



**ROLAND W. BURRIS**

ATTORNEY GENERAL  
STATE OF ILLINOIS



January 27, 1994

I - 94-010

COMPATIBILITY OF OFFICES:  
Community College Board  
Trustee and City Treasurer

Honorable Raymond G. Kimbell, III  
State's Attorney, Knox County  
Knox County Courthouse  
Galesburg, Illinois 61401

Dear Mr. Kimbell:

I have your letter wherein you inquire whether one person may simultaneously hold the offices of community college board trustee and treasurer of a city which is located within the community college district. 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 question 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 are such 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 expressly prohibit one person from simultaneously holding the two offices in question. It is, therefore, necessary to examine the duties, functions and powers of the offices of community college board trustee and city treasurer to determine whether a conflict of duties could arise if one person were to occupy both offices.

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The provisions of the Public Community College Act (105 ILCS 805/1-1 et seq. (West 1992)) govern the operations of the several public community colleges in Illinois. The powers of a community college district are exercised by its board of trustees (105 ILCS 805/3-30 (West 1992)). Community college districts have specific authority to contract with municipalities for the provision of public services and the enforcement of traffic laws (105 ILCS 805/3-38.2, 3-42.2 (West 1992)).

The powers and duties of a city treasurer are governed by sections 3.1-35-40 through 3.1-35-85 of the Municipal Code (65 ILCS 5/3.1-35-40 through 3.1-35-85 (West 1992 Supp.)). Those duties include the receipt, deposit and investment of money belonging to the municipality; the payment of funds upon lawfully drawn warrants; the keeping of accounts and reporting upon them to the corporate authorities; and the filing of certain reports and accounts with the municipal clerk and town or county collectors. The duties of the treasurer are ministerial in nature, and would not appear to confer upon the treasurer any discretionary authority with respect to any possible contracts between the community college district and the city.

In this regard, the position of the treasurer may be distinguished from that of the mayor or an alderman, who would necessarily act upon any agreement between the city and the community college district. Thus, a mayor who served on a community college board would face a conflict of duties in such a situation. Further, a city treasurer is in a different position from a county treasurer, who also serves as collector, and could face a conflict of duties with respect to the collection, safe-keeping and payment over of tax receipts if he or she served on the board of a taxing district (see 1927 Ill. Att'y Gen. Op. 151).

Moreover, these circumstances appear to be distinguishable from those in Peabody v. Sanitary District of Chicago (1928), 330 Ill. 250, wherein the Supreme Court held that a contract between the board of trustees of the sanitary district and a contractor was void because the treasurer of the district had an interest in the contract. The court stated that since the duties of the treasurer included serving as financial advisor to the trustees, he might be called upon to act on the letting of the contract by advising the board as to the financial status of the bidders. The position of the municipal treasurer in this instance may be distinguished from that of the sanitary district treasurer in Peabody. The district treasurer was, by specific statutory provision, required to serve as financial advisor to

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the board. Further, the treasurer had absolute discretion in selecting depositories for districts. The municipal treasurer's duties, in contrast, are more ministerial and less discretionary. He is not required by statute to serve as the financial advisor to the city, and he may deposit funds only in depositories designated by the city council. Indeed, since the financial status of the community college is open to public inspection, the city council, in any dealings with the community college, would have no need to look to the treasurer for specific advice on the college's finances. Therefore, it appears that no conflict in the duties of these offices would occur.

For the reasons stated, it appears that the offices of city treasurer and community college trustee are not incompatible.

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:KJS:cj



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

**Lisa Madigan**  
ATTORNEY GENERAL

May 21, 2004

I-04-008

COMPATIBILITY OF OFFICES:  
City Treasurer and  
Township Supervisor

The Honorable Vincent Moreth  
State's Attorney, Macoupin County  
Macoupin County Courthouse  
P.O. Box 287  
Carlinville, Illinois 62626

Dear Mr. Moreth:

I have your letter wherein you inquire whether one person may simultaneously hold the offices of township supervisor and treasurer of a city which is located within the township. 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 question you have raised.

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 so that the holder of one cannot, in every instance, properly and faithfully perform all 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 is no constitutional or statutory provision which prohibits a person from holding both of the offices in question. The issue, therefore, is whether the duties of either office are such that the holder of one cannot fully and faithfully discharge all the duties of the other.

The powers and duties of a city treasurer are governed by sections 3.1-35-40 through 3.1-35-85 of the Illinois Municipal Code (65 ILCS 5/3.1-35-40 through 3.1-35-85 (West 2002)). Those duties include, *inter alia*, the receipt, deposit and investment of all money belonging to the municipality (65 ILCS 5/3.1-35-50 (West 2002)); the payment of funds upon lawfully drawn warrants (65 ILCS 5/3.1-35-40 (West 2002)); the keeping of accounts and reporting upon them to the corporate authorities (65 ILCS 5/3.1-35-45 (West 2002)); and the filing of certain reports and accounts with the city clerk and the town or county collectors (65 ILCS 5/3.1-35-65, 3.1-35-70 (West 2002)). The duties of the treasurer are ministerial in nature, and would not appear to confer upon the treasurer any discretionary authority with respect to matters of mutual concern between the city and the township. In this regard, the position of city treasurer may be distinguished from that of mayor or city alderman.

The provisions of the Township Code (60 ILCS 1/1-1 *et seq.* (West 2002)) govern the operations of the several townships in Illinois. The duties of the township supervisor are set out in article 70 of the Township Code (60 ILCS 1/70-5 *et seq.* (West 2002)) and in sections 6-205 and 6-206 of the Illinois Highway Code (605 ILCS 5/6-205, 6-206 (West 2002)). The township supervisor is the chief executive officer of the township. 60 ILCS 1/70-15 (West 2002). Among the supervisor's ministerial duties are the receipt and distribution of all moneys raised in the township (60 ILCS 1/70-15 (West 2002)); the keeping of the township's accounts of receipts and expenditures (60 ILCS 1/70-25 (West 2002)); and the preparation and filing of annual reports regarding a township's financial affairs for annual township meetings (60 ILCS 1/70-15 (West 2002)) and for the township board (60 ILCS 1/70-35 (West 2002)). In addition, the township supervisor serves *ex officio* as supervisor of general assistance (60 ILCS 1/70-50 (West 2002)) and as road district treasurer (60 ILCS 1/70-60 (West 2002)). With respect to the latter position, the supervisor receives and has charge of, subject to the order of the highway commissioner, all road district funds and provides annual statements related thereto. 605 ILCS 5/6-205 (West 2002).

The township supervisor also exercises certain discretionary powers. The township supervisor is a member of the township board and serves as its chairman. 60 ILCS 1/80-5 (West 2002). In this capacity, the township supervisor, together with the township's trustees, exercise many of the township's corporate powers. *See, e.g.*, 60 ILCS 1/85-5 *et seq.* (West 2002).


It appears, therefore, that although a township supervisor's duties with respect to the management of funds are primarily ministerial, the supervisor's duties as the chairman and as a member of the township board are discretionary. The township may act, through its board of trustees, to contract or otherwise associate with a city, for example. In doing so, the township supervisor would be in a position to vote upon or influence these actions. As a purely ministerial officer, however, the city treasurer would not be empowered to vote or otherwise act in such

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matters. Consequently, there is no apparent conflict in duties which would prohibit one person from simultaneously holding the two offices in question. Therefore, the office of city treasurer is not incompatible with the office of township supervisor, and one person may hold both offices simultaneously.

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

Very truly yours,



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

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