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FILE NO. NP-899

COUNTIES:

County Board Members may Serve
on Mental Health Board

Honorable William J. Cowlin
State's Attorney, McHenry County
2200 North Seminary Avenue
Woodstock, Illinois 60098

Dear Mr. Cowlin:

I have your letter wherein you state:

"Would you please furnish your opinion concerning a conflict of Illinois Revised Statutes, Chapter 102, Section 1 concerning county officers holding office by appointment, and Illinois Revised Statutes, Chapter 91 1/2, Section 303a wherein the statute directs that one member of the Community Health Board shall be a member of the governing body and, in our instance, it would be a member of the County Board. I therefore ask whether a member of the County Board can serve as a member of the Mental Health Board under the Community Mental Health Act."

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Section 1 of "AN ACT to prevent fraudulent and corrupt practices in the making or accepting of official appointments and contracts by public officers" (Ill. Rev. Stat. 1973, ch. 102, par. 1.), states:

"No member of a county board, during the term of office for which he is elected, may be appointed to, accept or hold any office other than chairman of the county board or member of the regional planning commission by appointment or election of the board of which he is a member. Any such prohibited appointment or election is void. This Section shall not preclude a member of the county board from being selected or from serving as a member of the County Personnel Advisory Board as provided in Section 12--17.2 of 'The Illinois Public Aid Code', approved April 11, 1967, as amended, or as a member of a County Extension Board as provided in Section 7 of the 'County Cooperative Extension Law', approved August 2, 1963, as amended."

Section 3a of the "Community Mental Health Act" (Ill. Rev. Stat. 1973, ch. 91 1/2, par. 303a.), provides that:

"Every governmental unit authorized to levy an annual tax under any of the provisions of this Act shall, before it may levy such tax, establish a 7 member community mental health board who shall administer this Act. Such board shall be appointed by the chairman of the governing body of a county, the mayor of a city, the president of a village, the president of an incorporated town, or the supervisor of a township, as the case may be, with the advice and consent of the governing body of

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such county, city, village, incorporated town or the town board of auditors of any township. Members of the community mental health board shall be residents of the government unit and, as nearly as possible, be representative of interested groups of the community such as local health departments, medical societies, local comprehensive health planning agencies, hospital boards, lay associations concerned with mental health and alcoholism, controlled substances addiction or use of cannabis and mental retardation, as well as the general public. One member shall be a member of the governing body. No member of the community mental health board may be a full-time or part time employee of the Illinois Department of Mental Health or any facility or service operating under contract to the board."

It is apparent from an examination of the foregoing statutes that they are inconsistent inasmuch as section 1 of "AN ACT to prevent fraudulent and corrupt practices * * *" (Ill. Rev. Stat. 1973, ch. 102, par. 1.), precludes a member of the county board from being appointed to another office by appointment of the county board except for those specific offices mentioned. A member of the Mental Health Board is not mentioned. Where, as in this situation, the passage of a series of legislative acts results in confusion and consequences which the legislature may not have contemplated, the conflicting statutes must

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be construed in such a way as to reflect the obvious intent of the legislature and to permit practical application of the statutes. (People ex rel. High School Dist. 231 v. Hupe, 2 Ill. 2d 434; Scofield v. Board of Education, 411 Ill. 11; Moyer v. Board of Education, 391 Ill. 156.) Acts which appear to be inconsistent are not to be so construed if it is possible to construe them otherwise. (People ex rel. Little v. Peoria & Eastern Railway Co., 383 Ill. 79; People ex rel. English v. Atchison, Topeka and Santa Fe Railway Co., 370 Ill. 420.) If there is an irreconcilable conflict between the new provision and the prior statutes relating to the same subject matter, the new provision will control as it is the later expression of the legislature. See, 2A Sutherland, Statutes and Statutory Construction, 4th ed. 1973, sec. 51.02, and cases cited therein.

Reviewing the legislative history of the Mental Health Code and applying the aforementioned rules of statutory construction it is clear that section 3a of the Mental Health Code must be construed as an exception to section 1 of "AN ACT to prevent fraudulent and corrupt practices * * *". Section 3a of the Mental Health Code was amended in 1971 to provide that not more

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than one member of the mental health board shall be a member of the governing body that selects the board. In 1972 the Mental Health Code was amended further to provide that one member of the mental health board shall be a member of the governing body. Both of these amendments were enacted despite the language of section 1 of "AN ACT to prevent fraudulent and corrupt practices * * *", which prohibited a member of the county board from being appointed to or holding certain other offices during his incumbency. In light of this history it is logical to assume that the legislature enacted section 3a of the Mental Health Code as an exception to the prohibition against county board members serving in more than one office. In a similar situation, I recently stated in opinion S-877, that a specific statute which allows a county board member to simultaneously hold the office of member of the board of review provides an exception to the general, earlier enacted provisions of section 1 of "AN ACT to prevent fraudulent and corrupt practices * * *", which prohibits such dual office holding.

Therefore, I am of the opinion that a member of the county board can serve as a member of the mental health board

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and in so doing does not violate section 1 of "AN ACT to prevent
fraudulent and corrupt practices * * *".

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

February 5, 2010

I - 10-002

COMPATIBILITY OF OFFICES:
Village Trustee and Community
Mental Health Board Member

The Honorable Patrick J. Verschoore
Chairperson, Counties and Townships Committee
State Representative, 72nd District
County Office Building
1504 3rd Avenue
Rock Island, Illinois 61201

Dear Representative Verschoore:

I have your letter inquiring whether the office of village trustee is compatible with the office of community mental health board member. For the reasons discussed below, the offices of village trustee and community mental health board member are incompatible. Consequently, one person may not hold both offices simultaneously.

BACKGROUND

Your letter indicates that the Hanover Township Community Mental Health Board (the Board) is considering the appointment of a Village of Bartlett trustee to the Board. Your letter also states that the village and the Board have never entered into any contracts, nor does the Board own any real property within the village's corporate limits. Further, your letter notes that the village does not provide any mental health services and suggests that the village has no plans to provide such services.

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 that expressly prohibits one person from simultaneously serving as a village trustee and a community mental health board member. 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 all of the duties of the other.

Powers and Duties of Members of the Community Mental Health Board

Community mental health boards are 7-member boards¹ authorized by the Community Mental Health Act (the Act) (405 ILCS 20/0.1 (West 2008)) to provide mental health services to residents of their communities. 405 ILCS 20/3a (West 2008). The members of a community mental health board are appointed by the presiding officer of the unit of local government creating the board. Thus, in these circumstances, the Board is appointed by the Hanover Township supervisor with the advice and consent of the Hanover Township Board of Trustees. Members of a community mental health board are required to be residents of the governmental unit creating the board and should be representative of interested groups of the community.² Only one member of the board may be a member of the governing body that created the board. No member of a community mental health board may be a full-time or part-time employee of the Illinois Department of Human Services, or be a board member, employee, or any other individual receiving compensation from any facility or service operating under contract with the board.

The principal duties of community mental health board members are set out in section 3e of the Act (405 ILCS 20/3e (West 2008)). Pursuant to section 3e, a community mental health board has the authority to enter into multi-year, joint agreements with other governmental units located within the geographical area of the board for the rendition of mental health services

¹The community mental health board may request the appointment of two additional members to the board. 405 ILCS 20/3a (West 2008).

²Section 3a of the Act (405 ILCS 20/3a (West 2008)) indicates that community mental health board members should be "representative of interested groups of the community such as local health departments, medical societies, local comprehensive health planning agencies, hospital boards, lay associations concerned with mental health, developmental disabilities and substance abuse, as well as the general public."

and the operation of mental health facilities and educational programs. 405 ILCS 20/3e(2)(a), (h), (i) (West 2008). The board is authorized to arrange through intergovernmental agreements for the rendition of mental health services and operation of mental health facilities by agencies or departments of governmental units³ subject to the approval of the governmental unit (405 ILCS 20/3e(2)(b) (West 2008)) and to receive Federal, State, and local funds for purposes not inconsistent with the provisions of the Act. 405 ILCS 20/3e(2)(k) (West 2008).

Powers and Duties of Village Trustee

The village board of trustees serves as the corporate authorities for the village (65 ILCS 5/1-1-2(2) (West 2008)), and is authorized to adopt ordinances that carry into effect the statutory powers granted to villages. 65 ILCS 5/1-2-1 (West 2008), as amended by Public Act 96-288, effective August 11, 2009; 65 ILCS 5/3.1-45-5 (West 2008). Just as community mental health boards are authorized to contract with villages, villages are expressly authorized to contract with any community mental health board having jurisdiction within the village for the receipt of mental health services for village residents. In this regard, section 11-29.2-1 of the Illinois Municipal Code (65 ILCS 5/11-29.2-1 (West 2008)) provides:

Any city, village or incorporated town may enter into contractual agreements with any Community Mental Health Board having jurisdiction within the city, village or incorporated town. Such agreement shall be written and shall provide for the rendition of service by the Community Mental Health Board to the residents of such city, village or incorporated town. For this purpose, the city, village or incorporated town is authorized to expend its funds and any funds made available to it through the Federal State and Local Assistance Act of 1972. (Emphasis added.)

Conflict of Duties

Based on the foregoing statutory provisions, it is clear that potential conflicts in the duties of the offices of village trustee and community mental health board member could prevent one person from faithfully discharging the duties of each office simultaneously.

A community mental health board member, in implementing the powers granted to the community mental health board, is under a duty to protect and represent the best interests of the board and the mental health resources it oversees. *See generally* 405 ILCS 20/3c (West

³"Governmental unit" is defined in the Act to include, among other units of local government, villages. 405 ILCS 20/1 (West 2008).

2008). Similarly, a village trustee is also under a duty to protect and represent the best interests of the municipality which he or she serves. 65 ILCS 5/3.1-10-25 (West 2008); Ill. Const. 1970, art. XIII, §3.

One potential area of conflict relates to the execution of a contract for the provision and receipt of mental health services. If an individual were to serve as both a community mental health board member and a village trustee, and those bodies were to contract for mental health services, the officer would be required to protect the interests of both the community mental health board and the village. It has long been 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. 97-026, issued December 23, 1997; 1976 Ill. Att'y Gen. Op. 219, 220-21.

Your letter references the Illinois Appellate Court's holdings in *People v. Claar*, 293 Ill. App. 3d 211 (1997), *appeal denied*, 177 Ill. 2d 574 (1998) and *People ex rel. Barsanti v. Scarpelli*, 371 Ill. App. 3d 226 (2007), *appeal denied*, 224 Ill. 2d 593 (2007) and suggests that because of the "inconsistent holdings of the Illinois courts" it is unclear whether a village trustee may serve simultaneously as a community mental health board member. In *Claar*, the appellate court determined that the *quo warranto* complaint filed by the State's Attorney failed to set out allegations demonstrating a conflict of duties between the offices of mayor and director of the Illinois Toll Highway Authority to establish incompatibility. The court stated that the "complaint simply contains a recitation of the duties of both offices and conclusory statements that those duties are incompatible." *Claar*, 293 Ill. App. 3d at 217.

Further, in *People v. Brown*, 356 Ill. App. 3d 1096 (2005), a *quo warranto* action addressing the incompatibility of the offices of city alderman and park district board member, the Illinois Appellate Court reviewed its *Claar* decision and indicated that:

We do not view the facts of *Claar* as being analogous to those of this case, since they involve two entirely different offices, and other than its usefulness in setting forth general principles, we find the case to be of limited relevance. *Brown*, 356 Ill. App. 3d at 1100.

Rather, the *Brown* court concluded that where "there are a number of well-defined potential relationships and interactions between the two governmental bodies * * * [and] these interactions are substantially more significant and more likely to occur than the alleged interactions in *Claar*" (*Brown*, 356 Ill. App. 3d at 1101), the offices are incompatible.

In *Scarpelli*, a *quo warranto* complaint was filed alleging that the defendant had a conflict of interests and a conflict of duties by simultaneously holding the offices of township park district commissioner and village trustee. The appellate court concluded that because the defendant was called on to vote on a proposed water agreement between the two governmental bodies, there was a conflict of duties between the two offices. Further, the *Scarpelli* court found that the lack of an actual agreement between the village and the park district was immaterial to whether the offices are incompatible.

Based on our reading of the indicated cases, the court's holdings are not inconsistent. In *Claar*, the State's pleadings were found to be insufficient. Thus, the court did not have the requisite details before it to determine whether there was a conflict of duties. In *Brown*, the State's pleadings set out a number of statutes pursuant to which a park district and a municipality may enter into a contract with one another. In *Scarpelli*, the complaint and the State's motion for summary judgment set forth specific examples of conflicts of duties between the two offices. The *Claar*, *Brown*, and *Scarpelli* cases, therefore, stand for the principle that if it can be demonstrated that the statutory duties of two offices create well-defined potential relationships and interactions between the two governmental bodies, then there is a potential conflict and the offices are incompatible. Our review of the statutory duties of the offices of village trustee and community mental health board member indicates a specific, potential conflict in duties. Consequently, one person may not hold those offices simultaneously.

CONCLUSION

Because of the potential conflicts in the duties of the offices of village trustee and community mental health board member, a person who serves 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 village trustee and community mental health board member are incompatible, and one person may not hold both positions simultaneously.

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