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Release

I have reviewed the Sheriff's report concerning a possible conflict between Matt McConnon holding both a place on the Cedar Springs School Board and Courtland Township Board (Township Trustee). Along with the applicable statutes and corresponding case law, I have also read both William Forsyth's prior opinion letter on the incompatibility of someone being both a school board member and a city council member in Cedar Springs and the most recent opinion letter from the school attorney regarding this specific question.

MCL 15.181(b) defines "incompatible offices" as "public offices held by a public official which, when the official is performing the duties of any of the public offices held by the official, results in any of the following with respect to those offices held:

- (i) The subordination of 1 public office to another,
- (ii) The supervision of 1 public office by another,
- (iii) A breach of duty of public office.

While the first two instances do not apply in this case, the third—breach of duty of public office—requires more analysis. The key issue in this third area, covered in virtually every opinion on this matter, is the question of the existence of some sort of contractual relationship between the two offices. Offices have been held to be incompatible under the third option where the two entities on which a person is serving are in a contractual relationship (or negotiation such a relationship). *Contesti v Attorney General*, 164 Mich App 271, 280-281 (1987); see also *Macomb County Prosecutor v Murphy*, 464 Mich 149, 161-164 (2001). The question then becomes does Cedar Springs Public Schools have any sort of contractual relationship with Courtland Township?

The answer to that question is they do not. The only possible "contractual" relationship discovered by the Kent County Sheriff's Department between Courtland Township and Cedar Springs Public Schools involves Cedar Springs Schools Parks and Recreation. Courtland Township is a member of the "Cedar Springs Area Parks and Recreation Board". There is an operating agreement for this entity, most importantly for this question, Cedar Springs Schools and Courtland Township are part of the governing body of this organization. They do not oppose one another, they are partners in this organization. This is a key point, for the main AG opinion in this area is crystal clear, "A person may simultaneously serve as a board of education member and an elected city council member so long as the public bodies do not negotiate or enter into contracts with one another." *OAG No. 6825*. This reasoning was later followed by the Michigan Supreme Court, "Where, however, incompatibility arises only when the performance of the duties of the two offices results in a breach of duty of a public office, there is not

incompatibility until the two public entities actually enter into contractual negotiations with each other." *Macomb County Prosecutor v Murphy*, 464 Mich 149, at 163(2001); citing *OAG No. 5256*. There is no contractual negotiations between the Cedar Springs School Board and Courtland Township in which they oppose each other, they work together in formulating policy and procedures for this board.

One other possible issue, one which Mr. Forsyth cited in his opinion years ago, was the fact that, in his case, the City of Cedar Springs ran the school board elections. The individual in that case served on the City Council of Cedar Springs and on the Cedar Springs School Board. This was another factor in his opinion that there was a conflict. This case is much different. The Kent County Clerk conducts the elections in Courtland Township for the school board. Given this fact, there is no conflict with a trustee sitting on the school board due to election issues.

Given all the facts that I am aware of at this time, there does not appear to be any sort of conflict between Mr. McConnon serving as Courtland Township Trustee and as a member of the Cedar Springs School Board that would necessitate him stepping down from either office.



Chris Becker
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