



**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.

Honorable Raymond G. Kimbell, III - 2.

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


Honorable Raymond G. Kimbell, III - 3.

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

January 7, 2010

I - 10-001

**COMPATIBILITY OF OFFICES:  
County Board Member and  
Community College District Trustee**

The Honorable Justin Hood  
State's Attorney, Hamilton County  
100 South Jackson Street  
McLeansboro, Illinois 62859

Dear Mr. Hood:

I have your letter inquiring whether one person may simultaneously serve in the offices of county board member and community college district trustee in a county with fewer than 40,000 inhabitants. For the reasons stated below, an incumbent county board member may not hold the office of community college district trustee simultaneously. The election of an incumbent county board member to the board of trustees of a community college district 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 Hamilton County Board currently serves as a community college district trustee for Rend Lake Community College District No. 521, which includes portions of Hamilton County within its territory. We understand that the individual who is the focus of your inquiry was elected to the office of county board member in 2006 and was

serving on the county board when he was elected to the office of community college district trustee at the consolidated election held on April 7, 2009. Accordingly, you inquire whether one person may serve in both offices simultaneously.

### 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 community college district trustee.<sup>1</sup> 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 community college district trustee in these circumstances.

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*

---

<sup>1</sup>In opinion No. 94-021, issued October 25, 1994, Attorney General Burriss was asked to determine whether one person may simultaneously serve as both a county board member and a trustee of a community college, part of the territory of which is located within the county. Because of potential conflicts in duties, Attorney General Burriss concluded that the office of county board member was incompatible with that of trustee for a community college located within the county.

*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 *People v. Wilson*, 357 Ill. App. 3d 204 (2005), 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 Illinois law.<sup>2</sup> Neither section 1 nor any other statute expressly permits one person to serve simultaneously as a county board member and a community college district trustee. Therefore, pursuant to section 1 of the Prohibited Activities Act, a Hamilton County Board member may not be appointed or elected to the office of community college district trustee. If a Hamilton County Board member, during his or her term of office, is elected to the office of community college district trustee, 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 community college district trustee

---

<sup>2</sup>For example, section 2 of the Public Officer Simultaneous Tenure Act (50 ILCS 110/2 (West 2008)) authorizes county board members to serve simultaneously as township supervisors. Further, section 3-9006 of the Counties Code (55 ILCS 5/3-9006 (West 2008)) authorizes county board members to serve as Assistant State's Attorneys, if the office of county board member is located outside of the jurisdiction of the State's Attorney's office that he or she serves.

The Honorable Justin Hood - 4

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 community college district trustee, that election is void under section 1 of the Prohibited Activities Act.<sup>3</sup>

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:LAS:lk

---

<sup>3</sup>Your letter indicates that the Hamilton County Board Chairman believes that section 1.2 of the Prohibited Activities Act (50 ILCS 105/1.2 (West 2008)), which authorizes county board members "in a county having fewer than 40,000 inhabitants" to hold the offices of "member of the board of education, regional board of school trustees, board of school directors, or board of school inspectors," also permits a county board member to serve simultaneously as a community college district trustee in those counties with a population under 40,000 inhabitants. Based on 2000 Federal census figures, Hamilton County's population is 8,621 inhabitants. Illinois Blue Book 504 (2007-2008).

Although section 1.2 of the Prohibited Activities Act expressly permits a member of the county board to hold the indicated offices, if the county has fewer than 40,000 inhabitants, section 1.2 contains no corresponding exception expressly allowing a member of the county board to serve as a community college district trustee in such circumstances. The offices of member of board of education (105 ILCS 5/9-5, 9-10 (West 2008)), regional board of school trustees (105 ILCS 5/6-2 (West 2008)), board of school directors (105 ILCS 5/10-1 (West 2008)), or board of school inspectors (105 ILCS 5/32-2.1, 32-2.11 (West 2008)) are established under the School Code (*see* 105 ILCS 5/1-1 *et seq.* (West 2008)), while the office of community college district trustee is governed by the Public Community College Act. *See* 110 ILCS 805/3-1 *et seq.* (West 2008). Further, when the General Assembly has authorized a public officer to serve simultaneously on a board of trustees of a community college district, it has done so by express statutory provision. *See* 110 ILCS 805/3-7 (West 2008) (permitting member of common school board elected or appointed to a board of trustees of a community college district to serve the remainder of his or her term of office as a member of the common school board). Thus, it is clear that the office of community college district trustee is not among the public offices enumerated in section 1.2 of the Prohibited Activities Act in which a county board member may serve simultaneously. *Cf.* 50 ILCS 105/3.2 (West 2008) (expressly addressing contracts of deposit, loans, or other financial services by "a unit of local government [or] community college district"). Accordingly, the language of section 1.2 of the Prohibited Activities Act authorizing a county board member to also hold the offices of member of the board of education, regional board of school trustees, board of school directors, or board of school inspectors, does not authorize a county board member to serve simultaneously as a community college district trustee, regardless of the county's population.



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

**Lisa Madigan**  
ATTORNEY GENERAL

March 29, 2012

I - 12-005

COMPATIBILITY OF OFFICES:  
County Board Member and  
Community College District Trustee

The Honorable Joseph P. Bruscato  
State's Attorney, Winnebago County  
400 West State Street, Suite 619  
Rockford, Illinois 61101

Dear Mr. Bruscato:

I have your letter inquiring whether one person may serve simultaneously as a county board member and a community college district trustee in a county with a population of more than 40,000 inhabitants. If the offices are incompatible, you inquire which office must be vacated when the person was serving as a community college district trustee at the time that he was elected to the office of county board member. For the reasons discussed below, the offices of county board member and community college district trustee in a county with more than 40,000 inhabitants are incompatible, and therefore, one person cannot hold both offices simultaneously. Further, as a matter of law, the acceptance of a second, incompatible office by the incumbent of another office constitutes an *ipso facto* resignation of the first office.

**BACKGROUND**

Your letter states that the individual who is the focus of your inquiry was first elected to the office of community college district trustee, and then was elected to the office of county board member. He continues to serve in both capacities. According to the 2010 Federal decennial census data, the population of Winnebago County is 295,266 inhabitants.<sup>1</sup>

---

<sup>1</sup>Illinois Blue Book 451 (2011-2012).



## 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). In these circumstances, the provisions of section 1 of the Public Officer Prohibited Activities Act (the Prohibited Activities Act) (50 ILCS 105/1 (West 2010)), which address the ability of county board members to hold other public office, necessarily preclude a county board member from simultaneously holding the office of community college district trustee.

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.)*

In *People v. Wilson*, 357 Ill. App. 3d 204 (2005), the Illinois Appellate Court addressed the issue of whether the offices of county board member and school board member in a county of over 40,000 inhabitants were incompatible under section 1 of the Prohibited Activities Act. The court held that, under the plain language of section 1, and except to the extent expressly authorized by law, a county board member is prohibited from simultaneously holding another

public office during his or her term of office. *Wilson*, 357 Ill. App. 3d at 206. Community college district trustees and county board members are officers of their respective units of government. Accordingly, unless simultaneous tenure in these offices is expressly permitted by statute, the *Wilson* decision is dispositive of the issue of whether the offices of community college district trustee and county board member are incompatible as a matter of law.<sup>2</sup>

With respect to simultaneous tenure, the office of community college district trustee is not one of the offices specifically excepted by section 1 of the Prohibited Activities Act. Moreover, the General Assembly recently enacted Public Act 97-460, effective August 19, 2011, which amended section 1.2 of the Prohibited Activities Act (50 ILCS 105/1.2 (West 2010)) to expressly authorize county board members in a county having fewer than 40,000 inhabitants to simultaneously hold the office of member of the "board of a community college district[.]"<sup>3</sup> As previously noted, Winnebago County's population significantly exceeds 40,000 inhabitants. Therefore, section 1.2 of the Prohibited Activities Act is inapplicable to Winnebago County, and that provision does not permit a member of the Winnebago County Board to simultaneously serve as a community college district trustee.<sup>4</sup>

Having concluded that the indicated offices are incompatible in the circumstances underlying your inquiry, it must next be determined which office must be vacated. You have advised that the dual officeholder in question was first elected to the position of community college district trustee, and then was subsequently elected to the office of county board member. Under the common law, the acceptance of a second, incompatible office by the incumbent of another office constitutes an *ipso facto* resignation of the first office held. *Brown*, 356 Ill. App. 3d at 1101; Ill. Att'y Gen. Inf. Op. No. I-11-003, issued March 31, 2011. Consequently, if an incumbent community college district trustee is elected to and qualifies for the office of county

---

<sup>2</sup>Moreover, prior to the decision in *Wilson*, Attorney General Burris determined that, because of potential conflicts in duties, the office of county board member was incompatible with that of trustee of a community college located within the county. Opinion No. 94-021, issued October 25, 1994. A review of the relevant statutory provisions confirms that the analysis in opinion No. 94-021 is still valid.

<sup>3</sup>Subsection 1-2(g) of the Public Community College Act (110 ILCS 805/1-2(g) (West 2010), as amended by Public Act 97-539, effective August 23, 2011) defines the term "board" to mean "[t]he board of trustees of a community college district, whether elected or appointed."

<sup>4</sup>Subsequent to the receipt of your opinion request, legislation was introduced in the 97<sup>th</sup> General Assembly. House Bill 5515 (Tracy) and Senate Bill 3182 (Syverson), among other things, amend section 1.2 of the Prohibited Activities Act to authorize a member of the county board in any county (rather than a county having fewer than 40,000 inhabitants) to hold the office of member of the board of education, regional board of school trustees, board of school directors, board of a community college district, or board of school inspectors. House Bill 5515 was referred to the House Rules Committee, and as of March 28, 2012, remains there. Senate Bill 3182 passed the Senate, and as of March 28, 2012, was on First Reading in the House and referred to the House Rules Committee.

board member in a county with a population that exceeds 40,000 inhabitants, the acceptance of the office of county board member constitutes a resignation from the office of community college district trustee. Therefore, by operation of law, the office of community college district trustee has been vacated.

### CONCLUSION

Section 1 of the Public Officer Prohibited Activities Act prohibits a county board member in a county having more than 40,000 inhabitants from simultaneously serving as a community college district trustee. Consequently, one person may not hold both offices simultaneously in Winnebago County. Further, because the dual officeholder in question was elected to the office of county board member while serving as a community college district trustee, his or her qualification for the office of county board member constituted an *ipso facto* resignation from the office of community college district trustee.

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, Public Access and Opinions Division

LEP:LAS:cj



**ROLAND W. BURRIS**

ATTORNEY GENERAL  
STATE OF ILLINOIS



July 9, 1993

I - 93-037

**COMPATIBILITY OF OFFICES:**

Village Trustee and Fire Protection  
District Trustee; Township Clerk  
and School Board Member; Fire Protection  
District Trustee and Community College Trustee

Honorable Jack O'Malley  
State's Attorney, Cook County  
500 Richard J. Daley Center  
Chicago, Illinois 60602

Dear Mr. O'Malley:

I have Assistant State's Attorney Jeanette Sublett's letter wherein she inquired, on your behalf, regarding the potential incompatibility of several local offices. Because of the nature of these inquiries, I do not believe that the issuance of an official opinion of the Attorney General is necessary. I will, however, comment informally upon the questions which have been 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 conflict so 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 prohibit simultaneous tenure in the offices which are the

Honorable Jack O'Malley - 2.

focus of this inquiry. Therefore, the issue is whether a conflict of duties could arise if one person were to occupy the particular offices in question.

Your first question concerns whether the offices of village trustee and fire protection district trustee are incompatible. Sections 10b and 11a of the Fire Protection District Act (Ill. Rev. Stat. 1991, ch. 127 1/2, pars. 30b, 31a; 70 ILCS 705/10b, 11a) respectively provide, in pertinent part:

"Any two or more fire districts or one or more fire protection districts and one or more cities, villages or incorporated towns may provide for joint ownership of fire fighting equipment, communication equipment, rescue and resuscitator equipment and real and personal property necessary for the care and housing of such equipment. In case of joint ownership the term of the agreement shall be fair, just and equitable to all parties and shall be set forth in a written agreement entered into by the corporate authorities of each participating unit.

\* \* \*

"

"The Board of Trustees of any fire protection district organized hereunder may contract with any corporation organized to furnish fire protection service or with any association organized to furnish fire protection service or with any city, village, incorporated town, or organized fire protection district lying adjacent to such district for fire protection service to be furnished by such corporation or such association or such municipality or fire protection district for the property within such district or to be furnished by such district for the property within such municipality. The board of trustees may also contract for the installation, rental or use of fire hydrants within the fire protection district and for the furnishing of water to be used within such district for fire protection purposes, and for mutual aid from and to other fire protection districts, and for mutual aid from and

to corporations and associations organized to furnish fire protection service and for mutual aid from and to municipalities.

\* \* \*

"

(Emphasis added.)

Similarly, section 11-6-1 of the Illinois Municipal Code (Ill. Rev. Stat. 1991, ch. 24, par. 11-6-1; 65 ILCS 5/11-6-1 (West 1992)) provides:

"The corporate authorities of each municipality may provide and operate fire stations, and all material and equipment that is needed for the prevention and extinguishment of fires, and may enter into contracts or agreements with other municipalities and fire protection districts for mutual aid consisting of furnishing equipment and man power from and to such other municipalities and fire protection districts." (Emphasis added.)

Under the statutes quoted above, it is foreseeable that a village and a fire protection district could enter into a contract for the provision of equipment and other materials necessary for the prevention and extinguishment of fires. Moreover, under section 11 of the Act, the board of trustees of a fire protection district is authorized to provide emergency ambulance service. (Ill. Rev. Stat. 1991, ch. 127 1/2, par. 31; 70 ILCS 705/11 (West 1992).) Municipalities possess the authority to provide or contract for ambulance services, as well as the power to license and to regulate the operation of ambulances. (Ill. Rev. Stat. 1991, ch. 24, par. 11-5-7; 65 ILCS 5/11-5-7 (West 1992).)

It is well established 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.) Because of the potential for conflicts in duties to arise when one governmental unit is authorized to contract with another, an individual serving as both a village trustee and a fire protection district trustee would be unable to represent the units of both entities adequately, fully and faithfully. Therefore, it appears that one person may not simultaneously hold the offices of village trustee and fire protection district trustee.

Secondly, you inquire whether the offices of township clerk and board of education member are incompatible. Township clerks are custodians of all records, books and papers of the town (Ill. Rev. Stat. 1991, ch. 139, par. 111; 60 ILCS 5/12-1 (West 1992)) and are authorized to certify to the county clerks the amount of taxes required to be raised for town purposes (Ill. Rev. Stat. 1991, ch. 139, par. 114; 60 ILCS 5/12-4 (West 1992)). Board of education members are responsible for conducting the business affairs of a school district (Ill. Rev. Stat. 1991, ch. 122, pars. 10-22 through 10-23.12; 105 ILCS 5/10-22 - 10-23.12 (West 1992)). The clerk's duties are ministerial in nature and do not require the exercise of discretion. A review of the duties of the two specified offices has failed to disclose any potential conflicts which could prevent one person from faithfully discharging the duties of either office. Consequently, it appears that one person may serve as township clerk and school board member simultaneously.

Lastly, you have asked whether a person may serve as both a fire protection district trustee and a community college board trustee. Section 3-38.2 of the Public Community College Act (Ill. Rev. Stat. 1991, ch. 122, par. 103-38.2; 110 ILCS 805/3-38.2 (West 1992)) authorizes a community college board:

"To enter into contracts with any municipality or fire protection district in which any community college buildings are located for the purpose of reimbursing such fire protection district or municipality for the additional costs of providing fire fighting equipment, apparatus or additional paid personnel occasioned by the presence of community college buildings within the municipality or fire protection district." (Emphasis added.)

Under section 3-38.2 of the Public Community College Act, it appears that the General Assembly specifically contemplated that a fire protection district and a community college could enter into a contract to reimburse the fire protection district for costs associated with the provision of fire fighting services on the community college campus or to the community college's buildings. As noted earlier, one person cannot represent the interests of two governmental units when those units contract with one another. (1991 Ill. Att'y Gen. Op. No. 91-023; 1985 Ill. Att'y Gen. Op. No. 85-019.) Consequently, given the authorization for the two bodies to contract for services, it

Honorable Jack O'Malley - 5.

does not appear that one person may simultaneously hold the positions of fire protection district trustee and community college board trustee.

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:LP:cj





**ROLAND W. BURRIS**

ATTORNEY GENERAL  
STATE OF ILLINOIS



December 8, 1992

I-92-060

COMPATIBILITY OF OFFICES:  
Community College Board  
Trustee and Mayor

Honorable Timothy V. Johnson  
State Representative, 104th District  
108 East Anthony  
Urbana, Illinois 61801

Dear Representative Johnson:

I have your letter wherein you inquire whether one person may simultaneously hold the offices of community college board trustee and mayor of a city which is located within the territory of the community college district. Because of your need for an expedited response, I will 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 mayor to determine whether a conflict of duties could arise if one person were to occupy both offices.

The provisions of the Public Community College Act (Ill. Rev. Stat. 1991, ch. 122, par. 101-1 et seq.) govern the operations of the State's several community colleges. As provided in the Act, the powers of the community college district are exercised by its board of trustees. (Ill. Rev. Stat. 1991, ch. 122, par. 103-30). Section 3-38.2 of the Public Community College Act (Ill. Rev. Stat. 1991, ch. 122, par. 103-38.2) grants the board of any community college district the power:

"To enter into contracts with any municipality \* \* \* in which any community college buildings are located for the purpose of reimbursing such \* \* \* municipality for the additional costs of providing fire fighting equipment, apparatus or additional paid personnel occasioned by the presence of community college buildings within the municipality \* \* \*."

Similarly, section 11-6-4 of the Illinois Municipal Code (Ill. Rev. Stat. 1991, ch. 24, par. 11-6-4) provides:

"The corporate authorities of any municipality may contract with the board of any public community college district to reimburse the municipality for any additional costs for fire protection service, including equipment, apparatus, or firemen occasioned by the presence of any public community college building within the municipality."

Further, section 3-42.2 of the Act (Ill. Rev. Stat. 1991, ch. 122, par. 103-42.2) grants the board the power:

"To establish parking regulations, to regulate, and control the speed of, travel on all paths, driveways and roadways which are owned and maintained by, and within the property of, the community college district, to prohibit the use of such paths, driveways and roadways for racing or speeding purposes, to exclude therefrom traffic and vehicles, and to prescribe such fines and penalties for the violation of such traffic regulations as cities and villages are allowed to prescribe for the violation of their traffic ordinances.

\* \* \*

The local community college board may enforce the provisions of this Section by use of members of the Security Department of the

community college or by agreeing in writing with a municipality, county or the State for its law enforcement officers to provide such enforcement." (Emphasis added.)

Under sections 3-38.2 of the Public Community College Act and 11-6-4 of the Illinois Municipal Code, it is foreseeable that a community college board and a municipality could enter into a contract whereby the municipality would be reimbursed for making its fire fighting equipment and personnel available to service the community college district. Moreover, section 3-42.2 of the Act specifically authorizes a municipality and a community college district to enter into an agreement for the provision of municipal law enforcement services to the college.

While the powers of a mayor may vary depending upon the particular organization of the municipality, in every case the mayor has sufficient power to influence municipal actions. (Ill. Att'y Gen. Op. 91-015, issued March 14, 1991.) Under the Illinois Municipal Code (Ill. Rev. Stat. 1991, ch. 24, par. 1-1-1), a mayor is required to perform all duties required by law and to execute his or her duties faithfully. (Ill. Rev. Stat. 1991, ch. 24, par. 3-11-6.) A community college board trustee is under a similar duty to represent and protect the interests of the district which he or she serves. It is well established 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. 91-021 issued July 26, 1991; Ill. Att'y Gen. Op. No. 91-015, issued March 14, 1991; 1976 Ill. Att'y Gen. Op. 116.

Because of the potential conflicts of duties which are present when one governmental unit is authorized to contract with another, it appears that a person who served as both a city mayor and a community college board trustee would be unable to represent the interests of both entities adequately, fully and faithfully. Consequently, it appears that the doctrine of incompatibility would prohibit one person from simultaneously holding the offices of community college board trustee and mayor of a city located within the territory of the community college district.

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



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

Lisa Madigan  
ATTORNEY GENERAL

January 26, 2006

I - 06-011

COMPATIBILITY OF OFFICES:  
Community College District Trustee  
and Regional Board of School Trustee

The Honorable Julia R. Rietz  
State's Attorney, Champaign County  
Courthouse  
101 East Main Street  
P.O. Box 785  
Urbana, Illinois 61801

Dear Ms. Rietz:

I have your letter inquiring whether one person may simultaneously hold the offices of community college district trustee and member of a regional board of school trustees. In accordance with your request, I will comment informally on your question.

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 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 prohibits one person from serving simultaneously as both a community college district trustee and a member of a regional board of school trustees. The issue, therefore, is whether the duties of either office are such that the holder of one cannot, in every instance, fully and faithfully discharge the duties of the other.

Illinois is currently divided into 40 community college districts. 110 ILCS 805/3-1 (West 2004). The powers of each district are exercised by a seven-member board of trustees. 110 ILCS 805/3-6, 3-7 (West 2004). Article 3 of the Public Community College Act (the Act) (110 ILCS 805/3-1 *et seq.* (West 2004)) sets forth the powers and duties of a community college board. *See* 110 ILCS 805/3-21 through 3-43 (West 2004). As set out in section 3-40 of the Act, among the board's enumerated powers is the authority "[t]o enter into contracts with any \* \* \* educational institution, or governmental agency for providing or securing educational services." 110 ILCS 805/3-40 (West 2004).

Regional boards of school trustees are established pursuant to the provisions of article 6 of the School Code (105 ILCS 5/6-1 *et seq.* (West 2004)). The regional boards are comprised of seven members elected from an educational service region (that is, a portion of a county, a county, or a multi-county area, if consolidation has occurred (105 ILCS 5/3A-1 *et seq.* (West 2004)). 105 ILCS 5/6-2 (West 2004). The board's primary duty is to hear and decide petitions for changes in school district boundaries by detachment, annexation, division, or dissolution. 105 ILCS 5/7-1, 7-2, 7-6 (West 2004). The regional board is also authorized to hear petitions by school districts seeking to withdraw from joint educational agreements. 105 ILCS 5/10-22.31a (West 2004). Specifically, section 10-22.31a of the School Code (105 ILCS 5/10-22.31a (West 2004)) authorizes the regional board of school trustees to hear and act upon petitions to withdraw from joint educational agreements entered into by school boards operating under the authority of the School Code (105 ILCS 5/1-1 *et seq.* (West 2004)) and public institutions of higher education. Section 10-22.31a provides, in pertinent part:

Joint educational programs. To enter into joint agreements with other school boards or public institutions of higher education. to establish any type of educational program which any district may establish individually, to provide the needed educational facilities and to employ a director and other professional workers for such program. \* \* \* *Such agreement shall be executed on forms provided by the State Board of Education and shall \* \* \* provide for the withdrawal of districts from the joint agreement by petition to the regional board of school trustees. Such petitions for withdrawal shall be made to the regional board of school trustees of the region having supervision and control over the administrative district and shall be acted upon in the manner provided in Article 7 for the detachment of territory from a school district. (Emphasis added.)*

Although the School Code contains no general definition of "public institutions of higher education," this phrase is uniformly defined in various statutes to include community college districts established or authorized by the General Assembly. *See, e.g.*, 105 ILCS 5/30-15.25 (West 2004) ("Public institution of higher education' includes: \* \* \* the public community colleges of the State"); 110 ILCS 205/1 (West 2004) ("Public institutions of higher education': \* \* \* the public community colleges of the State"); 110 ILCS 979/10 (West 2004) ("Public institution of higher education' means an Illinois public university or Illinois community college"). It is apparent, therefore, that section 10-22.31a of the School Code and section 3-40 of the Act together authorize agreements for joint educational programs between local school boards and community college districts. These agreements, by express statutory provision, must provide for the withdrawal of a participating school district by petition submitted to the regional board of school trustees having supervision and control over the designated administrative district. A regional board of school trustees receiving such a petition must act upon it in the manner provided in article 7 of the School Code (105 ILCS 5/7-01 *et seq.* (West 2004)) for detachment of territory from a school district. Under section 7-6 of the School Code (105 ILCS 5/7-6 (West 2004)), this procedure includes the filing of a petition for withdrawal, notice, and a public hearing. *See also* 105 ILCS 5/7-2 (West 2004). Following the public hearing, the regional board of school trustees must "determine whether it is to the best interests of the schools of the area and the educational welfare of the pupils that such [withdrawal] \* \* \* be granted[.]" 105 ILCS 5/7-6(i) (West 2004).

A member of a regional board of school trustees has a duty to impartially render a decision in a proceeding subject to section 7-6 of the School Code. A community college district trustee has a concomitant duty to represent and protect the interests of the community college district that he or she serves. Ill. Att'y Gen. Op. No. 94-021, issued October 25, 1994. The duties of the offices of community college district trustee and member of a regional board of school trustees will conflict whenever the regional board of school trustees is asked to determine whether a school district may withdraw from a joint educational agreement with the community college district whose interests the community college district trustee represents.

It is the existence of the potential for a conflict in duties, whether that conflict ever arises, that renders two offices incompatible. *See Brown*, 356 Ill. App. 3d at 1100 (2005); 1976 Ill. Att'y Gen. Op. 232. Therefore, the offices of community college district trustee and member of a regional board of school trustees are incompatible, and one person cannot hold both offices simultaneously.

The Honorable Julia R. Rietz - 4

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

Very truly yours,

A large black rectangular redaction box covering the signature of Lynne E. Patton.

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

LEP:CIE:an



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

Lisa Madigan  
ATTORNEY GENERAL

April 28, 2016

I - 16-003

COMPATIBILITY OF OFFICES:  
Regional Superintendent of Schools and  
Community College District Trustee

The Honorable Trish Joyce  
State's Attorney, Whiteside County  
200 East Knox Street  
Morrison, Illinois 61270

Dear Ms. Joyce:

I have your letter inquiring whether one person may serve simultaneously as a regional superintendent of schools and a community college district trustee. For the reasons stated below, the offices of regional superintendent of schools and community college district trustee are incompatible. Consequently, one person may not hold both offices simultaneously.

**BACKGROUND**

Your inquiry concerns whether the regional superintendent of schools for Whiteside County (which has subsequently been consolidated into the Whiteside, Lee, and Ogle Counties Regional Office of Education<sup>1</sup>) may serve simultaneously as a trustee of the Sauk Valley Community College District, which includes portions of Whiteside, Lee, and Ogle Counties within its territory.

---

<sup>1</sup>On July 1, 2015, Whiteside, Lee, and Ogle Counties were consolidated into one educational service region. Illinois State Board of Education, Regional Offices of Education (ROE) Consolidation Website, available at <http://www.isbe.net/regionaloffices/html/consolidation.htm>; see also 105 ILCS 5/3A-4 (West 2014) (mandating the consolidation of educational service regions into 35 regions of populations greater than 61,000 inhabitants after July 1, 2015).



## 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. Smith v. Brown*, 356 Ill. App. 3d 1096, 1098 (2005); *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 that expressly prohibits one person from serving simultaneously as both a regional superintendent of schools and a community college district trustee.<sup>2</sup> The issue, therefore, is whether the duties of either office are such that the holder of one office cannot, in every instance, fully and faithfully discharge all of the duties of the other.

### Regional Superintendent of Schools

A regional superintendent of schools is an elected official who acts as the chief administrative officer of a single-county or multi-county educational service region. 105 ILCS 5/3-0.01(a), 3A-1 *et seq.* (West 2014); 105 ILCS 5/3-1 (West 2014), as amended by Public Act 99-030, effective July 10, 2015. Article 3 of the School Code (105 ILCS 5/3-0.01 *et seq.* (West 2014)) sets out the general powers and duties of the regional superintendent. Pursuant to article 3, the regional superintendent is responsible for supervising, controlling, and monitoring all school districts within his or her educational service region (105 ILCS 5/3-14.2, 3-14.21 (West 2014)) and acting as the official adviser and assistant to school officers and teachers in the region (105 ILCS 5/3-14.7 (West 2014)).

The regional superintendent also serves as an intermediary between the State Board of Education and the school districts within the educational service region (105 ILCS 5/3-14.7, 3-14.21, 3-15.8 (West 2014)). In this regard, section 2-3.66b of the School Code (105 ILCS 5/2-3.66b (West 2014)), which creates the IHOPE Program to encourage high school dropouts to earn their diplomas, provides, in pertinent part:

---

<sup>2</sup>Section 3-3 of the School Code (105 ILCS 5/3-3 (West 2014)) makes it unlawful for a superintendent of an educational service region "to practice or to hold himself out as practicing any other profession." In opinion No. NP-956, issued August 28, 1975, Attorney General Scott noted that the word "profession," as used in section 3-3 of the School Code (then codified at Ill. Rev. Stat. 1973, ch. 122, par. 3-3), is generally applied to the professions of theology, law, and medicine, which require special professional knowledge and skill. He further stated that aldermen need not possess the special professional knowledge and skill connoted by the term "profession." Consequently, Attorney General Scott concluded that section 3-3 did not prohibit the superintendent of an educational service region from holding the office of alderman simultaneously. The reasoning of opinion No. NP-956 is equally applicable to the office of community college district trustee. Accordingly, section 3-3 does not prohibit a regional superintendent of schools from simultaneously holding the office of community college district trustee.

(a) There is established the Illinois Hope and Opportunity Pathways through Education (IHOPE) Program. The State Board of Education shall implement and administer the IHOPE Program. The goal of the IHOPE Program is to develop a comprehensive system in this State to re-enroll significant numbers of high school dropouts in programs that will enable them to earn their high school diploma.

(b) *The IHOPE Program shall award grants, subject to appropriation for this purpose, to educational service regions \* \* \* from appropriated funds to assist in establishing instructional programs and other services designed to re-enroll high school dropouts. \* \* \**

*The IHOPE Program shall provide incentive grant funds for regional offices of education \* \* \* to develop partnerships with school districts, public community colleges, and community groups to build comprehensive plans to re-enroll high school dropouts in their regions or districts.*

*\* \* \* Programs may include without limitation comprehensive year-round programming, evening school, summer school, community college courses, adult education, vocational training, work experience, programs to enhance self-concept, and parenting courses. \* \* \**

(c) *In order to be eligible for funding under the IHOPE Program, an interested regional office of education \* \* \* shall develop an IHOPE Plan to be approved by the State Board of Education. \* \* \* Each Plan shall involve school districts, public community colleges, and key community programs that work with high school dropouts located in an educational service region \* \* \*. No funds may be distributed to a regional office of education \* \* \* until the State Board has approved the Plan.*

(d) *A regional office of education \* \* \* may operate its own program funded by the IHOPE Program or enter into a contract with other not-for-profit entities, including school districts, public community colleges, and not-for-profit community-based organizations, to operate a program.*

*A regional office of education \* \* \* that receives an IHOPE grant from the State Board of Education may provide funds under a sub-grant, as specified in the IHOPE Plan, to other not-for-profit entities to provide services according to the IHOPE Plan that was developed. These other entities may include school districts, public community colleges, or not-for-profit community-based organizations or a cooperative partnership among these entities. (Emphasis added.)*

Further, section 18-8.05 of the School Code (105 ILCS 5/18-8.05 (West 2014), as amended by Public Acts 99-002, effective March 26, 2015; 99-194, effective July 30, 2015) addresses the apportionment of State aid moneys to schools operating certain types of programs, and provides, in pertinent part:

(K) Grants to Laboratory and Alternative Schools.

In calculating the amount to be paid to the governing board of a public university that operates a laboratory school under this Section or to any alternative school that is operated by a regional superintendent of schools, the State Board of Education shall require by rule such reporting requirements as it deems necessary.

\* \* \*

As used in this Section, "alternative school" means a public school which is created and operated by a Regional Superintendent of Schools and approved by the State Board of Education. Such alternative schools may offer courses of instruction for which credit is given in regular school programs, courses to prepare students for the high school equivalency testing program or vocational and occupational training. *A regional superintendent of schools may contract with a school district or a public community college district to operate an alternative school.* An alternative school serving more than one educational service region may be established by the regional superintendents of schools of the affected educational service regions. An alternative school serving more than one educational service region may be operated under such terms as the regional superintendents of schools of those educational service regions may agree. (Emphasis added.)

In addition to serving as an intermediary between the State Board of Education and the school districts, the regional superintendent also coordinates functions among school districts and other units of local government. Section 3-9.1 of the School Code (105 ILCS 5/3-9.1 (West 2014)) provides, in pertinent part:

Investment of funds. Funds of the educational service region are public funds within the meaning of the Public Funds Investment Act<sup>3</sup> and may be invested by the educational service region as provided in that Act, except as otherwise provided in this Code.

*Any educational service region, with the approval of its regional superintendent of schools, is authorized to enter into agreements of any definite or indefinite term regarding the deposit, redeposit, investment, reinvestment or withdrawal of educational service region funds, including, without limitation, agreements with other educational service regions, agreements with community college districts authorized by Section 3-47 of the Public Community College Act and agreements with township and school treasurers authorized by Section 8-7 of this Code.*

Each educational service region is permitted to \* \* \* (ii) *join with other educational service regions, community college districts, and township and school treasurers in investing educational service region funds, community college funds and school funds. Those joint investments shall be made \* \* \* in the case of investments made jointly with community colleges \* \* \* in investments authorized by law for the investment of \* \* \* community college funds \* \* \* [.] [W]hen moneys of an educational service region are combined with moneys \* \* \* of community college districts \* \* \*, the moneys combined for that purpose shall be accounted for separately in all respects, and the earnings from that investment shall be separately and individually computed and recorded, and credited to the fund or \* \* \* community college district \* \* \* for which the investment was acquired.* (Emphasis added.)

---

<sup>3</sup>See 30 ILCS 235/0.01 *et seq.* (West 2014).

**Community College District Trustee**

A community college board is a body politic and corporate (110 ILCS 805/3-11 (West 2014)) that is generally responsible for administering the academic and business affairs of the community college district. Article 3 of the Public Community College Act (the Act) (110 ILCS 805/3-1 *et seq.* (West 2014)) sets out the powers and duties of a community college board. A community college board has exclusive control over the expenditure of all moneys collected for the community college district (110 ILCS 805/3-20.1, 3-20.3, 3-27 (West 2014)). Section 3-47 of the Act (110 ILCS 805/3-47 (West 2014)), which addresses the investment of community college funds, contains language substantially similar to that found in section 3-9.1 of the School Code that authorizes community college boards to enter into investment agreements with educational service regions:

*Any community college district, with the approval of its board, is authorized to enter into agreements of any definite or indefinite term regarding the deposit, redeposit, investment, reinvestment or withdrawal of community college funds, including, without limitation, agreements with other community college districts, agreements with township and school treasurers authorized by Section 8-7 of the School Code and agreements with educational service regions authorized by Section 3-9.1 of the School Code. (Emphasis added.)*

A community college district trustee has an inherent duty to represent and protect the interests of the community college district which he or she serves as trustee. 110 ILCS 805/2-8 (West 2014); Ill. Const. 1970, art. XIII, §3; Ill. Att'y Gen. Op. No. 94-021, issued October 25, 1994. The regional superintendent of schools has a concomitant duty with respect to the interests of the educational service region. 105 ILCS 5/3-2 (West 2014); Ill. Const. 1970, art. XIII, §3. Based on the statutory provisions cited above, it is clear that there are potential conflicts between the duties of the offices of regional superintendent of schools and community college district trustee that could prevent one person from faithfully discharging the duties of both offices simultaneously.

For example, if one person were to serve as both a community college district trustee and the regional superintendent of schools, and those bodies contract for IHOPE or alternative school programs or funds pursuant to sections 2-3.66b or 18-8.05 of the School Code, the officer would be required to fully and faithfully represent the interests of both the community college board and the educational service region. It is well established, however, 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. 94-021 at 3, citing 1991 Ill. Att'y Gen. Op. 30, 32; 1976 Ill. Att'y Gen. Op. 116, 117.

Additionally, under sections 3-9.1 of the School Code and 3-47 of the Act, there may be instances in which an educational service region and a community college board agree to combine funds for investment purposes. The governing statutes specifically provide that the investments are to be "accounted for separately in all respects" and any earnings are "individually computed and recorded, and credited" to the entity for which the investment was acquired. 105 ILCS 5/3-9.1 (West 2014); 110 ILCS 805/3-47 (West 2014). The statutes do not address, however, how decisions will be made regarding the investment of funds or how the fees associated with investment decisions, if any, will be paid. Although nothing in section 3-9.1 of the School Code or section 3-47 of the Act expressly references the creation of a contractual relationship governing joint investments by a regional superintendent or educational service region and community college district, reducing such an agreement to writing would be the diligent practice. One person could not adequately represent the interests of both the educational service region and the district if those entities were to enter into such an agreement.

Even absent a written contract, however, the pertinent statutory provisions require the approval of both the regional superintendent of schools and the community college district board to enter into an investment agreement. Community college district board approval generally requires a vote by the board of trustees. *See* 110 ILCS 805/3-9 (West 2014). Accordingly, a person who served as both a regional superintendent and a community college district trustee would be required to participate in the approval of the agreement in each capacity. One person cannot adequately represent the interests of both governmental units in such circumstances.

### CONCLUSION

Because of the potential conflicts in the duties of the offices of regional superintendent of schools and community college district trustee, a person who served in both offices simultaneously would not be able, in every instance, to represent the interests of both entities adequately, fully, and faithfully. Therefore, the offices of regional superintendent of schools and community college district trustee are incompatible, and one person may not 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, Public Access and Opinions Division



**OFFICE OF THE ATTORNEY GENERAL**  
STATE OF ILLINOIS

December 2, 1996

**Jim Ryan**  
ATTORNEY GENERAL

I - 96-048

COMPATIBILITY OF OFFICES:  
Community College District  
Trustee Simultaneously  
Serving as a School Board  
Member

Honorable Jack O'Connor  
State Representative - 35th Dist.  
12307 South Harlem, Suite 7  
Palos Heights, Illinois 60463

Dear Mr. O'Connor:

I have your letter wherein you inquire whether a member of a community college district board of trustees may simultaneously serve as a school board member. Because of the nature of your inquiry, I do not believe that the issuance of an official opinion will be necessary. I will, however, comment informally upon the question you have raised.

Under the common law doctrine of incompatibility of offices, two offices are deemed to be incompatible where the constitution or a statute prohibits the occupant of either office from holding the other, or where the duties of both offices conflict in such a manner that the holder of one office cannot in every instance properly and faithfully perform all the duties of the other office. (Rogers 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.) One person may not simultaneously serve in two incompatible offices.

Community colleges are governed by the provisions of the Public Community College Act (110 ILCS 805/1-1 et seq. (West 1994)), section 3-7 of which (110 ILCS 805/3-7 (West 1994)) provides, in pertinent part, as follows:

Honorable Jack O'Connor - 2.

"The election of the members of the board of trustees shall be nonpartisan and shall be held at the time and in the manner provided in the general election law.

\* \* \*

Each member must on the date of his election be a citizen of the United States, of the age of 18 years or over, and a resident of the State and the territory which on the date of the election is included in the community college district for at least one year immediately preceding his election. In the event a person who is a member of a common school board is elected or appointed to a board of trustees of a community college district, that person shall be permitted to serve the remainder of his or her term of office as a member of the common school board. Upon the expiration of the common school board term, that person shall not be eligible for election or appointment to a common school board during the term of office with the community college district board of trustees.

\* \* \*

(Emphasis added.)

Section 7-2 of the Act (110 ILCS 805/7-2 (West 1994)), which is applicable only to boards of trustees of community college districts in cities with a population of 500,000 or more, provides:

"The board shall consist of 7 members, appointed by the mayor with the approval of the city council. \* \* \* To be eligible for appointment to a board under this Section, a person must possess the same qualifications and meet the same requirements as are prescribed by this Act for members of an elected board of a community college district." (Emphasis added.)

Common schools are defined as "[s]chools in districts operating grades 1 through 8, 1 through 12 or 9 through 12". (110 ILCS 805/1-2(f) (West 1994).)



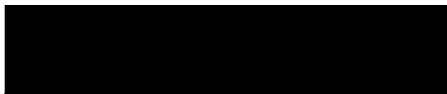
Honorable Jack O'Connor - 3.

Determining the intent of the General Assembly is the primary goal of statutory interpretation. (Barnett v. Zion Park Dist. (1996), 171 Ill. 2d 378, 388.) That intent is best demonstrated by the language of the statute. (People v. Thomas (1996), 171 Ill. 2d 207, 221.) Where the statutory language is clear and unambiguous, it should be given effect as written. People v. Robinson (1996), 172 Ill. 2d 452, 457.

The General Assembly has provided for simultaneous tenure in the offices of community college district trustee and school board member in section 3-7 of the Public Community College Act (110 ILCS 805/3-7 (West 1994)). Section 3-7 expressly permits a person who serves as a common school board member to complete the school board term if he or she is subsequently elected or appointed to a community college district board of trustees. When the school board term expires, however, section 3-7 states "\* \* \* that person shall not be eligible for election or appointment to a common school board during the term of office with the community college district board of trustees." Section 7-2, which governs the selection of trustees in municipalities with 500,000 or more inhabitants, incorporates the language of section 3-7 by reference. Therefore, under the plain language of these statutes, if a person who is elected or appointed to a community college district board of trustees is already serving on a common school board, he or she may complete the school board term. Thereafter, the community college board trustee would not be eligible for appointment or election to a common school board while serving as a trustee.

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

Sincerely,



Michael J. Luke  
Senior Assistant Attorney General  
Bureau Chief, Opinions

MJL:KB:dn



**OFFICE OF THE ATTORNEY GENERAL**

STATE OF ILLINOIS

October 16, 2000

**Jim Ryan**

ATTORNEY GENERAL

I - 00-043

COMPATIBILITY OF OFFICES:  
State's Attorney and  
Community College Trustee

The Honorable John C. Piland  
State's Attorney, Champaign County  
County Courthouse, Room 301  
101 East Main Street  
Urbana, Illinois 61803-0785

Dear Mr. Piland:

I have your letter wherein you inquire whether one person may serve simultaneously in the offices of community college trustee and State's Attorney of a county lying wholly within the territory of 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.

You have stated that a candidate for election to the office of State's Attorney in a neighboring county is currently an elected member of the board of trustees of Parkland Community College. The community college district includes all or part of 12 counties, with its main campus in Champaign County. Although Parkland owns no property and operates no facilities in the county in which the board member is a candidate, it does offer one or two classes in that county each year, using the facilities of a local school district. You have inquired whether the candidate, if elected, may properly continue to serve on the board of trustees after assuming office as State's Attorney.

Public offices are deemed to be incompatible 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 duties of either office, a conflict of interest may arise, or 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. Myers v. Haas (1908), 145 Ill. App. 283, 286; People ex rel. Fitzsimmons v. Swailes (1984), 101 Ill. 2d 458, 465.) No constitutional or statutory provision prohibits one person from serving simultaneously in the offices of State's Attorney and community college trustee. It must be determined, therefore, whether the duties of the two offices may conflict.

The duties of State's Attorneys are set out in Division 3-9 of the Counties Code (55 ILCS 5/3-9001 et seq. (West 1998)). In addition to prosecuting criminal matters, State's Attorneys prosecute and defend actions on behalf of their counties, county officers and the State, act as legal advisor to the several county officers and assist in the collection of taxes and other debts owed to public entities in their counties. As the attorney for the county and its officers, the State's Attorney may be called upon to advise the county regarding any agreements or contracts it may propose to enter into, including contracts or intergovernmental agreements with other units of government.

A community college board of trustees is generally responsible for administering the academic and business affairs of the college. (110 ILCS 805/3-1 et seq. (West 1998).) The operation of a community college may involve entering into contracts on behalf of the district (110 ILCS 805/3-27.1 (West 1998)), including contracts with other local entities regarding the use of buildings (110 ILCS 805/3-35 (West 1998)) and the enforcement of traffic and parking regulations (110 ILCS 805/3-42.2 (West 1998)).

A community college may well have one or more contractual relationships with the county or counties in which the district owns or maintains property and facilities. In those circumstances, the State's Attorney may be called upon to advise and represent the county with respect to contracts for the shared use of property or the enforcement of regulations by sheriff's personnel, for example. The duty of the State's Attorney to advise the county could potentially conflict with the duty of a trustee to represent the interests of the community college with undivided fidelity.


The Honorable John C. Piland - 3.

Although it may be assumed, for purposes of this analysis, that a community college district would be less likely to have a contractual relationship with a county in which the district does not own or maintain property or facilities requiring maintenance, regulation or security, such a relationship cannot be discounted completely. The community college district can acquire or establish facilities and offer programs in any county within the district. Each trustee has a fiduciary duty to the district to avoid relationships which would give rise to divided loyalties with respect to such matters.

In opinion No. 94-021, issued October 25, 1994, Attorney General Burris concluded that the offices of community college trustee and county board member are incompatible because the community college district and the county can contract pursuant to the statutes cited above, as well as the provisions of the Intergovernmental Cooperation Act (5 ILCS 220/1 et seq. (West 1998)), and because counties are required to enter into agreements with community college districts with respect to the payment of certain economic development project costs pursuant to the County Economic Development Project Area Tax Increment Allocation Act of 1991 (55 ILCS 90/10(d)(11) (West 1998)). Given the State's Attorney's duties as the legal advisor of the county board with respect to any matter upon which it may act, similar conflicts between the duties of the offices of State's Attorney and community college trustee may arise. It is the existence of the potential for a conflict in duties, whether that conflict ever arises, that renders two offices incompatible. (See 1976 Ill. Att'y Gen. Op. 232.) Therefore, it appears that the offices of State's Attorney and community college trustee are incompatible, and one person cannot hold both simultaneously.

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

Sincerely,



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

MJL:KJS:ab