



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

August 26, 2015

I - 15-007

GOVERNMENTAL ETHICS &
CONFLICT OF INTEREST:
Sheriff or Deputy Sheriff Serving on County's
Emergency Telephone System Board

The Honorable Mark R. Isaf
State's Attorney, Edgar County
115 West Court Street, Room S
Paris, Illinois 61944-1787

Dear Mr. Isaf:

I have your letter in which you state that the Edgar County Emergency Telephone System Board (the ETS Board) has agreed to compensate the Edgar County sheriff's office for providing dispatching services for the Edgar County Emergency Telephone System (the System). You inquire whether, in light of this agreement, either the Edgar County sheriff or an Edgar County deputy sheriff may serve simultaneously as a member of the ETS Board. For the reasons discussed below, in these circumstances, the offices of sheriff and deputy sheriff are incompatible with the office of ETS board member. **Accordingly, neither the Edgar County sheriff nor an Edgar County deputy sheriff may serve simultaneously as a member of the Edgar County ETS Board.** We are hopeful that this analysis will provide guidance for future appointments to ETS boards as consolidation and restructuring of the boards occurs to comply with the requirements of Public Act 99-006, effective in part June 29, 2015, and January 1, 2016.

BACKGROUND

Pursuant to subsection 15.4(a) of the Emergency Telephone System Act (the Act) (50 ILCS 750/15.4(a) (West 2014)), a county that imposes a telephone surcharge to fund an emergency telephone system is required to establish a governing board for the system:

The corporate authorities shall provide for the manner of appointment and the number of members of the [ETS] Board, provided that the board shall consist of not fewer than 5 members, *one of whom must be a public member who is a resident of the local exchange service territory included in the 9-1-1 coverage area, one of whom (in counties with a population less than 100,000)^[1] must be a member of the county board, and at least 3 of whom shall be representative of the 9-1-1 public safety agencies, including but not limited to police departments, fire departments, emergency medical services providers, and emergency services and disaster agencies, and appointed on the basis of their ability or experience. * * * Elected officials, including members of a county board, are also eligible to serve on the board.* (Emphasis added.)²

Subsection 15.4(b) of the Act (50 ILCS 750/15.4(b) (West 2014)), which sets out the powers and duties of an ETS board, currently provides, in pertinent part:

(b) The powers and duties of the board shall be defined by ordinance of the * * * county * * *. The powers and duties shall include, but need not be limited to the following:

- (1) Planning a 9-1-1 system.
- (2) Coordinating and supervising the implementation,

¹According to the 2010 Federal decennial census, the population of Edgar County is 18,576 inhabitants. Illinois Blue Book 441 (2013-2014).

²Public Act 99-006, Article II, effective January 1, 2016, will amend numerous sections of the Act to create a single statewide 9-1-1 system. Specifically, section 15.4 of the Act will be amended to provide that on and after January 1, 2016, no municipality or county may create an ETS board unless it is a joint ETS board, new section 15.4a will be added to require consolidation of certain ETS boards by July 1, 2017, and numerous other changes will be made to implement the recommendations of the 9-1-1 Services Advisory Board. See 9-1-1 Services Advisory Board, Report to the Illinois General Assembly, April 1, 2015, available at <http://www.icc.illinois.gov/911servicesadvisoryboard/>.

upgrading, or maintenance of the system, including the establishment of equipment specifications and coding systems.

(3) *Receiving moneys from the surcharge imposed under Section 15.3, and from any other source, for deposit into the Emergency Telephone System Fund.*

(4) *Authorizing all disbursements from the fund.*

(5) Hiring any staff necessary for the implementation or upgrade of the system.

(6) Participating in a Regional Pilot Project to implement next generation 9-1-1, as defined in this Act, subject to the conditions set forth in this Act. (Emphasis added.)

In addition, subsection 15.4(c) of the Act (50 ILCS 750/15.4(c) (West 2014)) presently authorizes the Board to expend ETS funds for specified purposes:

(c) All moneys received by a board pursuant to a surcharge imposed under Section 15.3 shall be deposited into a separate interest-bearing Emergency Telephone System Fund account. The treasurer of the * * * county that has established the board * * * shall be custodian of the fund. All interest accruing on the fund shall remain in the fund. *No expenditures may be made from such fund except upon the direction of the board by resolution passed by a majority of all members of the board. Expenditures may be made only to pay for the costs associated with the following:*

* * *

(7) * * * products and services necessary for the implementation, upgrade, and maintenance of the system and *any other purpose related to the operation of the system, including costs attributable directly to the construction, leasing, or maintenance of any buildings or facilities or costs of personnel attributable directly to the operation of the system.* Costs attributable directly to the operation of an emergency telephone system do not include the costs of public safety agency personnel who are and equipment that is dispatched in response to an emergency call. (Emphasis added.)

ANALYSIS

Composition of an ETS board

A single county ETS board is an agency of the county. *See* Ill. Att'y Gen. Op. No. 96-038, issued December 3, 1996; Ill. Att'y Gen. Inf. Op. No. I-12-003, issued March 2, 2012; Ill. Att'y Gen. Inf. Op. No. I-07-047, issued September 13, 2007. The county board determines the number of members comprising the board and their method of selection. 50 ILCS 750/15.4(a) (West 2014). Subsection 15.4(a) of the Act requires that at least three members of an ETS board be representatives of 9-1-1 public safety agencies, "including but not limited to police departments, fire departments, emergency medical services providers, and emergency services and disaster agencies[.]"³ The Act defines "public safety agency" as "a functional division of a public agency which provides firefighting, police, medical, or other emergency services." 50 ILCS 750/2.02 (West 2014).

A sheriff is a "conservator of the peace in his or her county," and is under a duty to "prevent crime and maintain the safety and order of the citizens of that county; and may arrest offenders on view[.]" 55 ILCS 5/3-6021 (West 2014). **As the supervisor of safety for the county,** the sheriff is also charged with enforcing the laws of this State, as well as municipal ordinances, relating to the regulation of motor vehicle traffic and the promotion of safety on public highways. 55 ILCS 5/3-6035, 3-6036 (West 2014). Deputy sheriffs may perform any and all of the duties of the sheriff, in the name of the sheriff, and the acts of the deputies are held to be acts of the sheriff. 55 ILCS 5/3-6015, 3-6016 (West 2014). Because it provides police services, **the Edgar County sheriff's office constitutes a "public safety agency," as that term is defined in the Act.**⁴ Consequently, both the sheriff and a deputy sheriff would meet the requirements to serve on the Edgar County ETS Board as representatives of a public safety agency, **unless they are otherwise disqualified from serving.**

³Your letter indicates that the Edgar County ETS Board consists of individuals representing the Paris Fire Department, Hume/Metcalf Police Department, Vermilion Fire Service, Paris Police and Fire Board, the sheriff of Edgar County, and a deputy sheriff of Edgar County. It appears that all of these individuals would be classified as representatives of the 9-1-1 public safety agencies. However, an ETS board is also required to include a public member who is a resident of the local exchange service territory included in the 9-1-1 coverage area, as well as a county board member. *See* 50 ILCS 750/15.4(a) (West 2014).

⁴*See also People ex rel. Rexses v. Cermak*, 239 Ill. App. 195, 200-01 (1925) (the police function of patrolling highways attaches to the sheriff); *People v. Dittmar*, 2011 IL App (2d) 091112, ¶29, 954 N.E.2d 263, 271-72 (2011) (holding that it was a "reasonable public-safety endeavor" for a deputy sheriff to check on a stopped vehicle because the deputy sheriff had reason to believe that the occupants might need assistance and/or that passing traffic may harm the occupants).

Incompatibility of Offices

Incompatibility of offices arises where the constitution or a statute specifically prohibits the occupant of one office from holding another, or where the duties of the two offices are such that the holder of one cannot, in every instance, fully and faithfully discharge all of the duties of the other. *People ex rel. Fitzsimmons v. Swailes*, 101 Ill. 2d 458, 465 (1984); *People ex rel. Smith v. Brown*, 356 Ill. App. 3d 1096, 1098 (2005); *People ex rel. Myers v. Haas*, 145 Ill. App. 283, 286 (1908). There are no constitutional or statutory provisions expressly prohibiting one person from simultaneously holding the offices of sheriff or deputy sheriff⁵ and ETS board member. The issue, therefore, is whether the duties of one of the offices are such that its holder could not, in every instance, fully and faithfully discharge all of the duties of the other.

It is our understanding that the Edgar County Board, with the approval of the sheriff, has entered into an agreement with the ETS Board pursuant to which the sheriff's office is compensated for providing dispatching services for the System.⁶ According to your letter, the ETS Board "routinely votes on financial contributions to the Edgar County Sheriff's Department" for providing these services.

It has long been established that one person cannot adequately represent the interests of two governmental units when those units contract with one another. 1991 Ill. Att'y Gen. Op. 188, 189; 1975 Ill. Att'y Gen. Op. 37, 43-47; Ill. Att'y Gen. Inf. Op. No. I-07-006, issued March 2, 2007, at 3. Although the Edgar County ETS System is a county agency, it is nonetheless quasi-independent, with its own restricted funding sources and a separate governing body. For purposes of this analysis, therefore, the contractual relationship between the county and the ETS Board is analogous to a contractual relationship between two separate units of government.

⁵Unlike a police officer, who was not considered an officer of the city at common law, a deputy sheriff is generally held to occupy an office. *See County of Winnebago v. Industrial Comm'n*, 39 Ill. 2d 260, 263-64 (1968). Accordingly, although the doctrine of incompatibility is not applicable to mere employees, it is applicable to deputy sheriffs, who are officers of the county.

⁶ETS boards are authorized to contract for the provision of emergency telephone system dispatching services, such as receiving telephone requests for emergency services and contacting the appropriate public agency for response. 50 ILCS 750/15.4(c)(7) (West 2014); *see also* Ill. Att'y Gen. Inf. Op. No. I-02-040, issued July 23, 2002. In instances where it is agreed that the county sheriff's office should provide dispatching services, the county board is the appropriate contracting entity for the sheriff. 1980 Ill. Att'y Gen. Op. 60; Ill. Att'y Gen. Inf. Op. No. I-02-040 at 6. While ETS boards may use ETS funds for the costs of dispatching services, the Act provides that "[c]osts attributable directly to the operation of an emergency telephone system do not include the costs of public safety agency personnel who are and equipment that is dispatched in response to an emergency call." 50 ILCS 750/15.4(c)(7) (West 2014). Accordingly, ETS boards are not authorized to expend ETS funds on public safety personnel and equipment dispatched on emergency calls.

One of the inherent duties of a county sheriff is to advise the county board on the needs and capabilities of the sheriff's office. *See* 1978 Ill. Att'y Gen. Op. 52; Ill. Att'y Gen. Inf. Op. No. I-96-014, issued January 4, 1996. Even if the Edgar County sheriff does not have the ultimate authority to contract with the ETS Board to provide dispatching services, the sheriff may nonetheless have significant influence over both the county board's and the ETS Board's decisions to enter into the agreement and the terms of the agreement. *See Peabody v. Sanitary District of Chicago*, 330 Ill. 250 (1928) (holding that a contract between the board of trustees of a sanitary district and a contractor was void because the treasurer of the district had a business relationship with the contractor and an interest in the contract); Ill. Att'y Gen. Inf. Op. No. I-07-006 (the offices of village commissioner and county sheriff are incompatible where the village contracts with the county for police protection services). If the sheriff or a deputy sheriff were to serve simultaneously as an ETS board member, he or she would be placed in the untenable position of balancing the interests of the sheriff's office and the ETS System. Because the sheriff's or the deputy sheriff's duties to the county and to the System would conflict in these circumstances, the sheriff (or a deputy sheriff) is necessarily precluded from also serving as a county ETS board member, unless another provision of Illinois law expressly permits such simultaneous tenure.

The General Assembly has established specific membership criteria for ETS boards, including the requirement that at least three members of such board be representatives of 9-1-1 public safety agencies. Although the definition of "public safety agency" in the Act would generally encompass a sheriff's office, there is no express requirement in subsection 15.4(a) that sheriffs or deputy sheriffs serve on an ETS board. Further, while section 15.4 provides that elected officials are eligible to serve on the board, the statutory language does not expressly address the offices of sheriff or deputy sheriff.

The Edgar County sheriff would have an actual conflict of duties if he were to serve simultaneously as a member of the ETS Board. Moreover, because a deputy sheriff is also a county officer whose powers are derived from the sheriff, the sheriff's conflict extends to his deputies. If the General Assembly had intended to permit a sheriff or a deputy sheriff to serve on an ETS board notwithstanding the potential conflicts stemming from simultaneous tenure, we may presume that the General Assembly would have included that specific authorization in the Act. The general language of subsection 15.4(a) that requires an ETS board to include representatives of public safety agencies and that authorizes elected officials to serve as members of ETS boards does not sufficiently demonstrate the legislature's intent to permit a sheriff to serve on an ETS board, conflicting duties notwithstanding. Accordingly, absent express statutory authorization permitting simultaneous tenure in these circumstances, neither the Edgar County sheriff nor an Edgar County deputy sheriff may simultaneously serve as a member of the Edgar County ETS Board.

The Honorable Mark R. Isaf - 7

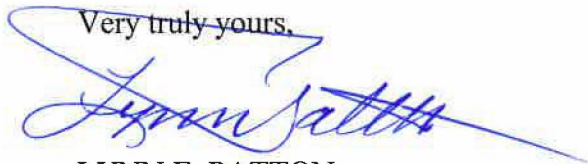
CONCLUSION

Based upon the facts that you have provided, and in the absence of express statutory authorization, the offices of Edgar County sheriff and Edgar County deputy sheriff are incompatible with the office of Edgar County Emergency Telephone System Board member. Accordingly, one person cannot hold both offices simultaneously.

You have also referenced potential conflicts of interest affecting other members of the Edgar County ETS Board. Based on your brief description of these issues, I regret that we cannot address them without additional information. If you wish to supplement your inquiry, we will endeavor to advise you. Alternatively, I am providing two previously issued opinions (Ill. Att'y Gen. Inf. Op. No. I-12-003, issued March 2, 2012; Ill. Att'y Gen. Inf. Op. No. I-01-007, issued February 5, 2001) that may provide you with guidance regarding conflicts of interest generally, and the proper expenditure of emergency telephone system funds.

This is not an official opinion of the Attorney General. If we may be of further assistance, please advise.

Very truly yours,



LYNN E. PATTON
Senior Assistant Attorney General
Chief, Public Access and Opinions Division

LEP:ERV:cj

Enclosures



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

March 2, 2012

I - 12-003

**GOVERNMENTAL ETHICS &
CONFLICT OF INTEREST:**

Operator of Ambulance Service Serving on
County's Emergency Telephone System Board

The Honorable Edward C. Deters
State's Attorney, Effingham County
120 West Jefferson, Suite 201
Effingham, Illinois 62401

Dear Mr. Deters:

I have your letter inquiring whether the operator of an ambulance service that is a party to an ambulance provider agreement with Effingham County may serve as a member of the county's emergency telephone system board (ETS Board). For the reasons stated below, the contractual agreement between the ambulance service and the county does not create a prohibited conflict of interest which would preclude the operator of the service from serving on the ETS Board.

BACKGROUND

The Emergency Telephone System Act

Section 15.4 of the Emergency Telephone System Act (the Act) (50 ILCS 750/15.4 (West 2010), as amended by Public Act 97-517, effective August 23, 2011) requires a county that imposes a telephone surcharge to fund an emergency telephone system (ETS) to establish an ETS Board. The general powers and duties of ETS Boards are set out in subsection 15.4(b) of the Act (50 ILCS 750/15.4(b) (West 2010), as amended by Public Act 97-517, effective August 23, 2011):

(b) The powers and duties of the board shall be defined by ordinance of the * * * county * * *. The powers and duties shall include, but need not be limited to the following:

(1) Planning a 9-1-1 system.

(2) Coordinating and supervising the implementation, upgrading, or maintenance of the system, including the establishment of equipment specifications and coding systems.

(3) Receiving moneys from the surcharge imposed under Section 15.3, and from any other source, for deposit into the Emergency Telephone System Fund.

(4) Authorizing all disbursements from the fund.

(5) Hiring any staff necessary for the implementation or upgrade of the system.

Subsection 15.4(c) of the Act (50 ILCS 750/15.4(c) (West 2010), as amended by Public Act 97-517, effective August 23, 2011) provides:

(c) All moneys received by a board pursuant to a surcharge imposed under Section 15.3 shall be deposited into a separate interest-bearing Emergency Telephone System Fund account. The treasurer of the * * * county that has established the board * * * shall be custodian of the fund. All interest accruing on the fund shall remain in the fund. No expenditures may be made from such fund except upon the direction of the board by resolution passed by a majority of all members of the board. *Expenditures may be made only to pay for the costs associated with the following:*

(1) The design of the Emergency Telephone System.

(2) The coding of an initial Master Street Address Guide data base, and update and maintenance thereof.

(3) The repayment of any moneys advanced for the implementation of the system.

(4) The charges for Automatic Number Identification and Automatic Location Identification equipment, a computer aided dispatch system that records, maintains, and integrates information, mobile data transmitters equipped with automatic vehicle locators, and maintenance, replacement and update thereof to increase operational efficiency and improve the provision of emergency services.

(5) The non-recurring charges related to installation of the Emergency Telephone System and the ongoing network charges.

(6) The acquisition and installation, or the reimbursement of costs therefor to other governmental bodies that have incurred those costs, of road or street signs * * *.

(7) *Other products and services necessary for the implementation, upgrade, and maintenance of the system and any other purpose related to the operation of the system * * *. Costs attributable directly to the operation of an emergency telephone system do not include the costs of public safety agency personnel who are and equipment that is dispatched in response to an emergency call.*

(7.5) The purchase of real property if the purchase is made before March 16, 2006.

(8) In the case of a municipality that imposes a surcharge under subsection (h) of Section 15.3, moneys may also be used for any anti-terrorism or emergency preparedness measures[.]
(Emphasis added.)

For purposes of the Act, the term "system" is defined as "*the communications equipment required to produce a response by the appropriate emergency public safety agency as a result of an emergency call being placed to 9-1-1.*" (Emphasis added.) 50 ILCS 750/2.06a (West 2010).

Effingham County

Your inquiry and accompanying documentation indicate that in 1994, Effingham County voted to impose a telephone surcharge to offset the costs of installing an ETS pursuant to section 15.3 of the Act (*see* 50 ILCS 750/15.3 (West 2010), as amended by Public Act 97-463,

effective January 1, 2012). As required by the Act, Effingham County established an ETS Board. An Amended Resolution of the Effingham County Board dated May 9, 1997, provides that the county board will appoint a seven-member ETS Board comprised of, among other individuals, a resident of Effingham County, Illinois, known as the "Community-at-Large Member," and "four (4) members of public safety emergency organizations of Effingham County (i.e.: emergency medical service, rural fire protection and Emergency Services and Disaster Agency)[.]"¹ This Resolution further provides that the duties and responsibilities of the ETS Board are defined by subsections 15.4(b), (c), and (d) of the Act.²

On November 29, 2010, the Effingham County Board entered into an Ambulance Provider Agreement with Altamont Ambulance Services, Inc. (Altamont), awarding the latter an exclusive operating area within Effingham County. Such agreements between counties and private ambulance service providers are expressly authorized by section 5-1053 of the Counties Code (55 ILCS 5/5-1053 (West 2010)). Altamont is operated by an individual who currently serves as a member of the Effingham County ETS Board. You have inquired whether the contractual agreement between the ambulance service and the county presents a prohibited conflict of interest which would preclude the operator of the service from serving on the ETS Board.

ANALYSIS

A county ETS Board is an agency of the county; it is not an independent unit of local government. See Ill. Att'y Gen. Op. No. 96-038, issued December 3, 1996; Ill. Att'y Gen. Inf. Op. No. I-07-047, issued September 13, 2007. It is well established in Illinois that administrative agencies, including ETS Boards, have no general or common law powers. Any authority or power claimed by these agencies arises from the express language of the statutes under which they act, or must be incidental to the express authority conferred by the General Assembly. *Vuagniaux v. Department of Professional Regulation*, 208 Ill. 2d 173, 187-88 (2003); *Abatron, Inc. v. Department of Labor*, 162 Ill. App. 3d 697, 700 (1987). ETS Boards are continuous bodies whose members are appointed by the county board to execute the duties fixed by statute and by ordinance, and are clearly engaged in the execution of sovereign duties delegated to the county. Therefore, ETS Board members are public officers and must abide by common law prohibitions regarding conflicts of interest, as well as conflict of interest statutes applicable to other public officers. See Ill. Att'y Gen. Inf. Op. No. I-02-053, issued November 20, 2002.

¹The remaining board members are specified county officers.

²Based on the materials accompanying your inquiry, it does not appear that the Effingham County Board has delegated any additional powers or duties to the ETS Board. We therefore limit our analysis to the powers and duties set out in subsections 15.4(b), (c), and (d) of the Act.

Under the common law, the personal interests of a public official and the public interests that he or she represents must not be brought into conflict. *State ex rel. Taylor v. Pinney*, 13 Ohio Dec. 210, 212 (Ohio C.P. 1902). A public officer owes a fiduciary duty to the public he or she serves. *People v. Savaiano*, 66 Ill. 2d 7, 15 (1976); *Village of Wheeling v. Stavros*, 89 Ill. App. 3d 450, 453 (1980); *County of Cook v. Barrett*, 36 Ill. App. 3d 623, 627-28 (1975).

Initially, because the ETS Board member's interest in the ambulance provider agreement with the county has been cited as presenting a potential conflict between the operator's public and private interests, it is necessary to determine whether the contractual relationship may violate section 3 of the Public Officer Prohibited Activities Act (the Prohibited Activities Act) (50 ILCS 105/3 (West 2010), as amended by Public Act 97-520, effective August 23, 2011), which provides, in pertinent part:

(a) No person holding any office, either by election or appointment under the laws or Constitution of this State, may be in any manner financially interested directly in his own name or indirectly in the name of any other person, association, trust, or corporation, in any contract or the performance of any work in the making or letting of which such officer may be called upon to act or vote. * * * Any contract made and procured in violation hereof is void.

The Illinois Supreme Court has stated that section 3 of the Prohibited Activities Act is a broadly drafted conflict of interest statute (*Croissant v. Joliet Park District*, 141 Ill. 2d 449, 459 (1990); *Miller v. County of Lake*, 79 Ill. 2d 481, 490 (1980)), which expresses a general policy requiring public officers to refrain from entering into transactions which could give rise to competing interests or loyalties that could hamper their performance as public officials. *Croissant*, 141 Ill. 2d at 459-62. Therefore, section 3 of the Prohibited Activities Act not only bars an official from having a pecuniary interest in a contract, but also prohibits the officer from being placed in a position where he or she may be called upon to act or vote with respect to a contract that inures to the official's benefit. *Miller*, 79 Ill. 2d at 490.

Based upon the information provided with your inquiry, although Altamont and Effingham County are parties to the ambulance provider agreement, there is no current contract or agreement of any kind between Altamont and the ETS Board. Moreover, a review of the powers and duties of the Effingham County ETS Board, as set out in subsections 15.4(b), (c), and (d) of the Act, indicates that the powers and duties of the ETS Board are limited to acquiring, installing, and maintaining the communications equipment necessary to operate a 9-1-1 emergency telephone system for Effingham County. Specifically, subsection 15.4(c) of the Act

provides that ETS Boards may only expend funds to pay costs associated with operating an emergency telephone system, as enumerated therein, which do not include: "the costs of public safety agency personnel who are and equipment that is dispatched in response to an emergency call." 50 ILCS 750/15.4(c)(7) (West 2010), as amended by Public Act 97-517, effective August 23, 2011. This provision effectively eliminates any possibility that the members of the ETS Board could be called upon to vote on contracts directly related to emergency services providers. As a result, it does not appear that the members of the Effingham County ETS Board may be placed in the position of voting or acting with respect to any contract with Altamont, or other emergency medical services providers, that might inure to the benefit of Altamont or its operator.

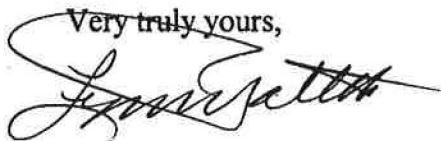
Further, although Altamont presumably relies upon the ETS to assist in providing its services (as do other emergency services providers in Effingham County), there are no obvious circumstances in which the interests of Altamont and the ETS Board would necessarily conflict. If such a circumstance should arise, however, the operator must consider abstaining from discussion or voting on any matter that could result in an appearance of impropriety. *See* Ill. Att'y Gen. Inf. Op. No. I-99-036, issued July 26, 1999, at 3.

CONCLUSION

For the reasons stated above, neither section 3 of the Public Officer Prohibited Activities Act nor common law conflict of interest prohibitions bar the operator of an ambulance service that is a party to an ambulance provider agreement contract with a county from serving on that county's emergency telephone system board.

This is not an official opinion of the Attorney General. If we may be of further assistance, please advise.

Very truly yours,



LYNN E. PATTON
Senior Assistant Attorney General
Chief, Public Access & Opinions Division

LEP:MJL:KAS:DR:an



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

February 5, 2001

Jim Ryan

ATTORNEY GENERAL

I - 01-007

GOVERNMENTAL ETHICS AND
CONFLICT OF INTEREST:
County Board Member Serving as
Director of Not-For-Profit Corporation
or Co-Chair of Community Organization

The Honorable Tim Huyett
State's Attorney, Logan County
Logan County Courthouse, Room 31
Lincoln, Illinois 62656

Dear Mr. Huyett:

I have your predecessor's letter wherein he inquired whether a county board member who simultaneously serves as a member of the board of directors of a not-for-profit corporation or as the co-chair of a community organization must abstain from voting upon or discussing the award of county funds to those entities. Because of the nature of this inquiry, I will comment informally in response thereto.

At issue are two organizations that are seeking county funding for programs to provide services to senior citizens in Logan County. Based upon the information we have been furnished, it appears that the first organization, the Central Illinois Economic Development Corporation (hereinafter "C.I.E.D.C."), is a not-for-profit corporation governed by a board of directors comprised of 36 volunteers from Logan, DeWitt, Piatt, Mason, Menard and Fulton counties. Pursuant to Federal regulations, an equal number of representatives are required from each county, and the regulations also require the board to contain an equal number of representatives from each of the following classes: local officials or their representatives; members of the client base who are served by the organization; and other service organizations. The C.I.E.D.C. board of directors meets approxi-

mately 11 times a year. The board hires an executive director who, in turn, hires other staff members. The board annually elects from its members an executive committee consisting of a president, a vice-president, a secretary, a treasurer and two members at large. Two members of the Logan County Board currently serve on the C.I.E.D.C. board of directors, one as its president.

The second organization, known as the Healthy Communities Partnership, was formed in 1996 as an outgrowth of the Lincoln-Logan Chamber of Commerce subcommittee on health. The partnership consists of the city of Lincoln, Logan County, the Logan County Health Department, Abraham Lincoln Memorial Hospital and the Lincoln-Logan Chamber of Commerce. Volunteers from the education field and other service organizations are also involved in the Healthy Communities Partnership. The mayor of Lincoln and the Logan County Board Chairman serve as co-chairs of the organization. The mission statement of the organization is: "To protect, maintain and improve the health and quality of life of all residents of Lincoln and Logan County". Two groups currently operate under the Healthy Communities Partnership: the Rural Health Partnership Task Force and the Youth Alcohol and Tobacco Use Task Force. According to the information we have been provided, the Rural Health Partnership Task Force is the only program of the Healthy Communities Partnership with staff paid through the use of grant funds.

The voters of Logan County recently approved a referendum, submitted pursuant to section 5-1034 of the Counties Code (55 ILCS 5/5-1034 (West 1998)), that authorizes the imposition of a tax for the purpose of providing social services to senior citizens in Logan County. The C.I.E.D.C., the Rural Health Partnership Task Force and one other organization have requested funding from the revenues to be raised by the new tax to provide such services. Questions have been raised regarding whether the two county board members who serve as members of the C.I.E.D.C. board of directors, or the county board chairman, who serves as co-chair of Healthy Communities Partnership, must abstain from voting upon or discussing the award of county funds to these organizations.

Section 3 of the Public Officer Prohibited Activities Act (50 ILCS 105/3 (West 1998)) provides, in pertinent part:

" * * *

(a) No person holding any office, either by election or appointment under the laws or Constitution of this State, may be in any manner financially interested directly in his own name or indirectly in the name of any other person, association, trust, or corporation, in any contract or the performance of any work in the making or letting of which such officer may be called upon to act or vote. * * *

* * *

Section 3 of the Public Officer Prohibited Activities Act prohibits a public officer from having a direct or indirect pecuniary interest in any contract or performance of any work in the making or letting of which he or she would be called upon to act or vote. A prohibited interest must be certain, definable, pecuniary or proprietary; it must be financial in nature. (Panozzo v. City of Rockford (1940), 306 Ill. App. 443, 456; Hollister v. North (1977), 50 Ill. App. 3d 56, 59.) Therefore, although a county board member may be called upon to vote upon the award of county funds to private organizations for the provision of services to senior citizens, section 3 will not be violated unless the county board members in question have a financial interest in any such award of county funds.

It is assumed, based upon the description of the organization, that the members of the C.I.E.D.C. board of directors receive no compensation or salary for their service as such. It follows, therefore, that those county board members would not have a pecuniary interest in the award of county funds for programs which provide services to senior citizens. Consequently, it appears that there would be no violation of section 3 of the Public Officer Prohibited Activities Act in these circumstances. (See also informal opinion No. I-89-035, issued July 28, 1989, a copy of which is enclosed, wherein it was determined, inter alia, that there was no violation of the pertinent conflict of interest statutes when a village board member served as director of a not-for-profit corporation promoting economic development.)

With regard to the chairman of the Logan County Board serving as co-chair of Healthy Communities Partnership, we have been provided less information concerning the organization and

The Honorable Tim Huyett - 4.

structure of the organization. It was stated in your predecessor's letter, however, that the Rural Health Partnership Task Force is the only program of the Healthy Communities Partnership with paid staff. As long as the chairman of the County Board receives no salary or compensation for his service as co-chair of the Healthy Communities Partnership, it appears that he or she would not possess a financial interest in the award of county funds for the provision of services for senior citizens. Consequently, there would be no violation of section 3 of the Public Officer Prohibited Activities Act in those circumstances.

This conclusion notwithstanding, it is well established that a member of a governmental body who has a personal interest in a matter coming before the body is disqualified, under the common law, from voting or otherwise acting thereon. (In re Heirich (1956), 10 Ill. 2d 357, 384, cert. denied, 355 U.S. 805, 78 S. Ct. 22 (1957); see also Annotation 10 ALR 3d 694.) Such common law conflicts of interest can arise whenever official action could result in a personal advantage or disadvantage to the interested official. Although an interest in the operations of a not-for-profit organization may not appear, initially, to be a "personal interest", it is clear that the county board members in question have a distinct duty to further the activities of the entities they serve. That duty is personal to the members, and is not shared with the remainder of the county board. It appears, therefore, that the county board members in question would have a personal interest in the award of funds to these entities, for purposes of applying common law conflict of interest principles, and should abstain from acting or voting upon any matters which may affect the organizations that they serve.

This is not an official opinion of the Attorney General. If we may be of further assistance, please advise.

Sincerely,



MICHAEL J. LUKE
Senior Assistant Attorney General
Chief, Opinions Bureau

MJL:LAS:cj

Enclosure