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November 3, 1972

FILE NO. NP-529

OFFICERS:
Compatibility
Regional Planning Commission

Honorable Robert S. Calkins
State's Attorney
Peoria County
Peoria County Court House
Peoria, Illinois 61602

Dear Mr. Calkins:

I have your recent letter wherein you state in part:

"Considering the facts set forth below and your Opinion S-419 of March 13, 1972, to the Hon. William J. Cowlin, State's Attorney of McHenry County, your opinion is requested on the following questions:

1. May each or any of the following office holders serve on a regional planning commission: township supervisor, county board member under board reorganization, city manager, mayor or village president, city councilman, city commissioner, village trustee?

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2. May those members of the County Board (of Supervisors) appointed to a regional planning commission before the April, 1972 election, who were not elected to the new County Board, continue to serve as commission members? * * * "

You first ask whether various office holders may serve on a regional planning commission. I enclose a copy of my Opinion No. S-500, issued July 24, 1972. In that Opinion, I held that a county board member, a mayor or village president, and a member of a city council or village board could simultaneously serve as a member of a regional planning commission. While I did not specifically discuss a township supervisor, a city manager or a city commissioner, the reasoning in that Opinion is equally applicable to these offices.

You also ask whether members of the County Board of Supervisors appointed to the Tri-County Regional Planning Commission before the April, 1972 election may continue to serve on the Commission if they were not elected to the new County Board. You note that the appointments were made to the individuals without reference to their elective offices at the time of the appointment.

Section 3(a)2(1) of the resolution creating the Commission provides that elected officials who are appointed to the Commission shall serve on the Commission until the end of their term of office, but not more than three years. If this section is to have any effect, then those individuals who were not reelected to the County Board should not be serving on the Commission after the end of their term on the County Board. It is necessary that statutes be so construed as to give effect to each word, clause and sentence in order that no such word, clause or sentence may be deemed superfluous or void. (Consumers Co. v. Industrial Commission, 364 Ill. 145. Haberer and Co. v. Smerling, 307 Ill. 191.) Therefore, effect should be given to this section and those not reelected to the County Board, should no longer serve on the Commission.

Furthermore, with regard to statutory construction, the court in Petterson v. City of Naperville, 9 Ill. 2d 233, has stated:

> " * * * But the primary object of statutory construction is to ascertain and give effect to

> legislative intent. In ascertaining legislative intent, the courts should consider the reason or necessity for the enactment and the meaning of the words, enlarged or restricted, according to their real intent. Likewise the court will always have regard to existing circumstances, contemporaneous conditions, and the object sought to be obtained by the statute. * * * "

From the facts you state in your letter, it is apparent that the amendment to the resolution creating the Tri-County Regional Planning Commission was intended to make it possible for the Commission to qualify for federal grants. The federal requirements that you quote provide that at least 2/3 of the Commission shall be comprised of elected officials. These circumstances substantiate the contention that these individuals were appointed in their official capacity, even though the appointment was made without specific reference to their elective offices. Therefore, in my opinion, your second question must be answered in the negative.

Very truly yours,

ATTORNEY GENERAL

ROLAND W. BURRIS
ATTORNEY GENERAL
STATE OF ILLINOIS

June 8, 1994

I - 94-030

GOVERNMENTAL ETHICS AND
CONFLICT OF INTEREST:
Simultaneous Tenure in Municipal
and School District Positions

Honorable Robert M. Raica
Chairman
Senate Local Government and
Elections Committee
129 Capitol Building
Springfield, Illinois 62706

Dear Senator Raica:

I have your letter wherein you inquire whether one person may serve simultaneously in the following positions: (1) city manager and school board member; (2) high school principal and city alderman; and (3) city fire chief and school board member. Because of the nature of your inquiry, I do not believe that the issuance of an official opinion is necessary. I will, however, comment informally upon the questions you have raised.

In considering the propriety of simultaneous tenure in two or more positions, the first issue to be addressed is whether the positions in question are subject to the common law doctrine of incompatibility of offices. The doctrine of incompatibility, being traditionally limited to offices, is not applicable to positions which constitute mere employments. (1975 Ill. Att'y Gen. Op. 278, 280.) In response to your first inquiry, therefore, although it is clear that the position of school board member constitutes a public office, the position of city manager must be examined to determine its status.

In opinion No. S-515, issued October 17, 1972 (1972 Ill. Att'y Gen. Op. 241), Attorney General Scott discussed the attributes of a public office:

"

* * *

> To summarize, there are two indispensable requirements of a public office. One, to be a public office, a position must possess a delegation of a portion of the sovereign power of the government. Secondly, the position must be created by the constitution or by law and must be of an enduring nature and not subject to abolition by whim of superior officials. Other indicia that a position is a public office are whether the individuals must give bond or take an oath.

* * *

"

(1972 Ill. Att'y Gen. Op. 241, 244.)

The duties of an office are prescribed not by contract, but by law. (Wargo v. Industrial Commission (1974), 58 Ill. 2d 234, 236-37.) In determining whether a position constitutes an office, courts have also considered whether the statute or ordinance creating the position refers to the position as an "office"; whether salary is fixed by or according to law, rather than by contract; and whether a term of office is fixed. People ex rel. Adamowski v. Wilson (1960), 20 Ill. 2d 568, 583.

Section 5-3-7 of the Illinois Municipal Code (65 ILCS 5/5-3-7 (West 1992)) provides that in municipalities which have adopted the managerial form of municipal government:

> "The council or board of trustees * * * shall appoint a municipal manager, who shall be the administrative head of the municipal government and who shall be responsible for the efficient administration of all departments. * * * The manager shall be appointed for an indefinite term, and the conditions of the manager's employment may be set forth in an agreement. * * * The manager may at any time be removed from office by a majority vote of the members of the council or the board.

* * *

"

Under section 5-3-7, the position of city manager is continuous and enduring in nature, and cannot be eliminated by the fiat of a superior official. Although the person holding the position can be removed at any time, the position itself continues. I note parenthetically that the phrase "manager's employment", as used in section 5-3-7, appears to denote "managerial tenure", rather than to signify that the manager holds a position of employment.

As previously noted, the authority to exercise a portion of the sovereign power of government is also a characteristic of a public office. Cases from other jurisdictions have stated that the exercise of duties or powers independently of a governing board or other officer is of the essence to the concept of sovereignty. (Edwards v. Brunner (Ala. 1989), 547 So.2d 1172, 1175-6; Main v. Claremont Unified School District (Cal. App. 1958), 326 P.2d 573, 583.) An officer has supervisory and discretionary authority which an employee does not. Daniels v. City of Venice (1987), 162 Ill. App. 3d 788, 790.

Pursuant to section 5-3-7 of the Municipal Code, the city manager's powers include: (1) the enforcement of laws and ordinances within the municipality; (2) the appointment and removal of all directors of departments; (3) the control of all municipal departments and divisions; and (4) attendance at council meetings and the making of recommendations of measures for adoption by the city council. Although some of these powers are ministerial in nature, the city manager clearly exercises independent and discretionary authority with respect to the operations of all municipal departments and divisions.

Based upon this analysis, the position of city manager appears to constitute a public office. Other supporting criteria include the required filing of a bond and the taking of an oath by the city manager (65 ILCS 5/5-3-8, 5-3-9 (West 1992)), and the fixing of the city manager's salary by ordinance rather than by contract. (65 ILCS 5/5-4-2 (West 1992).) The common law doctrine of incompatibility of offices is, therefore, applicable to simultaneous tenure in the positions of city manager and school board member.

The doctrine of incompatibility of offices precludes simultaneous tenure in two offices where 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 of the duties of the other. (People v. Village of Tinley Park (1983), 116 Ill. App. 3d 437, 440-41; People ex rel. Myers v. Haas (1908), 145 Ill. App. 283,

286.) There is no constitutional or statutory provision which prohibits one person from serving simultaneously as both a city manager and as a member of a board of education. 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.

As a member of a board of education, a school board member exercises the corporate powers of the school district (105 ILCS 5/10-20.1 through 10-23.12 (West 1992)). These powers include: supervising the education of children within the district; the raising of revenue by tax levy; the hiring of teachers; and the maintaining of schools. There are situations in which a school district and a municipality are statutorily authorized to contract with one another, including: (1) the transfer, lease or sale of real property (65 ILCS 5/11-45-15, 11-74.2-12; 50 ILCS 605/0.01 et seq.; 105 ILCS 5/10-22.11, 16-9 (West 1992)); (2) traffic regulation in school parking areas (105 ILCS 5/10-22.42 (West 1992)); (3) municipal fire protection of school buildings (65 ILCS 5/11-6-2; 105 ILCS 5/16-10 (West 1992)); and (4) furnishing a school water supply (105 ILCS 5/10-20.17 (West 1992)). Moreover, under the Intergovernmental Cooperation section of the 1970 Illinois Constitution (Ill. Const. 1970, art. VII, sec. 10) and the Intergovernmental Cooperation Act (5 ILCS 220/1 et seq. (West 1992)), municipalities and school districts are authorized generally to enter into contracts to obtain or to share services, and to exercise, combine or transfer powers and functions.

Although a city manager would not vote or otherwise be a party to any contract between the city and the school district, he or she is still in a position to influence that contract. In opinion No. S-1120, issued July 1, 1976 (1976 Ill. Att'y Gen. Op. 232), Attorney General Scott concluded that the offices of county superintendent of highways and alderman were incompatible because the county superintendent of highways could be called upon by the county board for advice in situations where the interests of the county and those of the municipality might be opposed to each other.

Because a city manager is expressly authorized to make recommendations to the city council concerning municipal matters, a person who served as both a school board member and a city manager would be required, when these two bodies enter into contracts with each other, to represent the interests of the school district and, at the same time, to advise the city council as to the best interests of the municipality. In such circumstances, the interests of the school district and the city may

conflict, and the dual officeholder could be subject to divided loyalties.

In addition to the contractual conflicts, a city council, pursuant to section 3 of the State Revenue Sharing Act (30 ILCS 115/3 (West 1992)), may allocate all or part of its revenue sharing funds to a school district which lies at least partly within the municipality. A conflict could also arise, therefore, between the dual officeholder's authority as a city manager to advise the city council regarding how revenue sharing funds should be spent to serve the needs of the municipality, and his or her duty as a school board member to provide for the revenue necessary to maintain the district's schools. While the city council is not required to seek or follow the recommendations of the city manager in any of these circumstances, the advice of the city manager is, in practice, heavily relied upon by the council.

Accordingly, because of the potential conflicts in the duties and responsibilities of these offices, it appears that the offices of city manager and school board member are incompatible, and one person, therefore, cannot serve simultaneously in both offices.

In response to your second inquiry, I note initially that although the position of alderman is clearly a public office, it appears that the position of high school principal is not. As previously stated, the primary indicium of public office, as distinguished from public employment, is that the holder of an office has been authorized to exercise some portion of the sovereign power. Under section 10-21.4a of the School Code (105 ILCS 5/10-21.4a (West 1992)), principals supervise the operation of school attendance centers, but they are subject to the direction of the school superintendent and the school board in exercising their administrative responsibilities. Because such duties do not constitute an independent exercise of solemn functions of government, the position of high school principal is one of employment, and the doctrine of incompatibility of offices would not be applicable to preclude a person from simultaneously serving as a high school principal and a city alderman. It must also be determined, however, whether the holding of these two positions would violate other provisions proscribing conflicts of interest.

Section 3.1-55-10 of the Illinois Municipal Code (65 ILCS 5/3.1-55-10 (West 1992 Supp.)) prohibits, with certain limited exceptions, municipal officers from possessing any direct or indirect personal pecuniary interest in a contract entered

into by the governmental body of which he or she is a member. As previously noted, there are circumstances in which a municipality and a school district may enter into contracts for various purposes. These instances, however, would not appear to give rise to a per se violation of section 3.1-55-10, since an officer of a governmental entity does not generally have a personal pecuniary interest in the contracts of the entity which he serves. When one public body contracts with another, the contracts between such entities do not necessarily benefit the officers or employees of either financially, as the compensation of such employees is not likely to depend upon such contracts. (See 1992 Ill. Att'y Gen. Op. No. 92-026, issued October 27, 1992; 1976 Ill. Att'y Gen. Op. 56.) In the absence of a personal pecuniary interest in the contract, therefore, it appears that no violation of the section 3.1-55-10 would occur.

Although there is no statute or per se rule which would prohibit a high school principal from simultaneously serving as a city alderman, situations could nevertheless arise in which the person would have an actual personal interest as an employee of the school district in a matter coming before the city council. Such potential conflicts, generally referred to as common law conflicts of interest, can occur whenever official action could result in a personal advantage or disadvantage to the interested official. It is well established that where a member of a governmental body has a personal interest in a matter before the body, he or she is disqualified from voting or otherwise acting thereon. (In re Betts (1985), 109 Ill. 2d 154, 168; 1977 Ill. Att'y Gen. Op. 51; see generally Annotation 10 ALR 3d 694.) In these circumstances, therefore, it appears that the city alderman should abstain from voting or otherwise acting upon matters from which he or she may benefit in some manner as an employee of the school district.

In response to your final inquiry, concerning the positions of city fire chief and school board member, it appears that a municipal fire chief may be either an officer or an employee. The office of fireman was unknown at common law and does not exist unless created by statute or by municipal ordinance adopted under statutory authority. (See generally Rinchich v. Village of Bridgeview (1992), 235 Ill. App. 3d 614; People ex rel. Kwiat v. Board of Fire and Police Commissioners of the Village of Schiller Park (1973), 14 Ill. App. 3d 45.) While there is no statute which expressly creates the office of city fire chief, section 3-7-1 of the Illinois Municipal Code (65 ILCS 5/3-7-1 (West 1992)) provides that a city may create any office which the city council considers necessary or expedient. Accordingly, a city may, by ordinance, designate the position of

municipal fire chief to be a city office. In addition, section 10-2.1-4 of the Illinois Municipal Code (65 ILCS 5/10-2.1-4 (West 1992)) provides that, in cities which have adopted the statutory provisions governing a board of fire and police commissioners, full time members of a municipal fire department are deemed to be city officers:

> " * * *
>
> Any full time member of a regular fire or police department of any municipality which comes under the provisions of this Division or adopts this Division 2.1 or which has adopted any of the prior Acts pertaining to fire and police commissioners, is a city officer.
>
> * * * "

The common law rule of incompatibility of offices would therefore be applicable if the office of municipal fire chief has been created by ordinance or if the city has adopted the aforementioned provisions pertaining to a board of fire and police commissioners and the position of fire chief is held by a full time member of the fire department.

There is no constitutional or statutory provision which prohibits one person from simultaneously holding the offices of municipal fire chief and school board member. Furthermore, there does not appear to be a significant relationship between the duties of a municipal fire chief and the duties of a school board member which would conflict and render the offices incompatible. Although the school district may, for example, enter into contractual arrangements for fire protection services with the municipality, it is the city council, rather than the municipal fire chief, which would act to approve or disapprove such a contract. Moreover, such contractual agreements with respect to these two offices would not appear to result in a potential conflict of duties as was found with the offices of city manager and school board member. Unlike the city manager, a municipal fire chief is under no general statutory duty to make recommendations or render advice to the city council concerning matters before the council. For that reason, a person who holds the offices of city fire chief and school board member would be responsible for acting with respect to a fire protection services contract only in his or her capacity as a school board member.

Accordingly, it appears that in municipalities in which the position of fire chief qualifies as an office, the offices of municipal fire chief and school board member are not incompatible, and, therefore, one person may simultaneously hold both offices.

Similarly, in those municipalities in which the position of fire chief is merely one of employment, there does not appear to be any per se violation of the conflict of interest statutes which would prevent one person from serving as a municipal fire chief and a school board member. Under section 10-9 of the School Code (105 ILCS 5/10-9 (West 1992)), which prohibits a school board member from having a direct or indirect interest in any contract of the district which he or she serves, a public official typically does not have the sort of financial interest in the contracts of his governmental employer which a private firm's employee may have. For that reason, any contract between the municipality and the school district, such as one for fire protection services, would not appear to violate the pertinent conflict of interest provisions. Should any common law conflicts of interest arise, the officer in question would be required, as previously discussed, to abstain from acting in matters from which he or she may personally benefit in some manner.

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

Very truly yours,

[redacted]

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

MJL:JM:cj