



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

**Lisa Madigan**  
ATTORNEY GENERAL

December 19, 2003

I - 03-012

COUNTIES:

Appointment of County Board  
Member to Port District Board

The Honorable George Shadid  
Senate Majority Caucus Whip  
127 State Capitol Building  
Springfield, Illinois 62706

Dear Senator Shadid:

I have your letter wherein you inquire whether it is permissible for the chairman of a county board to appoint a member of that board to serve as a member of the Heart of Illinois Regional Port District Board. Because of your need for an expedited response, I will comment informally upon the question you have raised.

The Heart of Illinois Regional Port District was created by Public Act 93-262, effective July 22, 2003 (to be codified at 70 ILCS 1807/1 et seq.). Section 100 of the Act (to be codified at 70 ILCS 1807/100) provides, in pertinent part:

Heart of Illinois Regional Port District Board; compensation. The governing and administrative body of the district shall be a board consisting of 9 members, to be known as the Heart of Illinois Regional Port District Board. Members of the Board shall be residents of a county whose territory, in whole or in part, is embraced by the district and persons of recognized business ability.

Section 105 of the Act (to be codified at 70 ILCS 1807/105) provides, in part:

Board; appointments; terms of office; certification and oath. The Governor, by and with the advice and consent of the Senate, shall appoint 3 members of the Board. Of the 3 members appointed by the Governor, at least one must be a member of a labor organization, as defined in Section 3 of the Workplace Literacy Act. If the Senate is in recess when the appointment is made, the Governor shall make a temporary appointment until the next meeting of the Senate. The county board chairmen of Tazewell, Woodford, Peoria, Marshall, Mason, and Fulton Counties shall each appoint one member of the Board with the advice and consent of their respective county boards. (Emphasis added.)

With respect to appointments made by the county board, section 1 of the Public Officer Prohibited Activities Act (50 ILCS 105/1 (West 2002)) provides:

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 \* \* \* 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.

In opinion No. 80-030, issued September 22, 1980, Attorney General Fahner addressed the analogous issue of whether it was permissible for a member of an appointing authority to be appointed to the governing board of the Jackson-Union Counties Regional Port District. Citing section 1 of "AN ACT to prevent fraudulent and corrupt practices, etc." (now section 1 of the Public Officer Prohibited Activities Act), Attorney General Fahner concluded, inter alia, that a county board member was

prohibited from being appointed by the county board to serve in that capacity. Although there have been several amendments to section 1 of the Public Officer Prohibited Activities Act since opinion No. 80-030 was issued, the prohibition against the appointment of county board members to other offices remains essentially unchanged. Consequently, it appears that a member of a county board cannot be appointed by the county board chairman, with the advice and consent of the county board, to membership on the Port District Board.

You have further inquired whether the chairman of a county board would be prohibited from appointing himself or herself to the Port District Board. County board chairmen may be selected from the membership of the board, or may be elected by the voters of the county. When the county board chairman is selected from the membership of the board (55 ILCS 5/2-1003 (West 2002)), the only additional power accruing to that position is the right to preside over the meetings of the county board. (See Bouton v. Board of Supervisors of McDonough County (1877), 84 Ill. 384, 394.) In those instances, a county board chairman, being a member of the board, would also be prohibited by section 1 of the Public Officer Prohibited Activities Act from appointing himself or herself, with the consent of the county board, to the Port District Board.

With respect to a county board chairman who is elected by the voters of the county, in counties of less than 450,000 population, a popularly elected county board chairman "may either be elected as a county board member or elected as the chairman without having first been elected to the board." (55 ILCS 5/2-3007 (West 2002).) Where election to the county board is a requirement for election as chairman, there is no question but that the chairman would be prohibited by section 1 of the Public Officer Prohibited Activities Act from appointing himself or herself to the Port District Board. Moreover, it appears that a popularly elected chairman who is not required first to be elected to the board would be precluded under common law principles from appointing himself or herself to the Port District Board, regardless of whether the provisions of section 1 of the Public Officer Prohibited Activities Act would be strictly applicable.

Under the common law, two offices are considered to be incompatible where one has the power to appoint the incumbent of the other. (See Ehlinger v. Clark (Tex. 1928), 8 S.W.2d 666,

674: "[i]t is because of the obvious incompatibility of being both a member of a body making the appointment and an appointee of that body that the courts have with great unanimity throughout the country declared that all officers who have the appointing power are declared to be disqualified for appointment to the offices to which they may appoint"; see also 1917-1918 Ill. Att'y Gen. Op. 781; State v. Thompson (Tenn. 1952), 246 S.W.2d 59, 61-2.) The common law is the law of this State until repealed or modified by statute. (City of Chicago v. Nielsen (1976), 38 Ill. App. 3d 941.) Section 1 of the Public Officer Prohibited Activities Act merely codifies, but does not repeal or modify, the common law principle enunciated above. Therefore, being the appointing authority, it is clear that a popularly elected county board chairman who is not required to be elected as a county board member is nonetheless disqualified from appointing himself or herself to the Port District Board.

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 Bureau

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

**Lisa Madigan**  
ATTORNEY GENERAL

October 15, 2004

I - 04-017

**COMPATIBILITY OF OFFICES:  
County Board Chairman Elected  
At-Large and County Liquor Control  
Commissioner; County Board Chairman  
Elected At-Large and County Emergency  
Services and Disaster Agency Coordinator**

The Honorable Stewart J. Umholtz  
State's Attorney, Tazewell County  
342 Court Street, Suite 6  
Pekin, Illinois 61554-3298

Dear Mr. Umholtz:

I have your letter wherein you inquire whether it is permissible for a county board chairman who is elected at-large:

- (1) to serve simultaneously as the county liquor control commissioner and to receive compensation therefor; and
- (2) to serve simultaneously as the county Emergency Services and Disaster Agency coordinator and receive compensation for performing those duties?

As background, your letter states that the chairman of the Tazewell County board is elected at-large by the voters of the county rather than being elected by the members of the county board.

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Because of the nature of your inquiry, I do not believe that the issuance of an official opinion is necessary. I will, however, comment informally upon the questions you have raised.

With regard to your first inquiry, sections 4-2 and 4-3 of the Liquor Control Act of 1934 (235 ILCS 5/4-2, 4-3 (West 2002)) respectively provide, in pertinent part:

*The mayor or president of the board of trustees of each city, village or incorporated town, and the president or chairman of the county board, shall be the local liquor control commissioner for their respective cities, villages, incorporated towns and counties, and shall be charged with the administration in their respective jurisdictions of the appropriate provisions of this Act and of such ordinances and resolutions relating to alcoholic liquor as may be enacted[.]*

*The city council of each city and the president and board of trustees of each village and incorporated town and the county board are authorized to fix and pay compensation to the local liquor control commissioner of the particular city, village, incorporated town or county[.]* (Emphasis added.)

It is well established that where the language of a statute is clear and unambiguous, it must be given effect as written. *Land v. Board of Education of the City of Chicago*, 202 Ill. 2d 414, 426 (2002). Under the plain language of section 4-2 of the Liquor Control Act, the county board chairman is expressly designated to serve as the county liquor control commissioner. The language of the section makes no distinction between a county board chairman who is elected at-large and a county board chairman who is elected by the members of the county board. Therefore, because county board chairmen are required by express statutory provision to serve as county liquor control commissioners, without reference to the manner of their selection, a county board chairman who is elected at-large may serve simultaneously in that capacity.

Further, section 4-3 of the Liquor Control Act expressly provides that the "county board \* \* \* [is] authorized to fix and pay compensation to the local liquor control commissioner." Again, no distinction is made between chairmen elected at-large and those elected by the members of the county board. Construing sections 4-2 and 4-3 of the Liquor Control Act together, it is clear that the county board chairman is eligible to receive additional compensation for serving as the liquor control commissioner. Because the county board chairman serves by virtue of that office as the county liquor control commissioner, however, any compensation provided must be established in accordance with the provisions of section 2 of the

Local Government Officer Compensation Act (50 ILCS 145/2 (West 2002)) (compensation of elected officers of units of local government must be fixed at least 180 days before the beginning of the terms of the officers) and article VII, section 9(b), of the Illinois Constitution of 1970 (which prohibits a change in the salary of an elected officer of a unit of local government that takes effect during the term for which the officer is elected). Consequently, a county board chairman who is elected at-large may receive additional compensation for serving as the county liquor control commissioner, if the additional compensation is set in accordance with the applicable constitutional and statutory provisions.

Your second inquiry addresses the issue of whether a county board chairman who is elected at-large may serve simultaneously as the county Emergency Services and Disaster Agency (ESDA) coordinator. In contrast to the position of county liquor control commissioner, the statutes are silent on the question of whether a county board chairman may also serve as county ESDA coordinator. Under the common law, however, two public offices are deemed to be incompatible where one of the public offices has the power to appoint the incumbent to the other public office. *See Ehlinger v. Clark*, 8 S.W.2d 666, 674 (Tex. 1928) ("It is because of the obvious incompatibility of being both a member of a body making the appointment and an appointee of that body that the courts have with great unanimity throughout the country declared that all officers who have the appointing power are disqualified for appointment to the offices to which they may appoint."); *State v. Thompson*, 246 S.W.2d 59, 61-62 (Tenn. 1952); 1917-1918 Ill. Att'y Gen. Op. 781.

Based upon the foregoing, a county board chairman may not serve simultaneously as the county ESDA coordinator, if: (1) the position of ESDA coordinator is a public office; and (2) the county board chairman appoints the ESDA coordinator. With respect to the latter issue, under the language of subsection 10(i) of the Illinois Emergency Management Agency Act (the Emergency Management Act) (20 ILCS 3305/10(i) (West 2002)), the ESDA coordinator is appointed by the "principal executive officer of the political subdivision," a phrase that is defined to refer to the county board chairman. *See* 20 ILCS 3305/4 (West 2003 Supp.). It must be determined, however, whether the position of county ESDA coordinator constitutes a public office.

In *Midwest Television, Inc. v. Champaign-Urbana Communications, Inc.*, 37 Ill. App. 3d 926, 931 (1976), the appellate court delineated the criteria to be used when determining whether a position constitutes a public office, stating:

The characteristics of a public office are generally agreed upon, although the distinction between an office and employment may be vague in particular fact situations. The characteristics of a public office include: (1) creation by statute or constitution; (2) exercise

of some portion of the sovereign power; (3) a continuing position not occasional or contractual; (4) fixed tenure; (5) an oath is required; (6) liability for misfeasance or nonfeasance; and (7) the official has an independence beyond that of employees.

The court further indicated that "[n]ot all [of] these factors are required in order to determine that a position is an office." *Midwest Television, Inc. v. Champaign-Urbana Communications, Inc.*, 37 Ill. App. 3d at 932. The most important of the factors, however, is the exercise of some portion of the sovereignty of the State. *People v. Brady*, 302 Ill. 576, 582 (1922).

Applying the several indicia of public office to the position of county ESDA coordinator, the position qualifies as a public office. The position of ESDA coordinator is created by a statute, in this case, subsection 10(i) of the Emergency Management Act. A review of the duties of the ESDA coordinators indicates that, among other things, the ESDA coordinators possess direct responsibility for the organization, administration, training and operation of the emergency services and disaster agency, subject only to the direction and control of the county board chairman (20 ILCS 3305/10(i) (West 2002)), and the authority to execute and enforce the orders, rules and regulations as may be made by the Governor under the authority of the Emergency Management Act. 20 ILCS 3305/18(b) (West 2002). In carrying out these duties, the ESDA coordinators exercise a portion of the sovereign power to preserve the public health and the public peace. *See generally* 20 ILCS 3305/2 (West 2002); *People ex rel. Barmore v. Robertson*, 302 Ill. 422 (1922); *City of Chicago v. Chicago League Ball Club*, 196 Ill. 54 (1902). Because counties generally are required to maintain an emergency services and disaster agency (20 ILCS 3305/10(b) (West 2002)) and because the county board chairman is required to appoint the ESDA coordinator (20 ILCS 3305/4 (West 2003 Supp.); 20 ILCS 3305/10(i) (West 2002)), the position of ESDA coordinator is one of continuing existence. It is not occasional or contractual.

Although the Emergency Management Act contains no specified term of office, section 20 of the Emergency Management Act (20 ILCS 3305/20 (West 2002)) requires the filing of a written oath by all persons "appointed to serve in any capacity in \* \* \* an emergency services and disaster agency." The ESDA coordinators also are subject to penalties for misfeasance and nonfeasance to the same extent as other local governmental officers and employees. *See* 20 ILCS 3305/15 (West 2002); 745 ILCS 10/1-101 *et seq.* (West 2002). Finally, a review of the statutory duties of the ESDA coordinators indicates a degree of discretion not generally granted to employees. As previously noted, the ESDA coordinators possess direct responsibility for the organization, administration, training and operation of the emergency services and disaster agency, subject only to the direction and control of the county board chairman, and the authority to execute and enforce the orders made by the Governor.

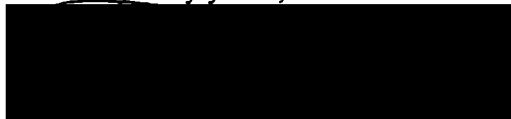


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When considered as a whole, the position of county ESDA coordinator appears to satisfy the criteria for a public office. The most important of the indicia have been satisfied: the ESDA coordinators exercise a portion of the sovereign power; their positions are created by statute; and they subscribe an oath of office. Because officers who have appointing power are disqualified for appointment to the offices to which they appoint, a county board chairman who is elected at-large may not simultaneously hold the office of county ESDA coordinator. Having resolved your second question in the negative, the issue of whether the county board chairman is eligible to receive additional compensation for serving as the county ESDA coordinator is rendered moot.

This is not an official opinion of the Attorney General. I apologize for the delayed response to your inquiry. If we may be of additional assistance, please advise.

Very truly yours,



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