involving the joint vocational school that employs them, such recusal would occur too often to be practical and acceptable. *See id.* at 2-77; *see also* 2021 Op. Att’y Gen. No. 2021-029, Slip Op. at 5.

For the reasons set forth above, it is our opinion, and you are hereby advised that local school board members cannot retain their employment with a joint vocational school that serves the same local school district.

Please note that this response does not constitute a formal opinion of the Ohio Attorney General.

Please do not hesitate to contact me with any questions.

Sincerely,

DAVE YOST
Ohio Attorney General

/s/ *Byers B. Emmerling*

Byers B. Emmerling
Assistant Attorney General, Opinions Unit