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May 28, 1976

FILE NO. NP-1004

COMPATIBILITY OF OFFICES:
County Board Member and
Chief of Police of a City.

Honorable Richard S. Simpson
State's Attorney
Lawrence County
Lawrenceville, Illinois 62439

Dear Mr. Simpson:

I have your letter wherein you ask whether the office of county board member is compatible with the offices of chief of police of a city and city police officer.

Incompatibility between offices arises where the Constitution or a statute specifically prohibits the occupants 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 cannot in every instance properly and faithfully perform all the duties of the other.

Honorable Richard S. Simpson - 2.

(People v. Haas, 145 Ill. App. 283.) There is no constitutional or statutory provision that prohibits a county board member from serving as either chief of police or city police officer, and there is no conflict between a county board member's duties and the duties of a chief of police and a city police officer. Therefore, it is my opinion that the office of county board member is compatible with the offices of chief of police and city police officer.

Very truly yours,

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



WILLIAM J. SCOTT

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June 15, 1976

FILE NO. NP-1108

COMPATIBILITY OF OFFICES:
Township Auditor and
County Board Member

Honorable Edward P. Drolet
State's Attorney
Kankakee County
Court House
Kankakee, Illinois 60901

Dear Mr. Drolet:

This is in response to your letter in which you ask whether the offices of township auditor and county board member are incompatible. You refer to my opinion No. S-877 which was issued on March 17, 1975, and opinion No. S-1016 which was issued on December 11, 1975. It is my opinion that the offices of township auditor and county board member are incompatible.

Incompatibility between offices arises where the Constitution, or a statute, specifically prohibits the occupant of either of the offices from holding the other, or where because of the duties of either office a conflict of interest

NP 1108

Honorable Edward P. Drolet - 2.

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. (People ex rel. Meyer v. Haas, 145 Ill. App. 283.)

As explained in opinion No. S-877, the county board and the board of township auditors have authority to enter into contracts with each other to provide a particular service to the people of the county and township. This power is the result of the cumulative effect of section 10 of article VII of the Illinois Constitution of 1970, the Intergovernmental Cooperation Act (Ill. Rev. Stat. 1975, ch. 127, pars. 741 et seq.) and the amendment of section 20 of article XIII of "AN ACT to revise the law in relation to township organization." (Ill. Rev. Stat. 1975, ch. 139, par. 126.10, as amended by P.A. 78-1189 and P.A. 79-458.) As stated in opinion No. S-877, these statutes allow a county and township to enter into a contract to provide services with regard to the areas of public safety, environmental protection, public transportation, health, recreation, and social services for the poor and aged.

In attempting to make decisions upon contracts with regard to any of the above areas, a person who is a member of

Honorable Edward P. Drolet - 3.

both the county board and the board of township auditors cannot fairly represent the conflicting interests of the county and township. Where the service is to be provided in accordance with a contract entered into between the county and township, the dual officeholder is representing, and attempting to negotiate a contract most advantageous to the interest of both parties to the bargain. Since under section 1 of article XIII of "AN ACT to revise the law in relation to township organization" (Ill. Rev. Stat. 1975, ch. 139, par. 117) a township supervisor who simultaneously holds the office of county board member would be faced with this dilemma, I concluded in opinion No. S-877, that the offices of township supervisor and county board member were incompatible. Pursuant to section 1 of article XIII of "AN ACT to revise the law in relation to township organization" (Ill. Rev. Stat. 1975, ch. 139, par. 117) a township auditor (township trustee after the 1977 election) like the township supervisor is a voting member of the board of auditors and participates in the decision-making process in the exercise of the powers vested in the board of township auditors. It follows from the foregoing that the offices of township auditor and county board member are incompatible.

Subsequent to the issuance of opinion No. S-877,

Honorable Edward P. Drolet - 4.

"AN ACT in relation to the simultaneous tenure of certain public offices" (Ill. Rev. Stat. 1975, ch. 102, pars. 4.10 et seq.) was enacted and it provides:

"§ 1. The General Assembly finds and declares that questions raised regarding the legality of simultaneously holding the office of county board member and township supervisor are unwarranted; that the General Assembly viewed the office of county board member and township supervisor as compatible; and that to settle the question of legality and avoid confusion among such counties and townships as may be affected by such questions it is lawful to hold the office of county board member simultaneously with the office of township supervisor in accordance with this Act."

§ 2. It is lawful for any county board member who may be elected in 1977 or before 1977 to the office of township supervisor to hold the office of county board member and township supervisor simultaneously until the expiration of his term of office as county board member; thereafter it is unlawful for the same individual to hold both such offices simultaneously.

§ 3. All actions of such person, as township supervisor after December 1, 1974, which are otherwise in accordance with law, are hereby validated."

In response to a question prompted by this Act, I issued opinion No. S-1016 on December 11, 1975, in which I concluded that under the Act, an individual who is elected to the county board in November 1976, may hold that office simultaneously with the office of township supervisor should he be

Honorable Edward P. Drolet - 5.

elected to the latter office in 1977. Your letter asks whether the above Act makes the offices of township auditor and county board member compatible. The language of the Act is clear and unambiguous; it focuses only upon the office of township supervisor and makes no reference to the office of township auditor. In Chicago Home For Girls v. Carr, 300 Ill. 478, at page 485, the Illinois Supreme Court stated:

" * * *

* * * [W]here a law is plain and unambiguous, whether it be expressed in general or limited terms, the legislature should be considered to have intended to mean what it has plainly expressed, and consequently no room is left for construction. It is not allowable to interpret what has no need of interpretation, or, when the words have a definite and precise meaning, to go elsewhere in search of conjecture in order to restrict or extend the meaning. 'Statutes * * * should be read and understood according to the natural and most obvious import of the language, without resorting to subtle and forced construction for the purpose of either limiting or extending their operation.' (City of Beardstown v. City of Virginia, 76 Ill. 34.) * * * "

It would be impermissible to expand the language of the Act to include the office of township auditor within its scope. I therefore conclude that the offices of township auditor and county board member are incompatible, and that "AN ACT in

Honorable Edward P. Drolet - 6.

relation to the simultaneous tenure of certain public offices"
(Ill. Rev. Stat. 1975, ch. 102, par. 4.10 et seq.) does not
make these offices compatible.

Very truly yours,

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



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

March 13, 2006

I - 06-021

COMPATIBILITY OF OFFICES:
Mayor and Police Chief

The Honorable Julie Kozuszek
State's Attorney, Washington County
101 East St. Louis Street
Nashville, Illinois 62263

Dear Ms. Kozuszek:

I have your predecessor's letter inquiring whether the mayor of a municipality may simultaneously serve as the police chief of the same municipality. For the reasons set forth below, the offices of mayor and police chief are incompatible, and one person may not hold both offices simultaneously.

The common law doctrine of incompatibility of offices precludes simultaneous tenure in two public 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 such that the holder of one cannot, in every instance, properly and faithfully perform all 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).

While there are no constitutional or statutory provisions that expressly prohibit a mayor from simultaneously serving as police chief, section 3.1-15-15 of the Illinois Municipal Code (the Code) (65 ILCS 5/3.1-15-15 (West 2004)) generally prohibits a mayor from holding another municipal office:

Holding other offices. A *mayor*, president, alderman, trustee, clerk, or treasurer *shall not hold any other office under the municipal government during the term of that office*, except when the officer is granted a leave of absence from that office or except as otherwise provided in Sections 3.1-10-50 [65 ILCS 5/3.1-10-50 (West 2004)] and 3.1-35-135 [65 ILCS 5/3.1-35-135 (West 2004)]. Moreover, an officer may serve as a volunteer fireman and receive compensation for that service. (Emphasis added.)

Under the plain language of section 3.1-15-15 of the Code, a mayor is prohibited from holding "any other office under the municipal government," unless one of the enumerated exceptions apply. See Ill. Att'y Gen. Op. No. 98-002, issued January 15, 1998. None of the exceptions referred to in section 3.1-15-15 of the Code are applicable to the question raised. The sole inquiry, therefore, is whether the position of police chief qualifies as an "office under the municipal government" within section 3.1-15-15, so that a mayor would be prohibited from simultaneously serving as police chief.

The term "office" in section 3.1-15-15 of the Code refers to a position held by an "officer" of a municipality by virtue of his election or appointment to that position, the incumbent of which is assigned the continuous performance of certain permanent public duties. It does not include mere municipal employees. See *Daniels v. City of Venice*, 162 Ill. App. 3d 788, 790 (1987); *Village of Round Lake Beach v. Brenner*, 107 Ill. App. 3d 1, 4 (1982); *Rudd v. Sarallo*, 111 Ill. App. 2d 153, 159 (1969). In *Midwest Television, Inc. v. Champaign-Urbana Communications, Inc.*, 37 Ill. App. 3d 926, 931 (1976), the appellate court specifically delineated the criteria to be used in determining whether a position constitutes a public office, stating:

The characteristics of a public office are generally agreed upon, although the distinction between an office and employment may be vague in particular fact situations. The characteristics of a public office include: (1) creation by statute or constitution; (2) exercise of some portion of the sovereign power; (3) a continuing position not occasional or contractual; (4) fixed tenure; (5) an oath is required; (6) liability for misfeasance or nonfeasance; and (7) the official has an independence beyond that of employees.

See also *Wargo v. Industrial Comm'n*, 58 Ill. 2d 234, 237 (1974); *People ex rel. Brundage v. Brady*, 302 Ill. 576, 582 (1922); Ill. Att'y Gen. Inf. Op. No. I-05-007, issued September 23, 2005. The court further indicated that "[n]ot all [of] these factors are required in order to determine that a position is an office." *Midwest Television, Inc.*, 37 Ill. App. 3d at 932. The most important of the factors, however, is the exercise of some portion of the sovereignty of the State. *Hall v. Cook County*, 359 Ill. 528, 539-40 (1935); *Brady*, 302 Ill. at 582.

Several factors support the conclusion that the police chief of the City of Ashley is a public officer. Significantly, the police chief is required to give a bond in the amount required by the city council and must take an oath of office prior to performing the duties of police chief. See Ashley City Ordinance 96-003 (eff. Aug. 19, 1996); Ashley City Code §30-2-19(C); 65 ILCS 5/3.1-10-25, 3.1-10-30 (West 2004). Although the position of police officer is created by statute (65 ILCS 5/11-1-2 (West 2004)), the position of police chief is created by ordinance. However, under the ordinance, the position is created as a continuous one. Ashley City Ordinance 96-003 (eff. Aug. 19, 1996); see also 65 ILCS 5/3.1-30-5, 5/11-1-1 (West 2004). Further, the police chief has an independence beyond that of an employee; the chief holds final policymaking authority with respect to law enforcement. Ashley City Code §§30-2-3, 30-2-16. The police chief bears the responsibility and direction for all functions and personnel of the municipal police department. *Fabiano v. City of Palos Hills*, 336 Ill. App. 3d 635, 657 (2002), appeal denied, 204 Ill. 2d 658 (2003). The police chief is responsible for the protection of the public, and inherent in this is the responsibility to maintain an efficient and effective police force. See *Buege v. Lee*, 56 Ill. App. 3d 793, 796 (1978); Ashley City Ordinance 96-003 (eff. Aug. 19, 1996). Thus, the police chief exercises a portion of the sovereign power.

Based on the foregoing, the position of police chief as created by the Ashley City Council is a public office. See *Brenner*, 107 Ill. App. 3d at 4 (chief of police is public office); Ill. Att'y Gen. Inf. Op. No. I-94-030, issued June 8, 1994 (fire chief may be either an officer or an employee); Ill. Att'y Gen. Inf. Op. No. I-01-025, issued May 23, 2001 (fire chief is a public office); 65 ILCS 5/10-2.1-1 (West 2004) (a full-time member of a police department in a municipality that has appointed a board of fire and police commissions is considered a "city officer").¹ As a result, section 3.1-15-15 of the Code, which generally prohibits a mayor from holding another municipal office, prevents a mayor from simultaneously serving as police chief of the same municipality.

Further, offices are also found to be incompatible if one of the offices is subordinate to the other. *Fitzsimmons*, 101 Ill. 2d at 467-69; *Tinley Park*, 116 Ill. App. 3d at 440-44. In these circumstances, the office of police chief is clearly subordinate to the office of mayor. The mayor appoints the police chief and may remove him or her from office. The mayor may be required to approve or disapprove of the compensation set for members of the police department, including the police chief, and the expenditures of the police department. Because a

¹ In *Rogers v. Village of Tinley Park*, 116 Ill. App. 3d 437 (1983), the appellate court considered whether the doctrine of incompatibility of offices precluded a village police officer from simultaneously serving as a village trustee. Without specifically discussing whether the position of police officer is an office, the court held that the doctrine of incompatibility of offices precludes a village police officer from simultaneously serving as a village trustee because of a conflict of duties between the two offices. *Tinley Park*, 116 Ill. App. 3d at 445. Because the common law doctrine of incompatibility of offices traditionally has been applied only to offices, and not to positions of employment (1975 Ill. Att'y Gen. Op. 278, 280), it must be assumed that the court concluded that the position of police officer was, in fact, a public office. If the position of village police officer is a public office, it then follows that the position of village police chief must similarly be considered a public office.

mayor may be called on to remove a police chief and approve or disapprove the compensation and expenditures of the police department, a mayor simultaneously serving as police chief would experience competing interests and divided loyalties which could hamper a mayor in the full and faithful performance of his duties. Under these circumstances, the duties of the two offices are divergent and would conflict. Thus, the offices of police chief and mayor are incompatible, and one person may not hold both offices simultaneously.

Moreover, the common law doctrine of incompatibility would preclude the simultaneous holding of the offices of mayor and police chief because of a conflict in duties between the two offices. As noted above, offices are incompatible where the duties of either office are such that the holder of one office cannot, in every instance, properly and faithfully perform all the duties of the other office. In the *Tinley Park* case, the court concluded that the offices of village trustee and police officer for the same municipality were incompatible because of a conflict of duties stating:

The board of trustees of the village of Tinley Park must determine the salaries and fringe benefits of all village employees, including police officers. It must annually establish an operating budget for the village's police department and for all village departments and must annually levy taxes for various police purposes. It must authorize expenditures for various equipment and supply purchases for the police department and approve of officers attending seminars, conventions and supplemental training.

The civil service commission of the village is responsible for the hiring and firing of police officers, but the board of trustees has extensive and wide-ranging responsibilities in the field of police department labor relations and personnel decisions.

The board has the duty and responsibility of increasing or decreasing the numerical strength of the police department. Recently it voted to reduce the number of officers in the department. The village president and board of trustees, not the civil service commission, has the authority to appoint and remove the chief of police, the head of the department of police to which Rogers belongs. The board also has the authority, by ordinance, to appoint and remove the civil service commissioners or change the composition of the commission.

The Ashley City Code provides that the mayor shall appoint the city's police chief for a term of one year with the advice and consent of the city council. If the mayor does not appoint a police chief, the Ashley City Code states that the mayor shall "act[] in that capacity."

Ashley City Code §30-2-2. The mayor also has the power to remove the police chief from office whenever the mayor determines that the interests of the municipality demand removal. Ashley City Code §1-2-46. The Ashley City Council must determine the compensation of the members of the police department, including the police chief. Ashley City Code §30-2-5. Further, the city council establishes an operating budget for the police department and authorizes its expenditures. Although the powers of a mayor vary depending on the particular organization of the municipality, in every case the mayor has sufficient power to influence city actions so that a conflict of interest could arise. Ill. Att'y Gen. Inf. Op. No. I-92-060, issued December 8, 1992; Ill. Att'y Gen. Op. No. I-91-015, issued March 14, 1991. Based on the foregoing, the duties of the offices of mayor and police chief are such that the holder of one cannot, in every instance, fully and faithfully discharge the duties of the other.

Finally, an ordinance cannot add to, subtract from, or affect a statute's provisions. *JLR Investments, Inc. v. Village of Barrington Hills*, 355 Ill. App. 3d 661, 666 (2005), *appeal denied*, 215 Ill. 2d 598 (2005). Where there is a conflict between a statute and an ordinance, the ordinance is invalid. *Hawthorne v. Village of Olympia Fields*, 204 Ill. 2d 243, 259 (2003). The Ashley City Code provides that if the mayor does not appoint a police chief, then the mayor shall "act[] in that capacity." Ashley City Code §30-2-2. Section 3.1-15-15 of the Code (65 ILCS 5/3.1-15-15 (West 2004)), however, prohibits a mayor from holding another municipal office. As previously discussed, the position of municipal police chief is a public office. As a result, section 3.1-15-15 of the Code prohibits a mayor from simultaneously serving as police chief of the same municipality. Because the Ashley City Code authorizes the mayor to act as police chief, the Ashley City Code conflicts with section 3.1-15-15 of the Code and is therefore invalid.

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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