



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

June 10, 2010

I - 10-006

COMPATIBILITY OF OFFICES:
County Board Member
and City Clerk

The Honorable John B. Roe
State's Attorney, Ogle County
106 South 5th Street, Suite 110
Oregon, Illinois 61061

Dear Mr. Roe:

I have your letter inquiring whether one person may simultaneously serve in the offices of county board member and city clerk. For the reasons stated below, a county board member, during his or her term of office, may not be elected to serve as a city clerk. The election of an incumbent county board member to the office of city clerk is void under section 1 of the Public Officer Prohibited Activities Act (the Prohibited Activities Act) (50 ILCS 105/1 (West 2008)).

BACKGROUND

Your letter states that a member of the Ogle County Board was elected to the office of city clerk for the City of Byron, and currently serves in both offices simultaneously. In light of *People v. Wilson*, 357 Ill. App. 3d 204 (2005), you inquire whether one person may serve simultaneously in the offices of county board member and city clerk.

ANALYSIS

The common law doctrine of incompatibility of offices precludes simultaneous tenure in two public offices if the constitution or a statute specifically prohibits the occupant of either office from holding the other, or if the duties of the two offices conflict so that the holder of one cannot, in every instance, fully and faithfully discharge all of the duties of the other office. *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 is no constitutional or statutory provision which expressly permits one person to serve simultaneously as a county board member and a city clerk.¹ However, the provisions of section 1 of the Prohibited Activities Act, which address the ability of county board members to hold other public offices, necessarily preclude a county board member from simultaneously holding the office of city clerk in these circumstances.

¹Prior to the court's opinion in *Wilson*, in opinion No. NP-546, issued December 12, 1972, Attorney General Scott was asked to determine whether a village clerk could also run for and simultaneously serve on the county board of supervisors. Although the Attorney General recognized that the interests of the village and the county may be conflicting, because the village clerk's duties were primarily ministerial, Attorney General Scott concluded that the duties of village clerk did not conflict with the duties of a county board member.

At the time that opinion No. NP-546 was issued, section 1 of "AN ACT to prevent fraudulent and corrupt practices in the making or accepting of official appointments and contracts by public officers" (Ill. Rev. Stat. 1971, ch. 102, par. 1), the precursor to section 1 of the Prohibited Activities Act (*see* Public Act 86-1324, effective September 6, 1990; Ill. Rev. Stat. 1991, ch. 102, par.1), only prohibited county board members from holding other public offices by appointment or election of the county board itself and provided:

No member of a county board, during the term of office for which he is elected, may be appointed to, accept or hold any office other than chairman of the county board or member of the regional planning commission by appointment or election of the board of which he is a member. Any such prohibited appointment or election is void. This Section shall not preclude a member of the county board from being selected or from serving as a member of the County Personnel Advisory Board as provided in Section 12-17.2 of "The Illinois Public Aid Code", approved April 11, 1967, as amended, or as a member of a County Extension Board as provided in Section 7 of the "County Cooperative Extension Law", approved August 2, 1963, as amended.

Public Act 88-623, effective January 1, 1995, amended section 1 to prohibit county board members from holding other public offices.

Section 1 of the Prohibited Activities Act provides, in pertinent part:

*No member of a county board, during the term of office for which he or she is elected, may be appointed to, accept, or hold any office other than (i) chairman of the county board or member of the regional planning commission by appointment or election of the board of which he or she is a member, (ii) alderman of a city or member of the board of trustees of a village or incorporated town if the city, village, or incorporated town has fewer than 1,000 inhabitants and is located in a county having fewer than 50,000 inhabitants, or (iii) trustee of a forest preserve district created under Section 18.5 of the Conservation District Act, unless he or she first resigns from the office of county board member or unless the holding of another office is authorized by law. Any such prohibited appointment or election is void. * * * Nothing in this Act shall be construed to prohibit an elected county official from holding elected office in another unit of local government so long as there is no contractual relationship between the county and the other unit of local government. This amendatory Act of 1995 is declarative of existing law and is not a new enactment. (Emphasis added.)*

The Illinois Appellate Court construed section 1 in *Wilson* and concluded that the offices of county board member and school board member were incompatible under the Prohibited Activities Act. The case arose because, approximately five months after becoming a county board member, the defendant was elected to the local school board. *Wilson*, 357 Ill. App. 3d at 205. The court held that, under the plain language of section 1 of the Prohibited Activities Act and except to the extent specifically authorized by law, a county board member is prohibited from simultaneously holding another public office. *Wilson*, 357 Ill. App. 3d at 206. The court further concluded that, except in the limited circumstances specifically authorized by law, if a county board member is elected to another office, the election is void. *Wilson*, 357 Ill. App. 3d at 206.

Pursuant to section 1 of the Prohibited Activities Act, as construed by the court in *Wilson*, no county board member may be elected or appointed, during the term of office for which he or she is elected, to any office other than those specified in section 1 or elsewhere in

The Honorable John B. Roe - 4

Illinois law.² Neither section 1 nor any other statute expressly permits one person to serve simultaneously as a county board member and a city clerk. Therefore, pursuant to section 1 of the Prohibited Activities Act, an Ogle County Board member may not be appointed or elected to the office of city clerk. If an Ogle County Board member, during his or her term of office, is elected to the office of city clerk, the election is void under section 1 of the Prohibited Activities Act.

CONCLUSION

Pursuant to section 1 of the Public Officer Prohibited Activities Act, a county board member may not be elected to hold the office of city clerk simultaneously unless specifically authorized to do so by statute. If a county board member, during his or her term of office, is elected to the office of city clerk, that election is void under section 1 of the Prohibited Activities Act.

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

Very truly yours,

LYNNE E. PAYTON
Senior Assistant Attorney General
Chief, Opinions Bureau

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²For example, in the Public Officer Simultaneous Tenure Act (50 ILCS 110/0.01 *et seq.* (West 2008)), the General Assembly has specifically declared that it is lawful for one person to hold the offices of county board member and township supervisor simultaneously and, in certain counties, for a county board member to also serve as a township trustee, township assessor, or township clerk. *See* 50 ILCS 110/2 (West 2008).



NEIL F. HARTIGAN
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD
62706

January 3, 1989

I - 89-002

GOVERNMENTAL ETHICS AND
CONFLICT OF INTEREST:
COMPATIBILITY:

The Offices of Township Trustee
and City Clerk of City Located within
the Township are Compatible

Honorable Michael P. Coghlan
State's Attorney, DeKalb County
133 West State Street
Sycamore, Illinois 60178

Dear Mr. Coghlan:

I have your letter of November 14, 1988, wherein you inquire whether one person may simultaneously hold the offices of township trustee and city clerk of a city which is located within the township. Because you have requested that I advise you on an informal basis, I shall respond accordingly.

Incompatibility between offices exists when the constitution or a statute specifically prohibits the occupant of either office from holding the other, or where the duties of the two offices conflict so that the holder of one cannot in every instance properly and faithfully perform all 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 is no constitutional or statutory provision prohibiting one person from simultaneously serving as a township trustee and as the city clerk of a city

Honorable Michael P. Coghlan - 2.

located within the township. The issue devolves, therefore, to whether the duties of either office are such that the holder of one cannot, in every instance, properly and faithfully perform all of the duties of the other.

From an examination of the statutes and consideration of the duties of the two offices, it appears that the office of city clerk is ministerial in nature precluding the likelihood of influence in discretionary city matters. (Ill. Rev. Stat. 1987, ch. 24, par. 3-10-7.) Even though a township may act, through its board of trustees, to contract or otherwise associate with the city, the city clerk would ordinarily not be under duty to vote or otherwise act in such matters. Therefore, since the duties of the two offices would not conflict, it appears that the offices of township trustee and city clerk in a city within the township are compatible.

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