WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD

November 9, 1972

FILE NO. NP-532

COUNTIES:
Compatibility

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Honorable William V. Hopf
State's Attorney
DuPage County
Wheaton, Illinois 60187

Dear Mr. Hopf:

I have your recent letter wherein you state:

"One of our County Board members has requested me to request your opinion regarding the following question. The facts in this situation are as follows:

"A member of our DuPage County Board also is appointed by a municipality (city) as legal counsel. That same municipality has, under statutory authority, appointed a City attorney. The County Board member of whom we speak has been appointed by this municipality as an 'additional' attorney. This 'additional' attorney's compensation is on a regular retainer plus hourly rate basis.

COPY

NP 532

> "The County Board member is of the opinion that since he is not the statutory City Attorney that the case does not come within your opinion that the office of City Attorney is not compatible with the office of County Board member.
>
> "May we please have your opinion as to whether a County Board member is compatible with the office of an 'additional' attorney on the basis described above."

From the general rules laid down in People v. Haas, 145 Ill. App. 283, it appears that incompatibility between offices arises where the constitution, or a statute, specifically prohibits the occupant of either one of the offices from holding the other, or where, because of the duties of either office a conflict in interest may arise, or where the duties of either office are such that the holder of one can not, in every instance, properly and faithfully perform all the duties of the other.

There are no constitutional or statutory provisions which expressly prohibit an individual from simultaneously holding the two offices you have mentioned in your letter. Therefore, the question arises whether or not a conflict of interest exists in simultaneously holding the two offices.

One example of an area where a conflict could arise is in contracts for garbage disposal. Section 25.11b of "An Act to revise the law in relation to counties," (Ill. Rev. Stat., 1971, ch. 34, par. 418) which states as follows:

> "To contract with any city, village, incorporated town, or any other county in relation to the collection and final disposition or to the collection alone or final disposition alone of garbage, refuse, and ashes. The governing body shall authorize the execution of the contract by resolution, and shall appoint a committee of no more than three of its own members to serve with committees from the other contracting parties as a joint subcommittee on garbage and refuse disposal, or collection, or collection and disposal, as the case may be."

Another example can be found in the provisions of Section 11 of "An Act in relation to water supply, drainage, sewage, pollution and flood control in certain counties," (Ill. Rev. Stat., 1971, ch. 34, par. 3111) which provides:

> "* * * * * * * * *
>
> The county is hereby authorized to construct or purchase and operate a waterworks system or a sewerage system or a combined waterworks and sewerage system and to improve or extend any such system so acquired from time to time, as provided in this Act. The county may furnish water or sewerage service or combined

> water and sewerage service to individuals, municipal corporations or other corporations and may impose and collect charges or rates for furnishing water or sewerage service or combined water and sewerage service, as provided in this Act. Any county which owns and operates or which may hereafter own and operate a waterworks system or a sewerage system or a combined waterworks and sewerage system may enter into and perform contracts, whether long-term or short-term, with any municipal, public utility or other corporation, or any person or firm, for the furnishing by the county of water or sewerage service or combined water and sewerage service. Such contracts may provide for periodic payments to the county of a share of the amounts necessary to pay or provide for the expenses of operation and maintenance of the waterworks system or sewerage system or the combined waterworks and sewerage system (including insurance), to pay the principal of and interest on any revenue bonds issued hereunder, and to provide an adequate depreciation fund as hereinafter provided and to maintain such other reserves and sinking funds as may be deemed necessary or desirable by the county for the payment of the bonds or the extension or improvement of the waterworks properties or sewerage facilities or a combination thereof, as the case may be. Any county may also enter into and perform contracts, whether long-term or short-term, with any such corporation, person or firm for the leasing, management or operation of a waterworks system or a sewerage system or a combined waterworks and sewerage system."

If the "additional" attorney representing the city were to

prepare a contract, he would necessarily be in a position where a conflict could arise since as a county board member he represents the county.

Furthermore, a county is authorized to contract with the city for the use of the city workhouse; for a joint program of air contamination control; for joint plans and construction of projects for the control of floods and the conservation or development of water, waterways and water resources; for leasing space in the city courthouse. (Ill. Rev. Stat., 1971, ch. 34, pars. 405, 421.2, 3115, 3551.)

Finally, I am cognizant of the provisions of Section 10(a) of Article VII of the Illinois Constitution of 1970 which reads as follows:

> "(a) Units of local government and school districts may contract or otherwise associate among themselves, with the State, with other states and their units of local government and school districts, and with the United States to obtain or share services and to exercise, combine, or transfer any power or function, in any manner not prohibited by law or by ordinance. Units of local government and school districts may contract and otherwise associate with individuals associations, and corporations in any manner not

> prohibited by law or by ordinance. Participating units of government may use their credit, revenues, and other resources to pay costs and to service debt related to intergovernmental activities."

It is not necessary for me to pass upon the question whether this constitutional provision standing alone is sufficient to create a conflict of interest as the above referenced statutory provisions are sufficient to hold the offices incompatible.

Your request refers to the position of "additional" city attorney as an office and I have, therefore, done the same in this opinion. This opinion is not to be construed as a determination as to whether such attorney is an officer or an employee. Whichever designation might apply, the result in this case would be the same.

I am therefore of the opinion that an "additional" city attorney, who is on a regular retainer plus hourly rate basis, is a position which is incompatible with that of county board member.

Very truly yours,

A T T O R N E Y G E N E R A L

ROLAND W. BURRIS
ATTORNEY GENERAL
STATE OF ILLINOIS

January 21, 1992

I-92-002

COMPATIBILITY OF OFFICES:
Hospital District Director
and State's Attorney; City
Attorney and State's Attorney

Honorable Stephen G. Sawyer
State's Attorney, Wabash County
Wabash County Courthouse
401 Market Streets
Mt. Carmel, Illinois 62863

Dear Mr. Sawyer:

I have your letters wherein you inquire, firstly, whether the offices of hospital district director and State's Attorney are incompatible, and, secondly, whether the offices of city attorney and State's Attorney are incompatible. Because of your need for an expedited response, I will comment informally upon the questions you have raised.

Offices are deemed to be incompatible where the constitution or a statute specifically prohibits the occupant of one office from holding the other, or where the duties of the two offices conflict so that the holder of one cannot, in every instance, fully and faithfully discharge the duties of the other. (People ex rel. Myers v. Haas (1908) 145 Ill. App. 283, 286; see generally People ex rel. Teros v. Verbeck (1987), 155 Ill. App. 3d 81.) There are no constitutional or statutory provisions which prohibit simultaneous tenure in the offices of hospital district director and State's Attorney. Therefore, the issue is whether a conflict of duties could arise if one person were to occupy both offices.

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Section 5-1005 of the Counties Code (Ill. Rev. Stat. 1989, ch. 34, par. 5-1005) authorizes a county, inter alia:

> "6. To cause to be erected, or otherwise provided, suitable buildings for, and maintain a county hospital and necessary branch hospitals and/or a county sheltered care home * * * for the care of such sick, chronically ill or infirm persons as may by law be proper charges upon the county, or upon other governmental units, and to provide for the management of the same. * * *
>
> * * * "

While a county is granted the authority to maintain a county hospital, this authority is limited by the language of section 23 of the Hospital District Law (Ill. Rev. Stat. 1989, ch. 23, par. 1273), which provides, in pertinent part:

> "In case any Hospital District organized hereunder shall be coterminous with or shall include within its corporate limits in whole or in part any pre-existing public agency authorized to own, operate and maintain a public hospital and to levy taxes for any such purpose, then such public agency shall cease to exercise any power in respect to hospitals within such Hospital District from and after the date that it receives written notice from the Director of Public Health to cease operation of its hospital, * * * such public agency shall not thereafter own, operate, maintain, manage, control or have an interest in any public hospital within the corporate limits of said Hospital District. * * * Where in any case any pre-existing public agency is in fact owning, operating and maintaining a public hospital located within the corporate limits of a Hospital District organized under this Act, such public agency shall be paid and reimbursed, upon such terms as may be agreed upon by its corporate authorities and the Board of Directors of such Hospital District, its actual expenditures theretofore made in acquiring the land for any such hospital and in acquiring, constructing, improving or developing any existing hospital facilities, not including funds advanced for that purpose or otherwise paid or expended either directly or indirectly by State or Federal governments. The terms of payment shall provide for reimbursement in full within not less than twenty years from the date of such agreement.

> In case the amount and terms of reimbursement cannot be determined or agreed upon between the corporate authorities of any existing public agency and the Board of Directors of the Hospital District, the Board of Directors of such Hospital District shall cause a description of the existing hospital facilities to be made, together with an estimate of all actual expenditures made by the public agency therefor and shall tender payment of the total amount so estimated in writing to the corporate authorities of such public agency. * * * <u>In case such a tender is not accepted in writing by the corporate authorities of such public agency within thirty days after the same is made, the Hospital District by its Board of Directors shall file a petition in the Circuit Court of the county in which the Hospital District and such public agency or the major portions thereof are situated, making such public agency a party defendant thereto</u>, setting forth a description of the hospital facilities, the estimated amount of expenditures made by the defendants thereon, the fact that a tender had been made for the payment of the actual expenditures in accordance with the estimate, and praying that it be determined by the Circuit Court the true amount of such expenditures by said public agency.
>
> * * * "

(Emphasis added.)

For purposes of the Hospital District Law, the term "public agency" is defined as follows:

> " * * *
>
> (g) '<u>Public Agency' means any</u> municipality, <u>county</u>, township, tuberculosis sanitarium district, or political subdivision <u>that maintains a public hospital</u>."

(Emphasis added.)

(Ill. Rev. Stat. 1989, ch. 23, par. 1252(g).)

Under the statutes quoted above, it is foreseeable that a hospital district and a county could enter into a contract whereby the hospital district would reimburse the county for its actual expenditures in acquiring, constructing and maintaining hospital facilities. Moreover, in the event that the amount and terms of reimbursement cannot be agreed upon between a hospital district and a county which is operating a hospital, the Board of Directors of the Hospital District is authorized to file a petition in the appropriate circuit court naming the county as party defendant.

A State's Attorney is the legal advisor and attorney for county officers. (Ill. Rev. Stat. 1989, ch. 34, par. 3-9005.) Therefore, as part of his or her official duties, a State's Attorney may be called upon to render advice or an opinion on, or to assist in the negotiation of, the terms of a reimbursement contract between a county and a hospital district. Similarly, it appears that a hospital district director, in implementing the powers granted to the board under the Hospital District Law, would be called upon to vote on the terms of a reimbursement contract entered into between the board and a county. It is well established that one person cannot adequately represent the interest of two governmental units when those units contract with one another. (Ill. Att'y. Gen. Op. No. 91-031, issued July 26, 1991; Ill. Att'y. Gen. Op. No. 91-923, issued June 6, 1991; Ill. Att'y. Gen. Op. No. 91-015, issued March 14, 1991). Therefore, it appears that one person would have a conflict of duties if he or she were to serve in both offices simultaneously.

I would also note that a hospital district is authorized to file a petition naming a county which operates a hospital facility within its district as a party defendant, if a reimbursement agreement cannot be reached. Because the State's Attorney must defend all actions brought against his or her county (Ill. Rev. Stat. 1989, ch. 34, par. 3-9005), a hospital district director who is also a State's Attorney would find himself or herself in the position of having divided loyalty and a conflict of interests. Consequently, because of the potential conflict in the duties of the offices in question, it does not appear that the same person may hold the offices of hospital district director and State's Attorney simultaneously.

You further inquire whether, in addition to serving as State's Attorney, a person could also serve as city attorney for Mt. Carmel, a city wholly situated in Wabash County. As indicated above, offices are deemed to be incompatible where the holder of one office cannot, in every instance fully and

faithfully discharge the duties of the other. In reviewing the duties of both a State's Attorney and a city attorney, this office has long held that there are instances when the duties of the two offices conflict, thus preventing one person from holding both offices simultaneously. 1910 Ill. Att'y. Gen. Op. 484; 1925 Ill. Att'y. Gen. Op. 159; 1927 Ill. Att'y. Gen. Op. 150; 1933 Ill. Att'y. Gen. Op. 85; 1977 Ill. Att'y. Gen. Op. 81.

By way of illustration, provisions in the Counties Code (Ill. Rev. Stat. 1989, ch. 34, par. 1-1001 et seq.) specifically contemplate that a county and a municipality may enter into a contract for the collection and disposition of garbage (Ill. Rev. Stat. 1989, ch. 34, par. 5-1048) or for the provision of police protection (Ill. Rev. Stat. 1989, ch. 34, par. 5-1103.1). Because both the State's Attorney and the city attorney are the legal advisors for their respective governing authorities, it is foreseeable that during the negotiations over a contract's terms, the attorney for either or both of these units of government could be contacted for an opinion or advice on an issue. If the same individual were to serve in both positions simultaneously, he or she would be unable to represent the interests of both units of government fully and faithfully.

While the offices of State's Attorney and city attorney are incompatible, a State's Attorney may properly serve as legal consultant to a city. Attorney General Scott determined that the doctrine of incompatibility of offices does not apply to municipal legal consultants. Thus, in opinion S-1254 (1977 Ill. Att'y. Gen. Op. 81), he concluded that a State's Attorney could act as a village's legal consultant, because a consultant advises the village on only a case by case basis. Thus, a consultant can refrain from rendering advice on those matters which relate to his or her duties as State's Attorney.

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

Very truly yours,

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

MJL:LP:jp