

October 12, 2017

The Honorable D. Vincent Faris
Clermont County Prosecuting Attorney
101 East Main Street
Batavia, Ohio 45103

SYLLABUS:

2017-035

A person may serve simultaneously as Chief Deputy Auditor of Clermont County and member or Treasurer of the Board of Trustees of the Clermont County Convention and Visitors Bureau, provided that the person, as Chief Deputy Auditor, does not (1) issue warrants for the disbursement of moneys to the Clermont County Convention and Visitors Bureau; (2) supervise a deputy auditor responsible for issuing warrants for the disbursement of moneys to the Clermont County Convention and Visitors Bureau; or (3) serve on, or supervise a deputy auditor who serves on, the Clermont County Budget Commission on behalf of the Clermont County Auditor when the Clermont County Board of Commissioners has appropriated moneys from the general fund to make contributions to the Clermont County Convention and Visitors Bureau.



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OPINION NO. 2017-035

The Honorable D. Vincent Faris
Clermont County Prosecuting Attorney
101 East Main Street
Batavia, Ohio 45103

Dear Prosecutor Faris:

You have requested an opinion whether a person may serve simultaneously as member of the Clermont County Board of Commissioners, Clermont County Auditor, Chief Deputy Auditor of Clermont County, or an employee of the Clermont County Department of Community and Economic Development and as member or Treasurer of the Board of Trustees of the Clermont County Convention and Visitors Bureau.¹ For clarity and ease of organization, we divided your questions among four separate opinions. The first of these opinions, 2017 Op. Att’y Gen. No. 2017-034 (syllabus), concluded that “[a] person may not serve simultaneously as Clermont County Auditor and member or Treasurer of the Board of Trustees of the Clermont County Convention and Visitors Bureau.” This opinion addresses whether a person may serve simultaneously as Chief Deputy Auditor of Clermont County and member or Treasurer of the Board of Trustees of the Clermont County Convention and Visitors Bureau.

Whether a public position and private position are compatible depends upon the answers to the following five questions:

¹ The Clermont County Convention and Visitors Bureau is a private, nonprofit corporation incorporated pursuant to the provisions of R.C. Chapter 1702. *See* 1999 Op. Att’y Gen. No. 99-028, at 2-184 n.1 (“R.C. Chapter 1702 provides for the creation, merger, consolidation, and dissolution of a nonprofit corporation”). The Board of Trustees of the Clermont County Convention and Visitors Bureau is the entity vested with the authority to conduct the affairs of the corporation. *See* R.C. 1702.30(A) (“[e]xcept where the law, the articles, or the regulations require that action be otherwise authorized or taken, all of the authority of a corporation shall be exercised by or under the direction of its directors”); *see also* R.C. 1702.01(K) (“[d]irectors’ means the persons vested with the authority to conduct the affairs of the corporation irrespective of the name, such as trustees, by which they are designated”).

1. Is the public position in the classified civil service of the state, a county, a city, a city school district, or a civil service township as defined in R.C. 124.57?
2. Do any constitutional provisions or statutes prohibit a person from serving in both positions at the same time?
3. Is there a conflict of interest between the two positions?
4. Are there any controlling local charter provisions, resolutions, or ordinances?
5. Does a federal, state, or local departmental regulation prevent a person from holding both positions?

See 2012 Op. Att’y Gen. No. 2012-040, at 2-349 to 2-350. All of these questions must yield answers in favor of compatibility to support a finding that the two positions are compatible. *Cf.* 2013 Op. Att’y Gen. No. 2013-008, at 2-78 (in analyzing the compatibility of two public positions, all questions of the compatibility test “must yield answers in favor of compatibility in order to conclude that two positions are compatible”).

The first question asks whether the public position is in the classified civil service of the state, a county, a city, a city school district, or a civil service township as defined in R.C. 124.57.² R.C. 124.57(A) states that an officer or employee in the classified civil service of “the state, the several counties, cities, ... city school districts ... or the civil service townships of the state,” shall not “be an officer in any political organization or take part in politics other than to vote ... and to express freely political opinions.” The classified civil service comprises “all persons in the employ of the ... several counties” unless specifically excluded from the classified civil service or specifically included in the unclassified civil service. R.C. 124.11(B); *see also* R.C. 124.11(A)(32) (“[t]he unclassified service shall comprise ... [e]mployees placed in the unclassified service by another section of the Revised Code”). R.C. 124.11(A)(9) places in the unclassified civil service “those persons employed by and directly responsible to elected county officials ... and holding a fiduciary or administrative relationship to such elected county officials.” We understand that the Chief Deputy Auditor of Clermont County is in the unclassified civil service. Therefore, R.C. 124.57 does not apply to the Chief Deputy Auditor of Clermont County. Accordingly, the first question of the compatibility analysis may be answered in favor of compatibility.

² The civil service in Ohio is divided into the classified and unclassified service. R.C. 124.11; *see also* Ohio Const. art. XV, § 10. An individual employed in the classified civil service possesses a statutory claim of qualified entitlement to continued employment, *see* R.C. 124.23, R.C. 124.34, whereas an individual employed in the unclassified civil service may be dismissed without cause, provided that the dismissal is not otherwise unlawful. *See* 1996 Op. Att’y Gen. No. 96-040, at 2-154.

The second question of the compatibility test asks whether there are any constitutional provisions or statutes that prohibit a person from serving in both positions at the same time. No constitutional or statutory provisions prohibit a person from serving simultaneously as the Chief Deputy Auditor of Clermont County and member or Treasurer of the Board of Trustees of the Clermont County Convention and Visitors Bureau. Therefore, the second question of the compatibility analysis may be answered in favor of compatibility.

The third question of the compatibility test asks whether a conflict of interest exists between the two positions. 2016 Op. Att’y Gen. No. 2016-004, at 2-43. A conflict of interest exists if the duties and responsibilities of one position are of such a nature as to influence the duties and responsibilities of the other position, thereby subjecting the person holding those positions to influences which may cause the person to act other than in the public’s best interest.³ 2017 Op. Att’y Gen. No. 2017-004, at 2-34; 2012 Op. Att’y Gen. No. 2012-040, at 2-351 to 2-352. “The mere existence of a conflict of interest does not automatically render two positions incompatible.” 2017 Op. Att’y Gen. No. 2017-004, at 2-34. When “the possibility of conflict is remote and speculative” and can be mitigated or avoided, “the conflict of interest rule is not violated.” 1993 Op. Att’y Gen. No. 93-016, at 2-91; *see also* 2004 Op. Att’y Gen. No. 2004-019, at 2-158 (“[w]here it can be demonstrated that the conflicts may be sufficiently avoided or eliminated entirely, the person may serve in both positions”).

The factors considered in determining whether conflicts of interest are remote and speculative and can be mitigated or avoided “include the probability of the conflicts arising, the ability of the person to remove himself from any conflicts that may arise, whether the person exercises decision-making authority in each position, and whether the conflicts relate to the primary functions of each position or to financial or budgetary matters.” 2012 Op. Att’y Gen. No. 2012-040, at 2-352. If a conflict of interest between a public position and a private position is not remote and speculative and cannot be mitigated or avoided to ensure the person is not tempted to act in other than the public’s best interest, a person may not hold those positions simultaneously. As explained in 1979 Op. Att’y Gen. No. 79-111, “[i]t 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.” 1979 Op. Att’y Gen. No. 79-111, at 2-371 (quoting 1970 Op. Att’y Gen. No. 70-168, at 2-336).

Whether a person who serves simultaneously as Chief Deputy Auditor of Clermont County and member or Treasurer of the Board of Trustees of the Clermont County Convention

³ As the Ohio Ethics Commission is authorized to determine the applicability of the ethics and conflict of interest provisions of R.C. Chapter 102 and R.C. 2921.42-43, R.C. 102.08, the Attorney General “refrain[s] from interpreting and applying [those] provisions by way of a formal opinion.” 2011 Op. Att’y Gen. No. 2011-008, at 2-60 n.1. For a determination of whether those provisions apply to the positions at issue in this opinion, we recommend that you contact the Ohio Ethics Commission. *Id.*

and Visitors Bureau is subject to a conflict of interest requires an examination of the duties and responsibilities of each position. *See* 2012 Op. Att’y Gen. No. 2012-040, at 2-352. A deputy auditor is appointed by the county auditor to aid the county auditor “in the performance of his duties.” R.C. 319.05. A county auditor is responsible for, among other things, “maintaining the financial records of the county, certifying moneys into the county treasury, and issuing warrants for all moneys payable from the county treasury.” 2002 Op. Att’y Gen. No. 2002-005, at 2-25; *see also* R.C. 319.13 (requiring a county auditor to “certify ... moneys into the county treasury, specifying by whom to be paid, what fund to be credited,” and to “charge the treasurer with such moneys”); R.C. 319.15 (requiring a county auditor to prepare a monthly statement of the county’s finances); R.C. 319.16 (requiring a county auditor, when issuing a warrant that authorizes the disbursement of county moneys, to keep a record of the warrant “showing the number, date of issue, amount for which drawn, in whose favor, for what purpose, and on what fund”). A county auditor also is a member of the county budget commission. R.C. 5705.27. The county budget commission is responsible for reviewing and revising the tax budgets of all of the subdivisions in the county. *See* R.C. 5705.30; R.C. 5705.31; R.C. 5705.32.

According to the job description provided by your office, a person serving as Chief Deputy Auditor of Clermont County “[e]xercises supervision of management and mid-management level personnel by coordinating the implementation of office policies and procedures as directed by the Auditor”; “[r]eviews and negotiates contracts with outside vendors for services and products required for the operation of the office”; “[r]epresents the Auditor, as directed, at various official hearings, meetings and functions including the Automatic Data Processing Board, Budget Commission, Records Commission, ... and on the Board of Revision”; and “[p]repare[s] documentation for review by the Budget Commission.” The Chief Deputy Auditor of Clermont County also “[s]upervises preparation of the County Annual Financial Report”; “[s]upervises and coordinates the annual budget request process with the Board of Commissioners”; “[r]eviews the budget throughout the calendar year to assure that sufficient funds are available for all necessary expenditures”; and performs “[a]ny and all other administrative duties as may be required or assigned by the Auditor.”

The duties and responsibilities of a member or Treasurer of the Board of Trustees of the Clermont County Convention and Visitors Bureau are set forth in the bylaws adopted by the Bureau’s Board of Trustees. *See* R.C. 1702.30(A) (authorizing a board of directors of a corporation to adopt bylaws “[f]or their own government ... that are not inconsistent with the articles [of incorporation]” filed as set forth in R.C. 1702.04 “or the regulations” for the government of the corporation adopted pursuant to R.C. 1702.10). Article II, Section 1 of the Bylaws of the Clermont County Convention and Visitors Bureau (“Bylaws”) states that “[t]he government and policy-making responsibilities of the Bureau shall be vested in the Board of Trustees, ... which shall control [the Bureau’s] property, be responsible for its finances, and direct its affairs.” The Board of Trustees may, among other things, “[p]urchase or otherwise acquire, ... invest in, ... sell, exchange, transfer, and dispose of property,” Bylaws, Art. II, Sec. 2A, and “[b]orrow money, and issue, sell, and pledge [the Bureau’s] notes, bonds, and other

evidences of indebtedness,” Bylaws, Art. II, Sec. 2E.

In addition to the powers conferred upon all members of the Board of Trustees, the Treasurer of the Board of Trustees of the Clermont County Convention and Visitors Bureau is responsible for keeping “[t]he books and accounts of the Bureau,” Bylaws, Art. VII, Sec. 3, and serves on the Executive Committee, which “perform[s] such duties as may be delegated by the Board from time to time.” Bylaws, Art. IV, Sec. 1. The Executive Committee is responsible for adopting and submitting to the Board for revision or approval “a budget of anticipated revenues and expenses,” Bylaws, Art. VII, Sec. 2, and may approve or order the “disbursements of money or other property of the Bureau,” Bylaws, Art. VII, Sec. 1.

The Clermont County Convention and Visitors Bureau is funded, in part, by revenue derived from an excise tax levied by the Clermont County Board of Commissioners pursuant to R.C. 5739.09. R.C. 5739.09(A)(1) authorizes a board of county commissioners to “levy an excise tax not to exceed three per cent on transactions by which lodging by a hotel is or is to be furnished to transient guests.” Divisions (A)(1) through (12) of R.C. 5739.09 set forth various ways in which revenue arising from the tax shall be distributed. *See, e.g.*, R.C. 5739.09(A)(12)(b) (a board of county commissioners with a population between 190,000 and 200,000 that levies an excise tax under R.C. 5739.09(A)(1) “may increase the rate of the tax by not more than one per cent ... for the purposes of paying the costs of constructing, improving, and maintaining a professional sports facility in the county and paying expenses considered necessary by the convention and visitors’ bureau ... to promote travel and tourism with respect to that professional sports facility”). Generally, however, except as provided in the circumstances described in those divisions, a portion of the revenue arising from an excise tax levied pursuant to R.C. 5739.09(A)(1) “shall be spent solely to make contributions to the convention and visitors’ bureau operating within the county.”⁴ The portion of the revenue

⁴ R.C. 5739.09(A)(1) states, in pertinent part:

A board of county commissioners may ... levy an excise tax not to exceed three per cent on transactions by which lodging by a hotel is or is to be furnished to transient guests. The board shall establish all regulations necessary to provide for the administration and allocation of the tax. The regulations may prescribe the time for payment of the tax, and may provide for the imposition of a penalty or interest, or both, for late payments, provided that the penalty does not exceed ten per cent of the amount of tax due, and the rate at which interest accrues does not exceed the rate per annum prescribed pursuant to [R.C. 5703.47]. Except as provided in divisions (A)(2)-(12) of this section, the regulations shall provide, after deducting the real and actual costs of administering the tax, for the return to each municipal corporation or township that does not levy an excise tax on the transactions, a uniform percentage of the tax collected in the municipal corporation or in the unincorporated portion of the township from each transaction, not to exceed thirty-three and one-third per cent. The remainder of the

earmarked for the convention and visitors' bureau is placed into a separate fund in the county treasury before it is disbursed in accordance with R.C. 5739.09(A)(1).

A review of the duties and responsibilities of the position of Chief Deputy Auditor of Clermont County and member or Treasurer of the Board of Trustees of the Clermont County Convention and Visitors Bureau discloses several potential conflicts of interest. R.C. 319.16 requires a county auditor to "issue warrants ... on the county treasurer for all moneys payable from the county treasury." The Clermont County Convention and Visitors Bureau receives county moneys pursuant to R.C. 5739.09. Therefore, "before moneys in the Clermont County treasury may be disbursed" to the Clermont County Convention and Visitors Bureau, "the Clermont County Auditor 'must issue warrants ... authorizing the disbursements.'" 2017 Op. Att'y Gen. No. 2017-034, slip op. at 5 (quoting 2002 Op. Att'y Gen. No. 2002-005, at 2-24). If a person who serves simultaneously as Chief Deputy Auditor of Clermont County and member or Treasurer of the Board of Trustees of the Clermont County Convention and Visitors Bureau is responsible, as Chief Deputy Auditor, for issuing warrants that authorize the disbursements of moneys to the Clermont County Convention and Visitors Bureau or is required to supervise the deputy auditor responsible for issuing such warrants, that person would face conflicting duties and loyalties that may prevent him from making completely disinterested decisions when transferring county moneys from the county treasury to the Clermont County Convention and Visitors Bureau.

We recently relied upon this conflict of interest to conclude that "[a] person may not serve simultaneously as Clermont County Auditor and member or Treasurer of the Board of Trustees of the Clermont County Convention and Visitors Bureau." 2017 Op. Att'y Gen. No. 2017-034 (syllabus). In the case of the Clermont County Auditor, we recognized that this conflict of interest was certain to occur, and could not be sufficiently mitigated or avoided:

[T]he conflict of interest facing a person serving simultaneously as Clermont County Auditor and as member or Treasurer of the Board of Trustees of the Clermont County Convention and Visitors Bureau relates to financial and budgetary matters and is certain to occur. The Clermont County Board of Commissioners has levied an excise tax pursuant to R.C. 5739.09(A)(1). A portion of the revenue derived from that tax is required by statute to be spent solely to make contributions to the Clermont County Convention and Visitors Bureau. Thus, there is no question that the Clermont County Auditor will be required to issue warrants for the disbursement of moneys to the Clermont County Convention and Visitors Bureau in accordance with R.C. 5739.09.

revenue arising from the tax shall be deposited in a separate fund and shall be spent solely to make contributions to the convention and visitors' bureau operating within the county.

A person serving simultaneously as Clermont County Auditor and member or Treasurer of the Board of Trustees of the Clermont County Convention and Visitors Bureau is not able to eliminate or mitigate this conflict of interest, as Clermont County Auditor, by delegating to a deputy county auditor the duty to issue warrants for the disbursement of moneys to the Clermont County Convention and Visitors Bureau.... A county auditor supervises, and is responsible for, the actions of his subordinates.... Thus, a deputy county auditor to which the duty to issue warrants for the disbursement of moneys to the Clermont County Convention and Visitors Bureau has been assigned may be adversely influenced by the interests of his superior.

Id. at 6-7.

Although this conflict of interest is certain to occur in the case of the Clermont County Auditor, it is not certain to occur for the Chief Deputy Auditor of Clermont County. Conflicts of interest that exist for an elected county official are not automatically imputed to her deputies or assistants. *Cf.* 2009 Op. Att’y Gen. No. 2009-049, at 2-367 n.2 (“the fact that a county prosecuting attorney may not serve on the county law library resources board does not in and of itself foreclose an assistant county prosecuting attorney from serving as a member of the ... board”). This conflict of interest arises for the Chief Deputy Auditor of Clermont County only if he issues warrants that authorize the disbursement of moneys to the Clermont County Convention and Visitors Bureau or supervises the deputy auditor responsible for issuing these warrants. *See* 1999 Op. Att’y Gen. No. 99-045, at 2-283 (“[i]t is speculative whether the person, as a deputy county auditor, will be required to issue warrants”). In 1999 Op. Att’y Gen. No. 99-045, at 2-283 n.2, the Attorney General recognized that “[t]he fact that a deputy county auditor holds another ... position that receives ... moneys from the county treasury is, in and of itself, an insufficient reason to find that the deputy county auditor is subject to an impermissible conflict of interest.” Thus, so long as the Chief Deputy Auditor does not issue warrants that authorize the disbursement of moneys to the Clermont County Convention and Visitors Bureau and does not supervise any deputy auditor responsible for issuing such warrants, this conflict of interest does not render the position of Chief Deputy Auditor of Clermont County incompatible with member or Treasurer of the Board of Trustees of the Clermont County Convention and Visitors Bureau.

A second conflict of interest may arise for a person serving simultaneously as Chief Deputy Auditor of Clermont County and member or Treasurer of the Board of Trustees of the Clermont County Convention and Visitors Bureau if the Clermont County Board of Commissioners has appropriated moneys from the county general fund to make contributions to the Clermont County Convention and Visitors Bureau and the person, as Chief Deputy Auditor of Clermont County, is required to serve on, or to supervise a deputy auditor who serves on, the Clermont County Budget Commission on behalf of the Clermont County Auditor.

A board of county commissioners is required to adopt a tax budget for the county “for the next succeeding fiscal year.”⁵ R.C. 5705.28(A). The county’s tax budget estimates the county’s anticipated expenditures and receipts, including the amount of money the county will require from the general property tax. *See* R.C. 5705.29 (listing the information each taxing unit shall include in its tax budget); *see also* R.C. 5705.09 (requiring each subdivision to establish certain funds into which tax revenues may be deposited and from which expenditures may be made). R.C. 307.693 authorizes a board of county commissioners to “appropriate moneys from the general fund to make contributions to convention and visitors’ bureaus operating within the county.” If the Clermont County Board of Commissioners appropriates moneys from its general fund to make contributions to the Clermont County Convention and Visitors Bureau pursuant to R.C. 307.693, the estimated amount of money that the county plans to appropriate to the Bureau from the general fund is included in the county’s tax budget.

The county’s tax budget, along with the tax budgets of all of the other subdivisions in the county, are submitted to the county auditor and presented to the county budget commission for examination. R.C. 5705.30; R.C. 5705.31; *see also* R.C. 5705.01(A) (defining “subdivision”); R.C. 5705.27 (creating county budget commissions). The county budget commission consists of “the county auditor, the county treasurer, and the prosecuting attorney.” R.C. 5705.27. A deputy county auditor may sit on the county budget commission on behalf of the county auditor. *See* 1999 Op. Att’y Gen. No. 99-045, at 2-281 (“a deputy county auditor may take the place of the county auditor on the county budget commission”). The county budget commission reviews the tax budgets “and ascertain[s] the total amount proposed to be raised in the county for the purposes of each subdivision and other taxing units.” R.C. 5705.31. The county budget commission ascertains that the levies identified in divisions (A) through (E) of R.C. 5705.31 “have been properly authorized,” and if so authorized, approves those levies without modification.⁶ *Id.* (“[d]ivisions (A) to (E) of this section are mandatory and commissions shall be without discretion to reduce such minimum levies except as provided in such divisions”); *see*

⁵ A subdivision is not required to adopt a tax budget under R.C. 5705.28(A) if it does not levy a tax, *see* R.C. 5705.28(B)(2)(a), or if the county budget commission, by majority vote, waives the requirement that the subdivision adopt a tax budget, *see* R.C. 5705.281. *See also* R.C. 5705.28(B)(1) (a board of trustees of a school library district that meets certain requirements files a tax budget with the board of education of a school district).

⁶ R.C. 5705.31(D), for example, requires a county budget commission to approve a minimum levy within the ten-mill limitation for the current expense and debt service of each subdivision or other taxing unit that existed during the last five years the fifteen-mill limitation was in effect (the period of 1929 through 1933). *See Newton Twp. v. Trumbull Cnty. Budget Comm’n*, Ohio Tax Case No. 92-M-1313, 1994 Ohio Tax LEXIS 1794, at *6 (BTA Oct. 28, 1994). When territory annexed to a municipal corporation remains part of a township, the minimum levy of the municipal corporation or township is adjusted pursuant to R.C. 5705.315(A)-(B).

also Vill. of S. Russell v. Budget Comm'n of Geauga Cnty., 12 Ohio St. 3d 126, 132, 465 N.E.2d 876 (1984) (“the phrase ‘properly authorized,’ as employed in R.C. 5705.31, requires the [county] budget commission to determine that” the taxing authority of the subdivision or other taxing unit has the power to impose the tax, “either by its own action or by vote of the people, ... that the enactment of the measure imposing the tax was in compliance with statutory requirements,” and to “determine whether [the] rate of taxation is clearly required by the budget of the taxing district or the political subdivision,” including a “determination of whether the funds to be derived from a levy approved for a specific purpose are indeed budgeted for that purpose”).

After approving the mandated levies in R.C. 5705.31(A)-(E), the county budget commission adjusts the amounts that the tax budgets estimate will be required from the general property tax so as to bring the tax levies required therefor within the ten-mill limitation and other limitations specified in R.C. 5705.01 to R.C. 5705.47.⁷ *See* R.C. 5705.32(A). The amount of money required by each subdivision, as shown in each subdivision’s tax budget, affects the amount of tax dollars derived from taxes levied within the ten-mill limitation that will be allocated to each of the subdivisions in the county. *See* 2011 Op. Att’y Gen. No. 2011-008, at 2-64. The amount of tax dollars allocated to each subdivision dictates the amount of money that will be available for allocation and use by the subdivision and its various departments, agencies, and offices. In this instance, the amount of tax dollars allocated to Clermont County by the Clermont County Budget Commission would affect the amount of moneys available for appropriation to the Clermont County Convention and Visitors Bureau. Therefore, a Chief Deputy Auditor of Clermont County that serves simultaneously as member or Treasurer of the Clermont County Convention and Visitors Bureau and who also is required to serve on, or to supervise another deputy auditor that serves on, the Clermont County Budget Commission, may be influenced to make adjustments and revisions to the tax budgets or to encourage his subordinate to make such adjustments and revisions in a way that maximizes the amount of money available for allocation to the Clermont County Convention and Visitors Bureau. *Cf.* 2017 Op. Att’y Gen. No. 2017-032, slip op. at 5 (recognizing that a county prosecuting attorney may not serve as a member of an entity to which the board of county commissioners may appropriate money because “as a member of the county budget commission, the prosecuting

⁷ “Revenue derived from taxes levied within the ten-mill limitation is commonly referred to as ‘inside millage.’” 2016 Op. Att’y Gen. No. 2016-012, at 2-120. The total amount of state and local taxes levied on real property may not exceed ten mills on each dollar of the property’s true value in money, except for those taxes that have been specifically authorized to be levied in excess thereof. Ohio Const. art. XII, § 2; R.C. 5705.02; *see also* 2005 Op. Att’y Gen. No. 2005-043, at 2-449 (“[t]axes levied by various taxing units may include both taxes within the 10-mill limitation (unvoted taxes) and taxes outside the 10-mill limitation (taxes authorized by the voters)”). A mill is a tenth part of one cent. *Black’s Law Dictionary* 1008 (7th ed. 1999). This rule is known as the “ten-mill limitation.” *See* R.C. 5705.02.

attorney ... acts as a check upon the financial requests” of that entity).

This conflict of interest, however, also is remote and speculative. First, it is speculative whether the Clermont County Board of Commissioners will decide to appropriate moneys to make contributions to the Clermont County Convention and Visitors Bureau pursuant to R.C. 307.693. Second, if the Clermont County Board of Commissioners does decide to appropriate moneys to the Bureau, a Chief Deputy Auditor of Clermont County who also serves as member or Trustee of the Clermont County Convention and Visitors Bureau is not required by statute to serve on the County Budget Commission on behalf of the Clermont County Auditor or to supervise a deputy auditor who serves on the County Budget Commission on the auditor’s behalf. *See* 1999 Op. Att’y Gen. No. 99-045, at 2-282 (“[i]t is speculative whether the deputy county auditor in question will be required to serve in place of the county auditor on the county budget commission”). So long as the Clermont County Board of Commissioners does not appropriate moneys pursuant to R.C. 307.693, or, in the event that the Clermont County Board of Commissioners does appropriate such moneys, so long as the Chief Deputy Auditor does not serve on the Clermont County Budget Commission or supervise the deputy county auditor responsible for serving on the Clermont County Budget Commission, this conflict of interest does not render the position of Chief Deputy Auditor of Clermont County incompatible with member or Treasurer of the Board of Trustees of the Clermont County Convention and Visitors Bureau.

A final conflict of interest may arise if the Clermont County Board of Commissioners appropriates moneys pursuant to R.C. 307.693 and the Chief Deputy Auditor of Clermont County, as part of his duty to supervise and coordinate the county’s “annual budget request process,” exerts any influence on the compilation of the county’s tax budget. As set forth above, a county’s tax budget includes an estimate of the county’s anticipated expenditures and receipts, including the amount of money the county will require from the general property tax. If the Clermont County Board of Commissioners desires to include in its tax budget an estimate of contributions to the Clermont County Convention and Visitors Bureau, a person serving simultaneously as Chief Deputy Auditor of Clermont County and member or Treasurer of the Clermont County Convention and Visitors Bureau may find it difficult to supervise and coordinate the county’s budget request in a disinterested manner. Instead, the person may be influenced in his role as Chief Deputy Auditor to encourage adjustments to the estimates submitted in the county’s tax budget in a way that increases the amount of moneys available for appropriation to the Clermont County Convention and Visitors Bureau.

This conflict of interest, however, also is remote and speculative and may be adequately mitigated or avoided so as to avoid incompatibility. First, as we mentioned above, it is speculative whether the Clermont County Board of Commissioners will decide to appropriate moneys to make contributions to the Clermont County Convention and Visitors Bureau pursuant to R.C. 307.693. Second, it is unclear exactly what type of influence, if any, the Chief Deputy Auditor of Clermont County would have as part of his duty to supervise and coordinate the county’s “annual budget request process.” Further, even if the Clermont County Board of

Commissioners does appropriate moneys pursuant to R.C. 307.693 and the Chief Deputy Auditor does have influence over the compilation of the county's tax budget, any undue influence exerted by the Chief Deputy Auditor in this regard would be tempered by the role that the Clermont County Board of Commissioners and Clermont County Budget Commission play in the overall budgeting process.

The compilation and adoption of the county's tax budget is ultimately completed by, and the responsibility of, the board of county commissioners. 2016 Op. Att'y Gen. No. 2016-035, at 2-439. "Further, after its adoption, a tax budget is subject to further review, adjustment, and approval by the county budget commission." *Id.* at 2-440. The Chief Deputy Auditor of Clermont County does not have the final power to determine the estimated amount of expenditures and receipts that are included in the county's tax budget, nor does the Chief Deputy Auditor of Clermont County have the final power to determine how that budget shall be ultimately adjusted by the county budget commission. Accordingly, based upon the foregoing mitigating factors, we conclude that this speculative conflict of interest is not sufficient to render the position of Chief Deputy Auditor of Clermont County incompatible with the position of member or Treasurer of the Board of Trustees of the Clermont County Convention and Visitors Bureau.

A person serving simultaneously as Chief Deputy Auditor of Clermont County and member or Treasurer of the Board of Trustees of the Clermont County Convention and Visitors Bureau may be subject to conflicts of interest. The nature of some of the conflicts of interest, as discussed above, are remote and speculative, and therefore do not render these positions incompatible. In the event conflicts of interest are not remote and speculative or do arise, the conflicts can be sufficiently mitigated or avoided. Accordingly, question three of the compatibility analysis may be answered in favor of compatibility.

The fourth question of the compatibility test asks whether any local charter provisions, resolutions, or ordinances prohibit the holding of the two positions. Whether any local charter provisions, resolutions, or ordinances apply is a matter of local concern. *See* 1996 Op. Att'y Gen. No. 96-062, at 2-252; 1993 Op. Att'y Gen. No. 93-016, at 2-85; 1979 Op. Att'y Gen. No. 79-111, at 2-368. We presume in this instance, having received no information to the contrary, that no local charter provisions, resolutions, or ordinances prohibit one person from holding the position of Chief Deputy Auditor of Clermont County and position of member or Treasurer of the Board of Trustees of the Clermont County Convention and Visitors Bureau.

The fifth question of the compatibility test asks whether any state, local, or federal departmental regulations prohibit a person from simultaneously holding the position of Chief Deputy Auditor of Clermont County and member or Treasurer of the Board of Trustees of the Clermont County Convention and Visitors Bureau. There are no state, local, or federal departmental regulations applicable. Accordingly, this final question may be answered in favor of compatibility.

Accordingly, it is our opinion, and you are hereby advised that a person may serve simultaneously as Chief Deputy Auditor of Clermont County and member or Treasurer of the Board of Trustees of the Clermont County Convention and Visitors Bureau, provided that the person, as Chief Deputy Auditor, does not (1) issue warrants for the disbursement of moneys to the Clermont County Convention and Visitors Bureau; (2) supervise a deputy auditor responsible for issuing warrants for the disbursement of moneys to the Clermont County Convention and Visitors Bureau; or (3) serve on, or supervise a deputy auditor who serves on, the Clermont County Budget Commission on behalf of the Clermont County Auditor when the Clermont County Board of Commissioners has appropriated moneys from the general fund to make contributions to the Clermont County Convention and Visitors Bureau.

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is written in a cursive, flowing style.

MICHAEL DEWINE
Ohio Attorney General