



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

October 2, 2008

I - 08-027

COMPATIBILITY OF OFFICES:
County Board of Health Member
and City Council Member

The Honorable Michael L. Wepsiec
State's Attorney, Jackson County
Jackson County Courthouse
Third Floor
Murphysboro, Illinois 62966

Dear Mr. Wepsiec:

I have your letter inquiring whether the offices of city council member and county board of health member are compatible. For the reasons discussed below, the offices of city council member and county board of health member are incompatible, and, therefore, one person may not hold both offices simultaneously.

BACKGROUND

Based on the information you have provided, it appears that the Jackson County Health Department operates under division 5-25 of the Counties Code (55 ILCS 5/5-25001 *et seq.* (West 2006)), rather than division 5-20 of the Counties Code (*see* 55 ILCS 5/5-20001 *et seq.* (West 2006)). Pursuant to section 5-25012 of the Counties Code (55 ILCS 5/5-25012 (West 2006)), each county health department is managed by a board of health consisting of 8 to 12 members appointed as prescribed by law. Further, your letter indicates that the county board of health member who is the focus of your inquiry also serves as a member of the city council of a municipality with a weak mayor city managerial form of government. *See* 65 ILCS 5/5-1-1 *et seq.* (West 2006). The mayor and city council constitute the corporate authorities for a city (*see generally* 65 ILCS 5/1-1-2 (West 2006)) and are authorized to exercise the powers thereof. 65 ILCS 5/11-1-1 *et seq.* (West 2006).

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 prohibits one person from simultaneously serving as a city council member and county board of health member. The issue, therefore, is whether the duties of either office are such that the holder of one cannot fully and faithfully discharge all of the duties of the other.

County boards of health established under division 5-25 of the Counties Code are charged with managing the county health department. In this regard, the county board of health is required to provide offices, facilities, and appliances for the health department; investigate the existence of any contagious or infectious disease; make all necessary sanitary and health investigations; submit an annual budget to the county board; and appoint officers and employees, as necessary. 55 ILCS 5/5-25013(A) (West 2006). Section 5-25013 of the Counties Code (55 ILCS 5/5-25013 (West 2006)) vests county boards of health with certain powers and duties, including the authority to "[e]nter into contracts with the State, municipalities, other political subdivisions and non-official agencies for the purchase, sale or exchange of health services[.]" 55 ILCS 5/5-25013(B)(5) (West 2006). By its express terms, subsection 5-25013(B)(5) of the Counties Code authorizes county boards of health to enter into contracts with municipalities to effectuate various duties with which they are charged relating to facilitating the provision of health services.

Similarly, section 11-20-5 of the Illinois Municipal Code (the Municipal Code) (65 ILCS 5/11-20-5 (West 2006)) authorizes the corporate authorities of each municipality to do all acts and make all regulations which may be necessary or expedient for the promotion of health or the suppression of diseases. Further, section 1-1-5 of the Municipal Code (65 ILCS 5/1-1-5 (West 2006)) authorizes a city council to jointly exercise with "other municipal corporations or governmental subdivisions or districts"¹ the powers set forth in the Municipal Code, which include various duties relating to facilitating the provision of specified health services. *See, e.g.*, 65 ILCS 5/7-4-1, 11-20-3 (West 2006).

¹For purposes of section 1-1-5 of the Municipal Code, the phrase "municipal corporations or governmental subdivisions or districts" includes, among other things, counties. 65 ILCS 5/1-1-5 (West 2006).

The Honorable Michael L. Wepsiec - 3

A county board of health member, in exercising the powers granted to the board by division 5-25 of the Counties Code, is under a duty to represent and protect the best interests of the health department and the county he or she serves. Likewise, a city council member is under a duty to represent and protect the interests of the municipality which he or she serves. 65 ILCS 5/3.1-10-25 (West 2006); Ill. Const. 1970, art. XIII, §3. Given the potential conflicts of duties that arise when one governmental unit contracts with another (*see, e.g.,* 1991 Ill. Att'y Gen. Op. 188; Ill. Att'y Gen. Inf. Op. No. I-92-060, issued December 8, 1992), a person who simultaneously serves as both a county board of health member and a city council member would not be able to represent the interests of both entities adequately, fully, and faithfully. Thus, these offices are incompatible.

CONCLUSION

The offices of city council member and county board of health member are incompatible. One person, therefore, may not simultaneously hold both offices.

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, Opinions Bureau

LEP:MMS:lk



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 31, 2005

I - 05-003

COMPATIBILITY OF OFFICES:
City Council Member and
Library District Trustee

The Honorable Timothy J. McCann
State's Attorney, Kendall County
807 West John Street
Yorkville, Illinois 60560

Dear Mr. McCann:

I have your letter wherein you inquire whether the offices of city council member and library district trustee are incompatible. Because of the nature of your inquiry, I do not believe that the issuance of an official opinion is necessary. I will, therefore, comment informally upon the question you have raised.

The doctrine of incompatibility of offices precludes simultaneous tenure in office 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 the duties of the other. *People ex rel. Fitzsimmons v. Swailes*, 101 Ill. 2d 458, 465 (1984); *People ex rel. Myers v. Haas*, 145 Ill. App. 283, 286 (1908). There are no constitutional or statutory provisions which expressly prohibit one person from simultaneously holding the offices of library district trustee and city council member. It is necessary, therefore, to examine the duties, functions and powers of the two offices to determine whether a conflict of duties could arise.

In opinion No. 91-023, issued June 6, 1991, Attorney General Burriss addressed the analogous question of whether the offices of county board member and library district trustee are incompatible. *See* 1991 Ill. Att'y Gen. Op. 51. In reaching his conclusion that one person

may not simultaneously hold both offices, Attorney General Burris reviewed the potential conflicts of duties which arise when one governmental unit contracts with another. Under similar reasoning, in informal opinion No. I-96-052, issued December 10, 1996, the offices of township trustee and library district trustee were found to be incompatible.

Section 30-55.40 of the Public Library District Act of 1991 (75 ILCS 16/30-55.40 (West 2002)) grants to library district trustees the power to:

Contract[] for library services and other matters. The board may contract with any public or private corporation or entity for the purpose of providing or receiving library service or of performing other acts necessary and proper to carry out the responsibilities, the intent, and the provisions of this Act. This contractual power includes, but is not limited to, (i) participating in interstate library compacts and library systems, (ii) contracting to supply library services, and (iii) spending any federal or State funds made available to any county, municipality, or township or to the State of Illinois for library purposes.

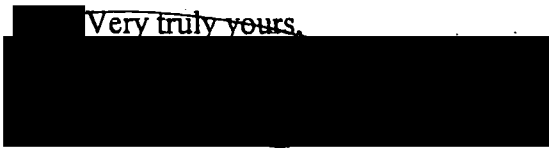
So too, municipalities may establish and maintain a public library (*see* 75 ILCS 5/1-2, 2-1 (West 2002)) and are expressly authorized to contract with any public corporation for the provision or receipt of library services. 75 ILCS 5/4-7(8) (West 2002). A library district trustee, in implementing the powers granted to the board by the provisions of the Public Library District Act of 1991 (75 ILCS 16/1-1 *et seq.* (West 2002)), is under a duty to protect and represent the best interests of the library district. 75 ILCS 16/30-5 *et seq.* (West 2002). Similarly, a city council member is also under a duty to represent and protect the interests of the municipality which he or she serves. 65 ILCS 5/3.1-10-25 (West 2002); Ill. Const. 1970, art. XIII, §3. It has previously been stated that one person cannot adequately represent the interests of two governmental units when those units contract with one another. Ill. Att'y Gen. Op. No. 91-023, issued June 6, 1991; Ill. Att'y Gen. Op. No. 85-019, issued November 19, 1985; 1976 Ill. Att'y Gen. Op. 116; 1975 Ill. Att'y Gen. Op. 37.

Because of the potential conflicts of duties which arise when one governmental unit contracts with another, a person who serves simultaneously as both a library district trustee and a city council member would not be able to represent the interests of both entities adequately, fully and faithfully. Therefore, the two offices are incompatible and one person cannot simultaneously hold both.

The Honorable Timothy J. McCann - 3

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, Opinions Bureau

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WILLIAM G. CLARK
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

February 17, 1965

UP 1342

FILE NO. UP 1342

OFFICERS:
Compatibility Between Membership
on the Board of Supervisors and
the City Council

Honorable J. Claire Shumaker
State's Attorney
Richland County
208 North Walnut
Olney, Illinois

Dear Mr. Shumaker:

I have your letter in which you advise that a member of the County Board of Supervisors is a candidate for City Councilman. You request my opinion whether or not the two offices are compatible.

From the general rules laid down in People v. Neas, 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

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UP 1342

Hon. J. Claire Shumaker

-2-

duties of either office, a conflict in interest may arise, or where the duties of either office are such that the holder of one cannot, in every instance, properly and faithfully perform all the duties of the other.

Where a person holding one office assumes another office incompatible with the first, he thereby in fact vacates the first. People v. Bott, 261 Ill. App. 251.

Counties are authorized to enter into contracts with cities in regard to matters such as garbage disposal (Illinois Revised Statutes 1963, Chapter 34, Paragraph 418) and water and sewage service (Chapter 34, Paragraph 311), among others. It is therefore apparent that there could be a conflict in interest between membership upon the city Council and the Board of Supervisors of the county in which the city is located and, therefore, I am of the opinion that such offices are incompatible.

Very truly yours,

ATTORNEY GENERAL