WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD
62706

February 4, 1975

FILE NO. NP-870

COUNTIES:
Conflict of Interest -
County Board Chairman as
Member and Director of
Central Illinois Agency on
Aging, Inc.

Honorable Robert A. Barnes, Jr.
State's Attorney
Marshall County
Lacon, Illinois 61540

Dear Mr. Barnes:

I have your letter in which you state:

"From time to time the chairman and members of our County Board are asked to serve as directors for various agencies providing services in our region. The most recent request has been by the Central Illinois Agency on Ageing, which, as I understand it, is an agency established under Title III of the Older Americans Act of 1965, as amended, which provides, among other things, interrelated services for the aged over a service area of Fulton, Marshall, Stark, Tazewell and Woodford Counties. A representative of this

> agency has requested the chairman of our County Board to serve as a director on said agency. There would be no compensation for the appointment other than perhaps mileage expenses. This agency is funded by Federal and State funds.
>
> My specific question is whether or not the chairman of our County Board or a member of said County Board may serve as a director of this agency without being in violation of Section 1, Chapter 102 of the Illinois Revised Statutes. I would appreciate an opinion on this question."

The specific agency to which you refer, the Central Illinois Agency on Aging, Inc., (hereinafter C.I.A.A., Inc.), is a general not-for-profit corporation formulated pursuant to the General Not For Profit Corporation Act. Ill. Rev. Stat. 1973, ch. 32, pars. 163a et seq.

In People v. Haas, 145 Ill. App. 283, it was held that incompatibility between offices arises where the Constitution of a statute specifically prohibits the occupants of either one of the offices from holding the other or where because of the duties of either office a conflict in interest may arise, or where the duties of either office are such that the holder of one cannot in every instance properly and faithfully perform all the duties of the other.

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) provides:

> "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." (emphasis added.)

First, by the plain meaning of the statute, the limitations imposed by section 1 apply only to those offices over which the county board has the power of "appointment or election". The position that is cited in the instant situation, that of a director of the Central Illinois Agency on Aging, Inc., is not an office over which the county board exercises either powers of appointment or election. Rather, the directors of C.I.A.A., Inc. are chosen on an independent

voluntary basis as concerned citizens who have shown a special interest in, or qualification for, coordinating the delivery of existing services affecting the elderly. Thus, in response to your specific question, the chairman or a member of your county board may serve as a director of C.I.A.A., Inc. without being in violation of section 1 of "AN ACT to prevent fraudulent and corrupt practices", supra.

Second, in order for a compatibility question to be raised at all, it is necessary to decide if the position of director, C.I.A.A., Inc., is a public office. Over the years the Illinois Supreme Court and courts of other jurisdictions have outlined the ingredients that comprise a public office.

An indispensable requirement of a public office is that the duties of the incumbent of an office involves an exercise of some portion of the sovereign power. People v. Brady, 302 Ill. 576, 582; Olson v. Scully, 296 Ill. 418,

421; Martin v. Smith, 239 Wisc. 314, 332, 1 N.W. 2d 163, 172; Parker v. Riley, 18 Cal. 2d 83, 87, 113 P. 2d 873, 875; State ex rel. Green v. Glenn, 39 Del. 584, 587, 4 A. 2d 366, 367; State ex rel. Barney v. Hawkins, 79 Mont. 506, 528, 257 P. 411, 418; 53 A.L.R. 595, 602; 140 A.L.R. 1076, 1081.

In People v. Brady, 302 Ill. 576, the Illinois Supreme Court held that committeemen of political parties were not public officers. The court placed strong emphasis on the notion that a person must exercise some portion of State sovereignty to be a public officer. At page 582, the court states:

> "* * * The most important characteristic of an office is that it involves a delegation to the officer of some of the solemn functions of government to be exercised by him for the benefit of the public. Some portion of the sovereignty of the State, either legislative, executive or judicial, attaches for the time being to the officer, to be exercised for the public benefit. Unless the powers conferred by the act creating the office are of this nature the individual filling the office is not a public officer."

An office is a public position created by the Constitution or by law, continuing during the pleasure of the

appointing power or for a fixed time, with a successor necessarily being elected or appointed. Bunn v. Illinois, 45 Ill. 397; Fergus v. Russel, 270 Ill. 304; State v. Sowards, 64 Okl. Cr. Rep. 430, 82 P. 2d 324; 140 A.L.R. 1076, 1080.

Section 24 of article V of the Illinois Constitution of 1870 read as follows:

> "An office is a public position created by the constitution or law, continuing during the pleasure of the appointing power, or for a fixed time, with a successor elected or appointed."

This constitutional definition of public office applied only to State officers. (People v. Loeffler, 175 Ill. 585.) The definition was broad enough to embrace within its terms all officers of units of local government, but it had no reference to them. It served as a guide to the General Assembly in making its appropriations, so that it could determine who were officers of the State and who were employees, and thereby comply with the constitutional provision prohibiting an increase in the salaries of State officers during their present term of office. Ill. Const.,

art. V, sec. 23 [1870]; People v. Brady, 302 Ill. 576; Fergus v. Russel, 270 Ill. 304, 322.

In Fergus v. Russel, 270 Ill. 304, at page 322, the Illinois Supreme Court construed section 24 of article V as follows:

> "* * * This is an explicit definition and must serve as the only guide of the legislature in making appropriations for the salaries of the officers of the State government. This definition contains two essential elements, both of which must be present in determining any given position to be an office: (1) The position must be a public one, created either by the constitution or by law; and (2) it must be a permanent position with continuing duties. To determine whether the first element is present we have but to look to our constitution and our statutes to see whether the particular position under consideration has been created by the constitution or by law. An office is created by law only as a result of an act passed for that purpose. The mere appropriation by the General Assembly of money for the payment of compensation to the incumbent of a specified position does not have the effect of creating an office or of giving such incumbent the character of an officer, (People v. McCullough, 254 Ill. 9,) as an office cannot be created by an appropriation bill. To ascertain whether the second element is present it is necessary to determine the character of the position. This is not determined by the method in which the occupant of holder of the position is selected, - whether

> by appointment or election. If the duties of the office are continuing and it is necessary to elect or appoint a successor to the several incumbents, then the second element is present whether the incumbent be selected by appointment or by election, and whether the incumbent be appointed during the pleasure of the appointing power or be elected for a fixed term. * * *"

It should be noted that section 24 of article V of the Illinois Constitution of 1870 has no counterpart in the Illinois Constitution of 1970.

The fact that one occupying a position is compelled by law to give a bond for the faithful performance of his duties is some indicia that the position is a public office. People v. Brady, 302 Ill. 576, 582; Martin v. Smith, 293 Wisc. 314, 332, 1 N.W. 2d 163, 172; State ex rel. Barney v. Hawkins, 79 Mont. 506, 528, 257 P. 411, 418; 53 A.L.R. 595, 608; 140 A.L.R. 1076, 1091.

In addition, the fact that one occupying a position must subscribe to the oath required by the Constitution may betoken a public office. People v. Brady, 302 Ill. 576, 582; Martin v. Smith, 293 Wisc. 314, 332, 1 N.W. 2d 163, 172; Kingston Associates v. LaGuardia, 156 Misc. 116, 281 N.Y.S. 390, aff'd 246 App. Div. 803; 285 N.Y.S. 19; 53 A.L.R. 595,

608; 140 A.L.R. 1076, 1092.

To summarize, there are two indispensable requirements of a public office. First, a position must possess a delegation of a portion of the sovereign power of the government. Second, the position must be created by the Constitution or by law and must be of an enduring nature and not subject to abolition by whim of superior officials. Other evidence that a position is a public office include whether the individual occupying the position must give bond or take an oath.

As I have indicated, supra, C.I.A.A., Inc. is a not-for-profit corporation. It is not a statutorily created governmental unit; nor is it a body politic. A director of C.I.A.A., Inc. is not required to post a bond; nor need he subscribe to any oath. The position of directorship is abolished upon dissolution of the corporation.

Funding support for C.I.A.A., Inc. comes directly from the Illinois Department on Aging, which is the single State agency for receiving and dispensing Federal funds made available under the "Older Americans Act of 1965". (42 U.S.C.A.

sec. 3001 et seq.) (See, "Area Plan for Programs on Aging Under Title III of The Older Americans Act of 1965, as Amended for the Central Illinois Agency on Aging, Inc.", October 1973, an official government document on file with the Illinois Administration on Aging, Exhibit C-1.) However, C.I.A.A., Inc. is not delegated any of the statutory powers conferred upon the Illinois Department on Aging with regard to the service area of the subject counties (Fulton, Marshall, Stark, Tazewell, Woodford and Peoria). Therefore, it is my conclusion that the position of director C.I.A.A., Inc. is not a public office, and no question of incompatibility exists.

It is, therefore, my opinion that an individual who serves as both a county board member and as director of C.I.A.A., Inc., a not-for-profit corporation, would not be in violation of section 1 of "AN ACT to prevent fraudulent and corrupt practices * * *", supra, because first, the position of director of C.I.A.A., Inc. is not elected or appointed by the county board, and second, there can be no

incompatibility of office because the position of director of C.I.A.A., Inc. is not a public office.

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

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,

[redacted]

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

MJL:an

WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
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62706

February 4, 1975

FILE NO. NP-866

COUNTIES:
County Board - Compatibility of
Member of County Board and Public
Building Commission

Honorable Howard L. Hood
State's Attorney, Jackson County
Courthouse
Murphysboro, Illinois 62966

Dear Mr. Hood:

I have your letter in which you state:

"The question has been raised by the Jackson County Board as to whether a member of the County Board may serve as a member of the County Building Commission created by the County Board.

I have reviewed your Opinion No. NP-165 dated April 27, 1970 on this issue. In light of recent conflict of interest opinions and ethics legislation, I am requesting your opinion as to the continued validity of the conclusion reached in the 1970 Opinion on the above question. Thank you for your cooperation in this regard."

NP-866

In relation to your specific question, it is my opinion that recent ethics legislation and conflict of interest opinions are not directly relevant to a determination of whether a member of a county board may serve as a member of a county building commission created by that county board. The Illinois Governmental Ethics Act (Ill. Rev. Stat. 1973, ch. 127, par. 601-101 et seq.) requires disclosure of economic interests by government officers in seeking to protect independence of judgment. Recent conflict of interest opinions concern prohibitions leveled against types of employment or privately held economic interests adjudged by the legislature and courts to have prevented public officials from giving the public that impartial and faithful service which they are duty-bound to render and which the public has every right to demand. (People v. Adduci, 412 Ill. 621; Panozzo v. City of Rockford, 306 Ill. App. 443.) In contrast, my opinion No. NP-165 was concerned with the compatibility of two public offices, county board member and member of the public building commission. Incompatibility as measured by the common law test of People v. Haas, 145 Ill. App. 283, does not require a finding of pecuniary conflict of interest.

Incompatibility will be found where the Constitution or a statute specifically prohibits the occupants of either of two offices from holding the other, or where, because of the duties of either office a conflict in interest may arise, or where the duties of either office are such that the holder of one cannot in every instance properly and faithfully perform all the duties of the other. In short, the compatibility doctrine involves a determination of public policy which prohibits the concurrent holding of two public offices by the same person.

In relation to compatibility of the offices of county board member and member of the county building commission, it is not necessary to reach the common law of incompatibility as the General Assembly has specifically provided that the two offices in question may be held concurrently. This argument draws support from section 6 of the Public Building Commission Act (Ill. Rev. Stat. 1973, ch. 85, par. 1036) which specifically provides:

> "§ 6. Each person appointed as a member of the Board of Commissioners shall qualify by taking and subscribing to an oath to uphold the Constitution of the United States and of the State of Illinois and to well and faithfully discharge his duties, which oath shall be filed with the Secretary of the Commission.

> Commissioners shall be persons experienced in real estate management, building construction or finance. The fact that a person is an officer or employee of any municipal corporation, including the county seat or county board or any municipality with 3,000 or more inhabitants which adopted the original resolution or any other municipal corporation which joined in the organization of the Commission, shall not disqualify that person from being a Commissioner of a Public Building Commission. No person who is appointed as a Commissioner of a Public Building Commission shall have a financial interest in the creation of or in the continued existence of the Public Building Commission. No Commissioner shall acquire any interest, direct or indirect in any contract or proposed contract of the Public Building Commission, or in any land, building or buildings or other property or facilities in which the Public Building Commission has an interest. If any Commissioner at any time holds or controls an interest, direct or indirect in any property which the Public Building Commission is about to acquire, he shall disclose the same in writing to the Commission and such disclosure shall be entered upon the minutes of the Board of Commissioners. As amended by act approved Aug. 20, 1965." (Emphasis added.)

As you have noted there is an apparent discrepancy between the language of the above cited section and that of 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), which provides:

> "§ 1. 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."

It is my opinion, however, that this apparent discrepancy may be resolved by reference to the ordinary rules of statutory construction. Section 6 of the Public Building Commission Act (Ill. Rev. Stat. 1973, ch. 85, par. 1036) states that where a person is a member of a county board, such membership shall not disqualify that person from membership on the Public Building Commission. Section 1 of the Corrupt Practices Act (Ill. Rev. Stat. 1973, ch. 102, par. 1), however, precludes a county board member from holding another office by appointment of the county board during the term to which he is elected, subject to certain exceptions specified within the paragraph itself.

It is the rule in Illinois that where an inconsistency exists between two statutes, one general and one specific, the specific statute will prevail in relation to the inconsistency. (East Maine Tp. Community Ass'n. v. Pioneer Trust & Sav. Bank, 15 Ill. App. 250; People v. Hale, 55 Ill. App. 2d 260; Jansen v. Illinois Municipal Retirement Fund, 58 Ill. 2d 97.) This is especially true where the special Act is enacted at a later date. (Bowes v. City of Chicago, 3 Ill. 2d 175; In Re Gubalas Estate, 81 Ill. App. 2d 378.) Consequently, as I noted in my opinion No. NP-165, the provisions of section 6 of the Public Building Commission Act (Ill. Rev. Stat. 1973, ch. 85, par. 1036) being specific and enacted later in point of time, prevail over those of section 1 of the Corrupt Practices Act (Ill. Rev. Stat. 1973, ch. 102, par. 1) to the extent of any inconsistency. I, therefore, am of the opinion that the General Assembly intended by promulgation of section 6 of the Public Building Commission Act (Ill. Rev. Stat. 1973, ch. 85, par. 1036) to permit county board members to serve as members of the Public Building Commission.

It is a cardinal rule in the construction of Illinois statutes that they should be construed to give effect to the

intent of the General Assembly as expressed in the statute. (Tan v. Tan, 3 Ill. App. 3d 671; Hardway v. Board of Education of Lawrenceville Twp. High School Dist. No. 7, 1 Ill. App. 3d 298; Lincoln National Life Ins. Co. v. McCarthy, 10 Ill. 2d 459.) Consequently, the statutory provisions in question must be construed to permit the contemporaneous and concurrent holding of the offices of county board member and member of the public building commission. It is not necessary, in the present case, to apply the common law rule in reference to compatibility.

Very truly yours,

ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

April 7, 1995

Jim Ryan
ATTORNEY GENERAL

I - 95 - 011

GOVERNMENTAL ETHICS AND
CONFLICT OF INTEREST:
County Board Member and Member
of Regional Board of School Trustees

Honorable Rod Irvin
State's Attorney, Fayette County
Fayette County Courthouse
221 South Seventh Street
Vandalia, Illinois 62471

Dear Mr. Irvin:

I have your letter wherein you inquire whether a member of the Regional Board of School Trustees for Bond, Fayette and Effingham Counties may continue to hold that office after having been elected to the county board of Fayette County. Because your inquiry can be answered by reference to a statute, I do not believe that the issuance of an official opinion of the Attorney General is required. I will, therefore, comment informally upon the issue you have raised.

At common law, two public offices are incompatible:

> " * * *
>
> * * * when the written law of a state specifically prohibits the occupant of either one of the offices in question from holding the other and, also, where the duties of either office are such that the holder of the office cannot in every instance, properly and fully, faithfully perform all the duties of the other office. This incompatibility may

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> arise from multiplicity of business in the office or the other, considerations of public policy or otherwise.
>
> * * * "
>
> (People ex rel. Myers v. Haas (1908), 145 Ill. App. 283, 286.)

The common law of England, including the doctrine of incompatibility, continues in force in this State, except to the extent that it has been superseded by statute. (5 ILCS 50/1 (West 1992); People v. Swanson (1930), 340 Ill. 188, 194).) Section 1.2 of the Public Officer Prohibited Activities Act (50 ILCS 105/1.2 (West 1993 Supp.)), which was added by Public Act 88-471, effective September 1, 1993, provides that "[a] member of a county board in a county having fewer than 40,000 inhabitants, during the term for which he or she is elected, may also hold the office of member of the * * * regional board of school trustees * * *."

It is my understanding that the population of Fayette County was, according to 1990 census data, 20,893 inhabitants. (George H. Ryan, Secretary of State, Illinois Blue Book 1993-1994 415 (1993).) It appears, therefore, that under section 1.2 of the Public Officer Prohibited Activities Act, a member of the county board of Fayette County may simultaneously hold the office of member of the regional board of school trustees for the region including Fayette County. To the extent that the doctrine of incompatibility of offices might otherwise be applicable to those offices, the action of the General Assembly has superseded the common law.

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

Very truly yours,

[redacted]

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

MJL:SJR:dn

WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
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62706

November 3, 1972

FILE NO. NP-529

OFFICERS:
Compatibility
Regional Planning Commission

Honorable Robert S. Calkins
State's Attorney
Peoria County
Peoria County Court House
Peoria, Illinois 61602

Dear Mr. Calkins:

I have your recent letter wherein you state in part:

"Considering the facts set forth below and your Opinion S-419 of March 13, 1972, to the Hon. William J. Cowlin, State's Attorney of McHenry County, your opinion is requested on the following questions:

1. May each or any of the following office holders serve on a regional planning commission: township supervisor, county board member under board reorganization, city manager, mayor or village president, city councilman, city commissioner, village trustee?

NP 529

> 2. May those members of the County Board (of Supervisors) appointed to a regional planning commission before the April, 1972 election, who were not elected to the new County Board, continue to serve as commission members? * * * "

You first ask whether various office holders may serve on a regional planning commission. I enclose a copy of my Opinion No. S-500, issued July 24, 1972. In that Opinion, I held that a county board member, a mayor or village president, and a member of a city council or village board could simultaneously serve as a member of a regional planning commission. While I did not specifically discuss a township supervisor, a city manager or a city commissioner, the reasoning in that Opinion is equally applicable to these offices.

You also ask whether members of the County Board of Supervisors appointed to the Tri-County Regional Planning Commission before the April, 1972 election may continue to serve on the Commission if they were not elected to the new County Board. You note that the appointments were made to the individuals without reference to their elective offices at the time of the appointment.

Section 3(a)2(1) of the resolution creating the Commission provides that elected officials who are appointed to the Commission shall serve on the Commission until the end of their term of office, but not more than three years. If this section is to have any effect, then those individuals who were not reelected to the County Board should not be serving on the Commission after the end of their term on the County Board. It is necessary that statutes be so construed as to give effect to each word, clause and sentence in order that no such word, clause or sentence may be deemed superfluous or void. (Consumers Co. v. Industrial Commission, 364 Ill. 145. Haberer and Co. v. Smerling, 307 Ill. 191.) Therefore, effect should be given to this section and those not reelected to the County Board, should no longer serve on the Commission.

Furthermore, with regard to statutory construction, the court in Petterson v. City of Naperville, 9 Ill. 2d 233, has stated:

> " * * * But the primary object of statutory construction is to ascertain and give effect to

> legislative intent. In ascertaining legislative intent, the courts should consider the reason or necessity for the enactment and the meaning of the words, enlarged or restricted, according to their real intent. Likewise the court will always have regard to existing circumstances, contemporaneous conditions, and the object sought to be obtained by the statute. * * * "

From the facts you state in your letter, it is apparent that the amendment to the resolution creating the Tri-County Regional Planning Commission was intended to make it possible for the Commission to qualify for federal grants. The federal requirements that you quote provide that at least 2/3 of the Commission shall be comprised of elected officials. These circumstances substantiate the contention that these individuals were appointed in their official capacity, even though the appointment was made without specific reference to their elective offices. Therefore, in my opinion, your second question must be answered in the negative.

Very truly yours,

ATTORNEY GENERAL

WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

January 6, 1978

FILE NO. NP-1327

COMPATIBILITY:
The Positions of Member
of a County Board and Trustee of
a River Conservancy District
are Incompatible

Honorable James E. Dull
State's Attorney
Jefferson County
P.O. Box 595
Mt. Vernon, Illinois 62864

Dear Mr. Dull:

I have received your letter in which you have questioned the compatibility of the offices of county board member of either the Franklin or Jefferson County Boards and the position of trustee on the Rend Lake Conservancy District Board.

For a discussion of incompatibility of offices since the adoption of the Illinois Constitution of 1970 and the enactment of the Intergovernmental Cooperation Act (Ill. Rev. Stat. 1975, ch. 127, par. 741 et seq.), I refer

you to opinion No. S-877 (1975 Ill. Att'y. Gen. Op. 37). In that opinion I stated that the Intergovernmental Cooperation provision of the Illinois Constitution (Ill. Const., art. VII, §10) and the Intergovernmental Cooperation Act, having greatly increased the possibility of interdependency and contractual relationships between local governmental agencies, have increased the likelihood of incompatibility of positions on the boards of two local governmental agencies.

Section 2 of the Intergovernmental Cooperation Act (Ill. Rev. Stat. 1975, ch. 127, par. 742) defines public agencies as including:

> " * * * any unit of local government as defined in the Illinois Constitution of 1970, any school district, the State of Illinois, any agency of the State government or of the United States, or of any other State and any political subdivision of another State."

Units of local government are defined in the Illinois Constitution (Ill. Const., art. VII, §1) as:

> " * * * counties, municipalities, townships, special districts, and units designated as units of local government by law, which exercise limited governmental powers or powers in respect to limited governmental subjects. * * *"

The Rend Lake Conservancy District is a special district formed in accordance with the River Conservancy Districts Act (Ill. Rev. Stat. 1975, ch. 42, par. 383 et seq.) and is clearly a unit of local government.

Sections 3 and 5 of the Intergovernmental Cooperation Act (Ill. Rev. Stat. 1975, ch. 127, pars. 743, 745) give these local governmental agencies the power to contract with one another and to act jointly when not prohibited by statute. There exist several areas of governmental activity which, under the applicable statutes, may be performed by counties and river conservancy districts. As part of the exercise of the county's corporate power, the county board is empowered to make contracts on behalf of the county in relation to the property and concerns of the county. (Ill. Rev. Stat. 1975, ch. 34, par. 303.) The Board of Trustees of a conservancy district is similarly authorized by the River Conservancy Districts Act to make contracts for the construction of its bridges and the operation of its facilities, letting them out to the lowest bidder, when such contracts are not for professional services and are for over $500. (Ill. Rev. Stat. 1975, ch. 42, par. 394, 399.) County boards have been empowered by statute to authorize stream clearing and brush removal from free flowing natural streams and other water courses in the county. (Ill. Rev. Stat. 1975, ch. 34, pars. 409.11, 430.) In the exercise of these powers the county may levy and collect a tax if such a tax proposal has been submitted to the electors

by the county board and a majority of the electors have approved it. (Ill. Rev. Stat. 1975, ch. 34, par. 409.11.) These powers, specifically enumerated as belonging to the county, overlap the general grant of powers in the area of the regulation of the artificial and natural waterways made to the board of trustees of a river conservancy district under section 9b of the River Conservancy Districts Act (Ill. Rev. Stat. 1975, ch. 42, par. 392a). A river conservancy district is similarly entitled to raise money through taxes to pay interest on debts and to discharge the principal (Ill. Rev. Stat. 1975, ch. 42, par. 398), and for its other corporate purposes. Ill. Rev. Stat. 1975, ch. 42, par. 400.

It would be inappropriate for an individual to be on two boards which may exercise the same power in the same district, especially when he may be called upon to represent a particular board in any attempted plan for the two agencies to perform jointly some function. His duties to both boards would conflict and he could not fairly represent the conflicting interests of both units of government.

For these reasons, I am of the opinion that the positions of member of the Jefferson County or Franklin County Board and trustee of the Rend Lake Water Conservancy

District are incompatible. It is well settled in Illinois that the acceptance of an incompatible office by the incumbent of another office will be regarded as a resignation or vacation of the first office. People v. Bott, 261 Ill. App. 261.

Very truly yours,

ATTORNEY GENERAL

WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD

October 27, 1972

FILE NO. MP-522

OFFICERS:
Compatibility

MP 522

Honorable Paul R. Welch
State's Attorney of McLean County
220 Unity Building
Bloomington, Illinois 61701

Dear Mr. Welch:

I have your letter wherein you state:

"I have been asked to determine whether a Trustee of a Sanitary District created under the Sanitary District Act of 1917, Illinois Revised Statutes, 1971, Chapter 42, Sec. 299-317(g), can serve as a member of the County Board of McLean County. The Sanitary District is solely in McLean County. The Trustee in question was appointed as a Trustee by an Associate Circuit Judge within this County."

Section 3 of the Sanitary District Act of 1917 as amended by P.A. 77-694 provides in part:

"A board of trustees * * * shall be created in the following manner:

(1) If the district is located wholly within a single county, the governing body of the county shall appoint the trustees for the

> district * * * ." Ill. Rev. Stat., 1971, ch. 42, par. 301.

Section 1 of "An Act to prevent fraudulent and corrupt practices * * * " provides in part:

> "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. * * * " Ill. Rev. Stat., 1971, ch. 102, par. 1.

Since the district in question was created under the Sanitary District Act of 1917 and is solely within one county, the trustees are now to be appointed by the county board. The above statute would prohibit the county board from appointing one of its own members as a district trustee. It does not, however, prohibit one, already a district trustee, from being elected to and serving as a county board member. Please note that if the individual was still a member of the county board when his term as sanitary district trustee expired, he could not be reappointed as a trustee by the board, since this would violate the above statute. Therefore, Section 1 of "An Act to prevent fraudulent and corrupt practices * * * " does not prohibit an individual already a trustee under the Sanitary District Act of 1917 from serving as a county board member.

In my opinion, however, the two offices are incompatible. From the general rules laid down in People v. Haas, 145 Ill. App. 283, it appears that incompatibility between offices arises 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 where the duties of either office are such that the holder of one can not, in every instance, properly and faithfully perform all the duties of the other.

There are no constitutional or statutory restrictions in simultaneously holding the offices mentioned in your letter. Therefore, the question arises as to whether or not a conflict of interest exists if an individual were to occupy simultaneously the offices of a county board member and sanitary district trustee.

Section 4 of the Sanitary District Act of 1917 (Ill. Rev. Stat., 1971, ch. 42, par. 303) reads in part as follows:

> "* * * The board of trustees is the corporate authority of such sanitary district, and shall exercise all the powers and manage and control all the affairs and property of the district. * * * *"

Further, the board of trustees have the power to provide for the disposal of sewerage of the district. Ill. Rev. Stat., 1971, ch. 42, par. 306.

Section 1 of "An Act in relation to contracts for sewerage service between sanitary districts and counties" provides statutory authorization for such contracts if the county has accepted the provisions of the 1959 legislation mentioned in the Act. Section 1 provides in pertinent part:

> "Any sanitary district organized and created under the laws of the State of Illinois having a population of less than 500,000 and lying wholly or partly within the boundaries of any county which accepts the provisions of "An Act in relation to water supply, drainage, sewage, pollution and flood control in certain counties," approved July 22, 1959, as heretofore or hereafter amended, may contract with such county for sewerage service to or for the benefit of the inhabitants of the sanitary district. * * * " Ill. Rev. Stat., 1971, ch. 34, par. 3131.

Thus, one potential area of conflict is the above contract between the sanitary district and county. As the powers of the county are exercised through the county board (Ill. Rev. Stat., 1971, ch. 34, par. 302) a county board member has a distinct influence in the negotiations of such a contract which could ultimately conflict with his duties as a sanitary district trustee.

Another area of potential conflict is the statutory authority given to sanitary districts by Section 16 of the Sanitary District Act of 1917 to take possession of public property. Section 16 reads as follows:

> "When in making any improvements which any district is authorized by this Act to make, it shall be necessary to enter upon and take possession of any existing drains, sewers, sewer outlets, plants for the purification of sewage or water, or any other public property, or property held for public use, the board of trustees of such district shall have the power to do and may acquire the necessary right of way over any other property held for public use in the same manner as is herein provided for acquiring private property, and may enter upon, and use the same for the purposes aforesaid: Provided, the public use thereof shall not be unnecessarily interrupted or interfered with, and that the same shall be restored to its former usefulness as soon as possible." Ill. Rev. Stat., 1971, ch. 42, par. 315.

A county board member who serves as a sanitary district trustee would be open to a conflict of interest if efforts were made to oppose the sanitary district in the taking of county property. Therefore, it is my opinion that the office of county board member is incompatible with the office of sanitary district trustee.

Very truly yours,

ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS
December 30, 1996

Jim Ryan
ATTORNEY GENERAL

I - 96-053

COMPATIBILITY OF OFFICES:
Sanitary District Trustee and
County Board Member or
Board of Review Member

Honorable Michael D. Clary
State's Attorney, Vermilion County
7 North Vermilion Street
Danville, Illinois 61832

Dear Mr. Clary:

I have your letter wherein you inquire whether a person who serves as a county board member or a member of a county board of review may be appointed to the board of trustees of a sanitary district located within the county. Pursuant to your request, I will comment informally upon the questions you have raised.

You have stated that the Danville Sanitary District is organized pursuant to the Sanitary District Act of 1917 (70 ILCS 2405/0.1 et seq. (West 1994)). The trustees thereof are appointed by the chairman of the county board with the advice and consent of the board. (70 ILCS 2405/3 (West 1994).) The District has authority to levy taxes. (70 ILCS 2405/12 (West 1994).)

Initially, it appears that the appointment of a member of the county board to the office of sanitary district trustee is precluded by section 1 of the Public Officer Prohibited Activities Act (50 ILCS 105/1 (West 1995 Supp.)), which provides, in part:

> "County board. No member of a county board, during the term of office for which he or she is elected, may be appointed to, ac-

500 South Second Street, Springfield, Illinois 62706 (217) 782-1090 • TTY: (217) 785-2771 • FAX: (217) 782-7046
100 West Randolph Street, Chicago, Illinois 60601 (312) 814-3000 • TTY: (312) 814-3374 • FAX: (312) 814-3806
1001 East Main, Carbondale, Illinois 62901 (618) 457-3505 • TTY: (618) 457-4421 • FAX: (618) 457-5509

> cept, 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. * * *"

The office of sanitary district trustee is not among those that are expressly excepted from the prohibition of this section. Therefore, unless the individual in question first resigns from the county board, it appears that his or her appointment to the office of sanitary district trustee would be void.

Moreover, I note that Attorney General Scott addressed this issue in opinion No. NP-522, issued October 27, 1972. He concluded therein that, even apart from the prohibition in the Public Officer Prohibited Activities Act, the offices of county board member and sanitary district trustee are incompatible because of potential conflicts between the duties of the two offices. I will enclose a copy of that opinion for your reference.

The issue of simultaneous tenure in the offices of board of review member and sanitary district trustee must be considered under traditional incompatibility analysis. 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.) There is no constitutional or statutory provision which prohibits one person from simultaneously serving as both a board of review member and a sanitary district trustee. Therefore, the question to be determined is whether the duties of the offices are such that the holder of one can, in every instance, fully and faithfully discharge the duties of the other.

A board of review, on written complaint that any property is overassessed or underassessed, is required to review the assessment and correct it, if necessary, in the interest of justice. (35 ILCS 200/16-55 (West 1994).) Any taxing body that

has an interest in an assessment may file a complaint for review of the assessment by the board of review. (35 ILCS 200/16-25 (West 1994).) As noted above, a sanitary district is a taxing body.

Based upon these facts, it appears that the doctrine of incompatibility of offices will preclude one person from holding the offices of board of review member and sanitary district trustee simultaneously. Sanitary district trustees, being under a general duty to ensure necessary funds for the operations of the district, may seek review of the assessment of any property within the district which might be underassessed. If a trustee also served on the board of review, he or she would be obligated to review any such assessment in order to ensure a just assessment for the taxpayer, rather than maximizing the receipts of the sanitary district. The duties of the two offices, under such circumstances, are divergent and would conflict. Consequently, the offices appear to be incompatible

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

Sincerely,

[redacted]

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

MJL:KJS:cj

Enclosure

WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD

March 26, 1973

NP. 560

COPY

FILE NO. NP-560

COUNTIES:
Compatibility of Office of
County Board Member with that of
Member of Community Unit
District School Board

Honorable Dayton L. Thomas
State's Attorney
Gallatin County
P. O. Box 412
Shawneetown, Illinois 62984

Dear Mr. Thomas:

I have your recent letter wherein you state:

"One of our County Board members is also an elected member of Community Unit District #4 School Board. By this letter I am requesting an opinion as to whether this board member's duties on the County Board and the Community Unit District #4 are compatible. I have been unable to find any statutory provisions on this."

You have inquired as to whether the office of county board member and member of a community unit district school board are compatible.

From the general rules laid down in People v. Haas, 145 Ill. App. 283, it appears that incompatibility between offices arises 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 in interest may arise, or where the duties of either office are such that the holder of one cannot, in every instance, properly and faithfully perform all the duties of the other.

Your attention is first called to "An Act in relation to State revenue sharing with local governmental entities," (Ill. Rev. Stat. 1971, ch. 85, pars. 611 through 614). Section 1 of said Act provides that 1/12 of the net revenue realized from the Illinois Income Tax Act shall be placed in a special fund in the State treasury, to be known as the Local Government Distribution Fund. Said fund is to be allocated among the several municipalities and counties of the State pursuant to Section 2 of said Act. Section 3 of said Act provides:

> "The amounts allocated and paid to the municipalities and counties of this State pursuant to the provisions of this Act shall be used

> solely for the general welfare of the people of the State of Illinois, including financial assistance to school districts, any part of which lie within the municipality or county, through unrestricted block grants for school purposes carried out within the municipality or county making the grant."

It can be observed from the provisions of Section 3 that a county can grant some or all of the money to a school district, any part of which lies within the county. If a member of the county board were also a member of the school board of a community unit school district, any part of which was located in the county, then he would be in a position to vote funds for the benefit of his particular school district. Although he would not be in a position to benefit himself personally, it is doubtful that he could properly and faithfully perform the duties of each office.

Because of the foregoing I am of the opinion that the offices of county board member and member of a board of a community unit school district, any part of which is located in the same county, are incompatible.

Very truly yours,

ATTORNEY GENERAL

NEIL F. HARTIGAN
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD
62706

August 9, 1989

I - 89-039

COMPATIBILITY OF OFFICES:
Offices of School Board Member and
County Board Member

Honorable Gordon Lustfeldt
State's Attorney, Iroquois County
Iroquois County Court House
Watseka, Illinois 60970

Dear Mr. Lustfeldt:

I have your letter wherein you state that a recently-elected county board member of Iroquois County also serves on the school board of a school district which extends into Iroquois County. You inquire whether the offices of school board member and county board member are incompatible. Because you have requested informal assistance, I shall respond accordingly.

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 properly and faithfully perform all of 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 of county board member and school board member. Therefore, the issue is whether a conflict of duties would exist if one individual were to occupy both of these offices simultaneously.

Attorney General Scott, in opinion No. S-590, issued May 22, 1973, advised that the office of county board member is incompatible with that of a school board member of a school district, any part of which is located in the same county. (1973 Ill. Att'y Gen. Op. 85.) He noted therein that sections 1 through 4 of "AN ACT in relation to State revenue sharing with local governmental entities" (now Ill. Rev. Stat. 1987, ch. 85, pars. 611-614) establish a fund from income tax revenue, which fund is paid to municipalities and counties of Illinois, to be used for the general welfare of the people of Illinois. Section 3 of that Act (Ill. Rev. Stat. 1987, ch. 85, par. 613) provides:

> "§ 3. Use of Fund. The amounts allocated and paid to the municipalities and counties of this State pursuant to the provisions of this Act shall be used solely for the general welfare of the people of the State of Illinois, including financial assistance to school districts, any part of which lie within the municipality or county, through unrestricted block grants for school purposes carried out within the municipality or county making the grant."

As a school board member, one has the duty to provide for the revenue necessary to maintain the schools in his or her district. (Ill. Rev. Stat. 1987, ch. 122, par. 10-20-3.) Attorney General Scott concluded that since a school district lying partially within a county would be eligible for unrestricted grants from the county, a conflict could arise between a dual officeholder's duty to determine how county funds should be spent to best serve the needs of the county, and his or her duty as a member of the board of education to provide for the revenue necessary to maintain the district schools. This potential conflict was deemed sufficient to render the offices of county board member and school board member incompatible.

The statutes relied upon by Attorney General Scott in opinion No. S-590 are still in effect, and the reasoning of that opinion appears to be valid. Therefore, it appears that the offices of county board member and school board member of a school district, which lies wholly or partly within a county, are incompatible, and, consequently, one person cannot simultaneously hold both offices.

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
May 28, 1996

Jim Ryan
ATTORNEY GENERAL

I - 96-028

COMPATIBILITY OF OFFICES:
County Board Member and
School Board Member;
County Board Member and
Deputy Coroner; County
Board Member and Deputy Sheriff

Honorable Terry C. Kaid
State's Attorney, Wabash County
Wabash County Courthouse
401 Market Street
Mt. Carmel, Illinois 62863

Dear Mr. Kaid:

I have your letter wherein you inquire whether one person may serve simultaneously in the offices of: 1) county board member and school board member; 2) county board member and deputy coroner; and 3) county board member and deputy sheriff. Because of the nature of your inquiry, 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 you have raised.

Your first inquiry concerns potential incompatibility in the offices of county board member and school board member. The common law doctrine of incompatibility of offices precludes simultaneous tenure in two 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. (People ex rel. Fitzsimmons v. Swailes (1984), 101 Ill. 2nd 458, 465; 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.) There are no constitutional or statutory provisions which expressly prohibit simultaneous tenure in the offices of county board member and school board member. Therefore, the issue is whether a conflict in duties could arise if one person were to occupy both offices simultaneously.

In opinion No. 93-011 (Ill. Att'y Gen. Op. No. 93-011, issued May 25, 1993), a copy of which I have enclosed for your review, Attorney General Burris concluded that the office of county board member is incompatible with that of school board member. He noted therein that one potential area of conflict relates to the several instances in which contracts or agreements are authorized between a county and a school district. (See, e.g., 55 ILCS 5/3-6036, 5/5-1060 (West 1994); 55 ILCS 90/10 (West 1994); 105 ILCS 5/29-16 (West 1994).) Another potential conflict in duties arises with respect to the allocation of revenue sharing funds under section 3 of the State Revenue Sharing Act (30 ILCS 115/3 (West 1994)). These potential conflicts were deemed sufficient to render the offices of county board member and school board member incompatible.

In reviewing the provisions of the Counties Code (55 ILCS 5/1-1001 et seq. (West 1994)) and the School Code (105 ILCS 5/1-1 et seq. (West 1994)), and the pertinent cases decided thereunder, it appears that the reasoning of opinion No. 93-011 is still valid. Consequently, the offices of county board member and school board member are incompatible under the common law doctrine of incompatibility of offices.

This issue cannot be concluded at this point, however. Since incompatibility is a common law doctrine, it may be modified or superseded legislatively. Shortly after opinion No. 93-011 was issued, the General Assembly enacted Public Act 88-471, effective September 1, 1993, which added section 1.2 to the Public Officer Prohibited Activities Act (50 ILCS 105/1.2 (West 1994)). Under section 1.2 of the Act, persons in a county having fewer than 40,000 inhabitants are expressly permitted to hold the offices of county board member and school board member simultaneously. According to 1990 Federal census figures, the population of Wabash County is 13,111 inhabitants. (Illinois Blue Book 424 (1993-94).) Consequently, in this instance, it appears that one person may hold the offices of county board member and school board member in Wabash county simultaneously, notwithstanding that those offices may be incompatible at common law.

You have also asked whether one person may serve simultaneously as a county board member and a deputy coroner in circumstances in which the deputy coroner does not receive a

salary, but is reimbursed for mileage and other expenses. There are no constitutional or statutory provisions which expressly prohibit simultaneous tenure in the offices of county board member and deputy coroner. Therefore, the issue is whether a conflict in duties could arise if one person were to occupy both offices simultaneously.

In People ex rel. Teros v. Verbeck (1987), 155 Ill. App. 3d 81, the court was asked to determine whether one person could hold the offices of county board member and deputy coroner simultaneously. In reaching its conclusion that the offices of county board member and deputy coroner are incompatible, the court noted:

" * * *

> * * *Common law incompatibility may be established where defendant in one position has authority to act upon the appointment, salary and budget of his superior in a second position. (People ex rel. Fitzsimmons v. Swailes (1984), 101 Ill. 2d 458, 463 N.E.2d 431.) In the present case, it is undisputed that the county board is charged with the duty to fix the compensation of the county coroner within statutory limitations (Ill. Rev. Stat. 1985, ch. 53, par. 37a.1 [55 ILCS 5/4-6002 (West 1994)]) and to provide for reasonable and necessary operating expenses for the coroner's office (Ill. Rev. Stat. 1985, ch. 34, par. 432 [55 ILCS 5/5-1106 (West 1994)]). It is further undisputed that the deputy coroner's compensation is fixed by the coroner, subject to budgetary limitations established by the county board. (Ill. Rev. Stat. 1985, ch. 31, par. 1.2 [55 ILCS 5/3-3003 (West 1994)].) Thus, under the statutory scheme, defendant's two offices are fiscally incompatible since defendant as a member of the county board has authority to act upon the salary and budget of the county coroner who, in turn, determines defendant's salary as deputy coroner. The potential for influencing his superior's salary and budget and, ultimately, his own salary, without more, renders defendant's offices incompatible.
>
> * * *

"

(People ex rel. Teros v. Verbeck (1987), 155 Ill. App. 3d at 83-4.)

Based upon the foregoing, it is clear that each fiscal year a county board must consider and provide that amount of funding which it considers to be reasonably necessary for the coroner to procure equipment, materials and services, which includes an appropriation for personal services. While you have indicated in your letter that the deputy coroner who is the focus of your inquiry does not currently receive any compensation for his services, there is no requirement that this policy must continue. Thus, a county board member who also serves as a deputy coroner would be called upon to vote upon the budget from which his compensation, if any, would be paid. This creates competing duties of loyalty. Consequently, it does not appear that a county board member may serve as a deputy coroner, even in those circumstances in which the deputy coroner does not receive compensation for carrying out his duties.

Lastly, you have inquired whether one person may serve simultaneously as a county board member and a deputy sheriff in those instances in which the deputy sheriff does not receive a salary for his services, but is reimbursed for mileage and other expenses. There are no constitutional or statutory provision which expressly prohibit simultaneous tenure in the offices of county board member and deputy county sheriff. Therefore, the issue again becomes whether a conflict in duties could arise if one person were to occupy both offices simultaneously.

In Rogers v. Village of Tinley Park (1983), 116 Ill. App. 3d 437, the court was asked to determine whether the offices of village trustee and municipal police officer were incompatible. In reaching its conclusion that one person could not serve simultaneously in those two offices, the court reviewed the elements of the doctrine of common law incompatibility:

" * * *

'It is to be found in the character of the offices and their relationship to each other, in the subordination of the one to the other, and in the nature of the duties and functions which attach to them.

Incompatibility of offices exist where there is a conflict in the duties of the offices, so that the performance of the duties of the one interferes with the performance of the duties of the other. They

> are generally considered incompatible where such duties and functions are inherently inconsistent and repugnant, so that because of the contrariety and antagonism which would result from the attempt of one person to discharge faithfully, impartially, and efficiently the duties of both offices, considerations of public policy render it improper for an incumbent to retain both.
>
> At common law, it is not an essential element of incompatibility of offices that the clash of duty should exist in all or in the greater part of the official functions. If one office is superior to the other in some of its principal or important duties, so that the exercise of such duties may conflict, to the public detriment, with the exercise of other important duties in the subordinate office, then the offices are incompatible.'
>
> * * *. "
>
> (Rogers v. Village of Tinley Park (1983), 116 Ill. App. 3d at 441.)

A review of the provisions of the Counties Code (55 ILCS 5/1-1001 et seq. (West 1994)) indicates that the county board is authorized to establish the number of deputy sheriffs to be appointed. (55 ILCS 5/3-6008 (West 1994).) In this regard, a county board member who also serves as a deputy sheriff would be called upon to determine whether his position as a deputy sheriff was necessary for the proper functioning of county government. This creates competing interests and divided loyalties which could hamper a county board member in the full and faithful performance of his duties.

In addition to determining the number of deputy sheriffs the county will employ, the county board is also charged with the duty to fix the compensation of the county sheriff, within statutory limitations (55 ILCS 5/4-6003 (West 1994)), and to provide for reasonable and necessary operating expenses for the sheriff's office (55 ILCS 5/5-1106 (West 1994)). As discussed supra, a county board member who also serves as a deputy sheriff would be required, when voting upon the budget of the county sheriff, to act annually upon the budget from which the sheriff's personal service contracts are satisfied. Thus, a county board member simultaneously serving as a deputy sheriff could create the appearance as well as the actuality of competing

interests and divided loyalties which could hamper a county board member in the full and faithful performance of his duties. Consequently, it does not appear that one person may serve simultaneously as a county board member and a deputy county sheriff.

I would further note that you have inquired whether any potential conflict in duties which may exist could be resolved by the county board member in question refraining from participation in matters brought before the county board which involve the school district, the county coroner's office or the county sheriff's office, respectively. Our courts have consistently held that abstention will not avoid application of the doctrine of incompatibility of offices. (People ex rel. Teros v. Verbeck (1987), 155 Ill. App. 3d 81, 84; Rogers v. Village of Tinley Park (1983), 116 Ill. App. 3d 437.) Moreover, the court in Rogers v. Village of Tinley Park noted that "[t]he common law doctrine of incompatibility * * * insure[s] that there be the appearance as well as the actuality of impartiality and undivided loyalty." (116 Ill. App. 3d at 442 quoting O'Connor v. Calandrillo (1971), 285 A.2d 275, aff'd, 296 A.2d 326 (1972), cert. denied, 299 A.2d 727 (1973), cert. denied, 93 S.Ct. 2775 (1973).) Therefore, it does not appear that abstention from participation will resolve a conflict of interest or a conflict in duties.

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

Very truly yours,

[redacted]

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

MJL:LP:dn

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

May 1, 2003

I - 03-002

COMPATIBILITY OF OFFICES:
County Board Member and
School Board Member

The Honorable Mark L. Shaner
State's Attorney, Crawford County
105 Douglas Street
Robinson, Illinois 62454

Dear Mr. Shaner:

I have your letter wherein you inquire whether, pursuant to section 1.2 of the Public Officer Prohibited Activities Act (50 ILCS 105/1.2 (West 2000)), a member of the county board in a county with fewer than 40,000 inhabitants may simultaneously hold the offices of county board member and school board member for more than one term of office. Because of the nature of your inquiry, I do not believe that the issuance of an official opinion is necessary. I will, however, comment informally upon the question you have raised.

The common law doctrine of incompatibility of offices precludes simultaneous tenure in two 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. (People ex rel. Fitzsimmons v. Swailes (1984), 101 Ill. 2d 458, 465; 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.) In opinion No. 93-011 (Ill. Att'y Gen. Op. No. 93-011, issued May 25, 1993), Attorney General Burris

concluded that the office of county board member was incompatible with that of school board member because of potential conflicts between the duties delegated to those offices.

Since incompatibility of offices is a common law doctrine, however, it may be modified or superseded legislatively. (See informal opinion No. I-96-028, issued May 28, 1996.) Shortly after opinion No. 93-011 was issued, the General Assembly enacted Public Act 88-471, effective September 1, 1993, which added section 1.2 to the Public Officer Prohibited Activities Act (50 ILCS 105/1.2 (West 2000)). Section 1.2 provides as follows:

> "County board member; education office. A member of the county board in a county having fewer than 40,000 inhabitants, during the term of office for which he or she is elected, may also hold the office of member of the board of education, regional board of school trustees, board of school directors, or board of school inspectors."

You have inquired whether the General Assembly's use of the phrase "term of office" in section 1.2 of the Public Officer Prohibited Activities Act, rather than "terms of office", was intended to preclude a person from simultaneously holding the offices of county board member and school board member for more than a single term of office.

The primary purpose of statutory construction is to ascertain and give effect to the intent of the General Assembly. (People v. Whitney (1999), 188 Ill. 2d 91, 97.) Legislative intent is best evidenced by the language used in the statute. (King v. Industrial Comm'n (2000), 189 Ill. 2d 167, 171.) Where the language of a statute is clear and unambiguous, it must be given effect as written without reading into it exceptions, limitations or conditions that the legislature did not express. (In re D.L. (2000), 191 Ill. 2d 1, 9.) Moreover, construction defeating a statute's purpose or yielding an absurd or unjust result should be avoided. People v. Latona (1998), 184 Ill. 2d 260, 269.

The plain and unambiguous language of section 1.2 of the Public Officer Prohibited Activities Act permits a county board member in a county with fewer than 40,000 inhabitants to

serve simultaneously in one of the education offices specified therein, including the office of school board member. Although the General Assembly used the singular tense "term of office" in section 1.2, there is nothing to suggest that its use was intended to limit a county board member in such a county to serving on a school board for only one term of office. When the General Assembly has elsewhere intended to limit simultaneous tenure to one term, it has done so specifically. See, for example, section 3-7 of the Public Community College Act (110 ILCS 805/3-7 (West 2000)), which provides:

"

* * *

> * * * 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.

* * *

"

Furthermore, similar phraseology is used in other provisions of the Public Officer Prohibited Activities Act authorizing simultaneous tenure in office (see, e.g., 50 ILCS 105/1, 1.1, 1.2 and 1.3 (West 2000)), but such language has apparently never been interpreted as limiting simultaneous tenure to a single term of office.

Lastly, I note that during the legislative debates concerning Senate Bill 345, which was enacted as Public Act 88-471, the sponsor of the legislation stated: "* * * [t]his language is added because there are many people, many times in * * * smaller counties in the State of Illinois where its [sic] individuals simply can't be found to hold these offices * * *". (Remarks of Rep. Steczo, July 13, 1993, House Debate on House Bill No. 345, at 88.) To construe section 1.2 of the Public Officer Prohibited Activities Act as limiting a person to holding

the offices of county board member and school board member for only one term would defeat the stated purpose of the statute.

It appears, therefore, that under section 1.2 of the Public Officer Prohibited Activities Act, a county board member in a county with fewer than 40,000 inhabitants may simultaneously serve as a school board member indefinitely.

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:LAS/KJS:an

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 31, 2006

I - 06-013

COMPATIBILITY OF OFFICES:
County Board Member
and School Board Member

The Honorable Terence M. Patton
State's Attorney, Henry County
307 West Center Street
Cambridge, Illinois 61238

Dear Mr. Patton:

I have your letter inquiring whether, in light of *People ex rel. Smith v. Wilson*, 357 Ill. App. 3d 204 (2005), a person who has been elected to the incompatible offices of county board member and school board member will be deemed to have vacated one of the offices as a matter of law. For the reasons set forth below, a county board member, during his or her term of office, may not be elected to the office of school board member. Pursuant to Illinois statute, the election to the school board is void. Under Illinois common law, if a school board member, during his or her term of office, is elected to the county board, assumption of the incompatible office of county board member will constitute an *ipso facto* resignation from the office of school board member.

According to the information you have provided, two members of the Henry County Board also serve simultaneously as school board members. The first individual (Member A) was elected to the school board in 1997 and then elected to the county board in 1998. Member A was re-elected to the school board in 2001 and the county board in 2002, and was again re-elected to the county board in 2004 and to the school board in 2005. The second individual (Member B) was elected to the school board in 2002 and then elected to the county board in 2004. Because the offices of county board member and school board member are

incompatible, you have asked which of the offices the school board-county board members must vacate, under the court's holding in *Wilson* or the common law, as the case may be.

In *Wilson*, the appellate court determined that the offices of county board member and school board member were incompatible under section 1 of the Public Officer Prohibited Activities Act (the Act) (50 ILCS 105/1 (West 2004), as amended by Public Act 94-617, effective August 18, 2005). The case arose because, approximately five months after becoming a county board member, the defendant Wilson was elected to the local school board. In reaching its conclusion that one person may not hold the office of county board member and be elected to the office of school board member, the court reviewed section 1 of the Act, which 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.[1] This amendatory Act of 1995 is declarative of existing law and is not a new enactment. (Emphasis added.)

The court concluded that, under the plain language of section 1 of the Act and except to the extent specifically authorized therein, a county board member is prohibited from simultaneously holding any other public office. The court further concluded that if a county

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[1]In *Wilson*, defendant argued that this sentence allowed him to hold the offices of county board member and school board member simultaneously. The court concluded that this sentence would not allow the defendant to hold these offices simultaneously because a school district is not a "unit of local government," as that phrase is defined in the Illinois Constitution., *Wilson*, 357 Ill. App. 3d at 206-07.

board member is elected to another office, except in the limited circumstances authorized, any such election is void. Thus, because Wilson was an incumbent county board member at the time he was elected to the school board, his election to the school board was void, and he was ordered removed therefrom.

Applying the court's analysis to your inquiry, it appears that Member A, who was re-elected to the county board in 2004 and re-elected to the school board in 2005, is currently entitled to hold the office of county board member but not that of school board member. Member A was serving as a county board member when he or she was most recently elected to the office of school board member. This is precisely the factual situation reviewed by the court in *Wilson*. Consequently, as in *Wilson*, Member A's election to the school board was void.

With respect to Member B, however, *Wilson* is not dispositive of the issue. Member B was serving as a school board member at the time that he or she was elected to the county board. As previously discussed, the *Wilson* case was based upon the specific statutory prohibition of section 1 of the Act that is applicable to incumbents of the county board. Because Member B was not serving on the county board when he or she was elected to the school board, section 1 of the Act was not applicable.

In the absence of a specific statutory provision addressing the incompatibility of particular public offices, the propriety of holding two offices simultaneously is reviewed under the common law doctrine of incompatibility of offices. *See generally People ex rel. Smith v. Brown*, 356 Ill. App. 3d 1096 (2005). The common law doctrine of incompatibility of offices precludes simultaneous tenure in two public offices 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); *Brown*, 356 Ill. App. 3d at 1098; *People ex rel. Myers v. Haas*, 145 Ill. App. 283, 286 (1908). Under the common law, the acceptance of an incompatible office by the incumbent of another office constitutes an *ipso facto* resignation of the first office held. *See Brown*, 356 Ill. App. 3d at 1101; *Myers*, 145 Ill. App. at 287; 1991 Ill. Att'y Gen. Op. 177, 178; 1991 Ill. Att'y Gen. Op. 188, 189; 1981 Ill. Att'y Gen. Op. 47, 48; 1980 Ill. Att'y Gen. Op. 81, 84; 1972 Ill. Att'y Gen. Op. 45, 47.

In opinion No. 93-011, issued May 25, 1993, Attorney General Burris was asked to determine whether one person may simultaneously hold the offices of school board member and county board member. Under the common law analysis, Attorney General Burris concluded that the office of school board member was incompatible with that of county board member because of potential conflicts between the duties delegated to those offices. Shortly after opinion No. 93-011 was issued, the General Assembly enacted Public Act 88-471, effective September 1, 1993, which added section 1.2 to the Act (50 ILCS 105/1.2 (West 2004)) and authorizes county

board members in a county of fewer than 40,000 inhabitants to hold, among other things, the office of member of a board of education or school board member. Based on Federal census figures, it appears that Henry County's population exceeds 40,000 inhabitants. *See* Illinois Blue Book 421 (2003-2004).

Applying the common law doctrine of incompatibility of offices to the specific facts in your inquiry, it appears that Member B, who was elected to the school board in 2002 and then to the county board in 2004, is considered to have resigned his or her office as school board member as a matter of law upon qualifying for and assuming the office of county board member. *See Brown*, 356 Ill. App. 3d at 1098.[2]

In summary, a county board member, during his or her term of office, may not be elected to the office of school board member, and any such election to the school board is void under section 1 of the Act. If a school board member, during his or her term, is elected to the county board, assumption of the incompatible office of county board member will constitute an *ipso facto* resignation from the office of school board member under the common law doctrine of incompatibility of offices.

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

Very truly yours,

[redacted]

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

LEP:CIE:an

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[2] On the same day that the appellate court handed down its opinion in *Wilson*, the court also decided another compatibility of offices case. In *Brown*, the appellate court determined that the offices of park district board member and city alderman were incompatible due to a conflict of duties between the offices. In that case, the defendant was elected to the park district board in 2001 and to the position of alderman in 2003. Because the court found the two positions to be incompatible, the court concluded that the defendant's acceptance of the position of alderman was an *ipso facto* resignation as park district board member. *Brown*, 356 Ill. App. 3d at 1098. Because of the different holdings in *Wilson* and *Brown*, confusion may have resulted as to which incompatible office an officer must vacate, or whether the officer must vacate a specific office as a matter of law. The distinction between the two cases, like the distinction between the situations concerning the two Henry County board members, is based on the fact that a specific statute prohibited election to the one office (*Wilson*, 357 Ill. App. 3d at 207), while no such statute existed in the other case to prohibit election to the second office (*Brown*, 356 Ill. App. 3d at 1098).

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

May 20, 2009

I - 09-005

COMPATIBILITY OF OFFICES:
County Board Member and
School Board Member

The Honorable Jonathan H. Barnard
State's Attorney, Adams County
Adams County Courthouse
521 Vermont Street
Quincy, Illinois 62301

Dear Mr. Barnard:

I have your letter inquiring whether, pursuant to the court's holding in *People v. Wilson*, 357 Ill. App. 3d 204 (2005), the election of an incumbent county board member to a school board at the consolidated election held on April 7, 2009, is void. Based on the decision in *Wilson*, a county board member in a county of 40,000 or more inhabitants may not simultaneously hold the office of school board member. Therefore, the election of an incumbent county board member to a school board in a county of 40,000 or more is void under section 1 of the Public Officer Prohibited Activities Act (the Prohibited Activities Act) (50 ILCS 105/1 (West 2006)). Further, because such election is void, a county board member has no discretion to accept the office of school board member. He or she does, however, remain entitled to hold the office of county board member.

BACKGROUND

Your letter states that an individual currently serving as an Adams County Board member was first elected to the office of school board member on November 7, 1989, and

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100 West Randolph Street, Chicago, Illinois 60601 • (312) 814-3000 • TTY: (800) 964-3013 • Fax: (312) 814-3806
1001 East Main, Carbondale, Illinois 62901 • (618) 529-6400 • TTY: (877) 675-9339 • Fax: (618) 529-6416

assumed the office of county board member on December 7, 1992. His service in these offices has been continuous and without interruption since the dates indicated. He was most recently re-elected to the office of school board member at the consolidated election held on April 7, 2009.

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.[1] *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 prohibits one person from simultaneously serving as a county board member and a school board member. 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 school board member 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 prohibited appointment or election is void.* * * * Nothing in this Act shall be construed to prohibit an elected county official from

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[1]In opinion No. 93-011, issued May 25, 1993, Attorney General Burris was asked to determine whether one person may simultaneously hold the offices of school board member and county board member. Because of a potential conflict in duties, Attorney General Burris concluded that the office of school board member was incompatible with that of county board member. In opinion No. S-590, issued May 22, 1973 (1973 Ill. Att'y Gen. Op. 83), Attorney General Scott concluded, on similar grounds, that the offices of county board member and school board member were incompatible.

> 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 *Wilson* 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.[2]

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[2]At the time of the initial election of the individual who is the subject of your inquiry to the county board, section 1 of the Prohibited Activities Act (50 ILCS 105/1 (West 1992)) provided:

> 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 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. (Emphasis added.)

This language prohibited an incumbent county board member from being appointed to another office, other than those specified, if the appointment was made by the county board. *See* 1980 Ill. Att'y Gen. Op. 123, 124.

Public Act 88-623, effective January 1, 1995, amended section 1 and broadened its scope. Specifically, Public Act 88-623 added subparagraph (ii) which expressly permits a member of the county board to hold the office of alderman of a city or member of the board of trustees of a village or incorporated town, if the village or incorporated town has fewer than 1,000 inhabitants and is located in a county having fewer than 50,000 inhabitants. The amendment also placed the phrase "by appointment or election of the board of which he or she is a member" within subparagraph (i) to describe the exception for appointment of the chairman of the county board or member of the regional planning commission, rather than limit the application of section 1 generally. As the *Wilson* holding makes clear, the manner by which the General Assembly added the language allowing simultaneous service in those offices to section 1 of the Prohibited Activities Act, rather than the Public Officer Simultaneous Tenure Act (50 ILCS 110/0.01 *et.seq.* (West 2006)), also broadened the scope of the general prohibition contained in section 1. Thus, with the enactment of Public Act 88-623, county board members are prohibited from being appointed or elected to any other offices, unless authorized by law.

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.[3] Neither section 1 nor any other statute expressly permits one person to serve simultaneously as a county board member and a school board member in counties having populations of 40,000 inhabitants or more. Therefore, pursuant to section 1 of the Prohibited Activities Act, an Adams County Board member may not be appointed or elected to the office of school board member. If an Adams County Board member, during his or her term of office, is elected to the office of school board member, the election is void under section 1 of the Prohibited Activities Act.

You have also asked whether, pursuant to the court's holding in *Wilson*, an individual who has been elected in succeeding elections to serve simultaneously in the offices of county board member and school board member may choose which of the offices to retain. Under the common law, the acceptance of an incompatible office by the incumbent of another office constitutes an *ipso facto* resignation of the first office held. *See Brown*, 356 Ill. App. 3d at 1101; *Myers*, 145 Ill. App. at 287; 1991 Ill. Att'y Gen. Op. 188, 189; 1991 Ill. Att'y Gen. Op. 177, 178; 1981 Ill. Att'y Gen. Op. 47, 48; 1980 Ill. Att'y Gen. Op. 81, 84; 1972 Ill. Att'y Gen. Op. 45, 47. Thus, under the common law, if an incumbent officer chooses not to accept the incompatible office, no resignation from the first office results.

Under section 1 of the Prohibited Activities Act, as applied in *Wilson*,[4] however, any election of a county board member to another office not specifically authorized by law is

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[3]For example, section 1.2 of the Prohibited Activities Act (50 ILCS 105/1.2 (West 2006)) authorizes county board members "in a county having fewer than 40,000 inhabitants" to hold, among other positions, the office of "member of the board of education" or school board member. Based on 2000 Federal census figures, Adams County's population is 68,277 people. Based on 1990 Federal census figures, Adams County's population was 66,090 people. The population of Adams County has exceeded 40,000 inhabitants at all pertinent times. *See* Illinois Blue Book 500 (2007-2008); Illinois Blue Book 412 (1993-1994). Therefore, an Adams County Board member may not serve on a school board pursuant to section 1.2 of the Prohibited Activities Act.

[4]As noted in informal opinion No. I-06-013, issued January 31, 2006, and informal opinion No. I-09-001, issued March 5, 2009, on the same day that the appellate court handed down its decision in *Wilson*, the court also decided another compatibility of offices case. In *People ex rel. Smith v. Brown*, 356 Ill. App. 3d 1096 (2005), the appellate court determined that the offices of park district board member and city alderman were incompatible due to a conflict of duties between the offices. In that case, the defendant was elected to the park district board in 2001 and to the position of alderman in 2003. Because the court found the two positions to be incompatible, the court concluded that the defendant's acceptance of the position of alderman was an *ipso facto* resignation as park district board member. *Brown*, 356 Ill. App. 3d at 1098, 1101. Because of the different holdings in *Wilson* and *Brown*, confusion may have resulted as to which incompatible office an officer must vacate, or whether the officer must vacate a specific office as a matter of law. The distinction between the two cases is based on the fact that, in the case of county board members, a specific statute prohibited election to the one office (*Wilson*, 357 Ill. App. 3d at 207), while no such statute existed in the other case to prohibit election to the second office (*Brown*, 356 Ill. App. 3d at 1098).

void. Therefore, in the circumstances underlying your inquiry, the county board member holds only one office–county board member. Even though the county board member received the requisite number of votes to be elected to the office of school board member, the election is void. Accordingly, there is no other office for the county board member to choose to accept. Therefore, as in *Wilson*, the county board member remains entitled to complete his or her term on the county board, and is subject to removal from the school board if he or she attempts to serve thereon.

CONCLUSION

Pursuant to section 1 of the Public Officer Prohibited Activities Act, a county board member may not be elected to or hold the office of school board member simultaneously unless specifically authorized to do so by statute. If a county board member in a county of 40,000 or more inhabitants, during his or her term of office, is elected to the office of school board member, the election is void under section 1 of the Prohibited Activities Act. Because the election is void, a county board member who receives the requisite number of votes to be elected to the office of school board member has no discretion to accept the office of school board member. The incumbent county board member remains entitled to hold the office of county board member.

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

Very truly yours,

[redacted]

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

LEP:LAS:lk

NEIL F. HARTIGAN
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD
62706

September 6, 1988

I - 88-034

GOVERNMENTAL ETHICS AND
CONFLICTS OF INTEREST:
Corrupt Practices Act Violated
When County Board Member is Sheriff's Employee

Honorable John Knight
Bond County State's Attorney
Bond County Courthouse
Greenville, Illinois 62246

Dear Mr. Knight:

I have your letter of July 1, 1988, wherein you inquire whether an individual may hold employment as a salaried dispatcher in the sheriff's office after being elected to the county board. Due to the nature of your inquiry, I will comment informally on the question you have raised.

Section 3 of "AN ACT to prevent fraudulent and corrupt practices in the making or accepting of official appointments and contracts by public officers" [the Corrupt Practices Act] provides that, with certain de minimus exceptions:

> "(a) No person holding any office, either by election or appointment under the laws or constitution of this state, may be in any manner interested, either directly or indirectly, in his own name or in the name of any other person, association, trust or corporation, in any contract or the performance of any work in the making or letting of which such officer may be called upon to act or vote. * * *
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> "
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> (Ill. Rev. Stat. 1987, ch. 102, par. 3.)

Clearly, this provision applies to employment relationships. (Robertson v. Binno (1978), 56 Ill. App. 3d 390; Rogers v. Village of Tinley Park (1983), 116 Ill. App. 3d 437; People ex rel Teros v. Verbeck (1987), 155 Ill. App. 3d 81; 1975 Ill. Att'y Gen. 281; 1980 Ill. Att'y Gen. 136.)

An employee of the sheriff's office has a direct pecuniary interest in his employment with the department. In counties of fewer than 2,000,000 inhabitants, the county board fixes the compensation, the necessary clerk hire and other expenses of the sheriff. (Ill. Rev. Stat. 1987, ch. 53, par. 37a.) Further, unless its authority to do so has been delegated pursuant to statute, the county board has a duty to audit and allow or disallow claims against county funds. (Ill. Rev. Stat. 1987, ch. 34, par. 605.) A county board member, in this circumstance, would therefore be in a position to act upon claims or vote upon appropriation ordinances from which his compensation as a sheriff's employee would be paid. This would constitute a personal pecuniary interest of the nature which section 3 of the Corrupt Practices Act is intended to prohibit. Consequently, it appears that a person could not continue to serve as an employee of the sheriff's office after election to the county 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 Division

NEIL F. HARTIGAN
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD
62706

July 22, 1988

I - 88-026

GOVERNMENTAL ETHICS AND
CONFLICT OF INTEREST
CORRUPT PRACTICES ACT

Honorable Kathleen Alling
State's Attorney
Jefferson County
Jefferson County Courthouse
Mt. Vernon, Illinois 62864

Dear Ms. Alling:

I have your letter wherein you inquire whether a county board member may simultaneously serve as a full-time, salaried employee of the sheriff of his county. Because of the nature of your question, I will comment informally on the question you have raised.

Section 3 of "AN ACT to prevent fraudulent and corrupt practices in the making or accepting of official appointments and contracts by public officers" [Corrupt Practices Act] (Ill. Rev. Stat. 1987, ch. 102, par. 3) provides in pertinent part:

> "(a) No person holding any office, either by election or appointment under the laws or constitution of this state, may be in any manner interested, either directly or indirectly, in his own name or in the name of any other person, association, trust or corporation, in any contract or the performance of any work in the making or letting of which such officer may be called upon to act or vote. * * *
>
> * * * "

Pursuant to section 1 of "AN ACT in relation to the compensation of Sheriffs, etc." (Ill. Rev. Stat. 1987, ch. 53, par. 37a), it is the duty of the county board, in all counties of less than 2,000,000 inhabitants, to fix the compensation, the necessary clerk hire and other expenses of the sheriff. Section 35 of "AN ACT to revise the law in relation to counties" (Ill. Rev. Stat. 1987, ch. 34, par. 605) requires the county board to audit and allow or disallow claims against the county, except where the county board has delegated its authority to do so pursuant to section 35.1 of that Act (Ill. Rev. Stat. 1987, ch. 34, par. 605.1).

Under these circumstances, the county board member in question would be required to vote upon the appropriation of funds from which his or her compensation as an employee of the sheriff would be paid. Moreover, it may be the responsibility of the board member to act upon the allowance or disallowance of his or her own claims for compensation as an employee of the sheriff. This appears to be a personal pecuniary interest of the nature which section 3 of the Corrupt Practices Act is intended to prohibit. (See Panozzo v. City of Rockford (1940), 306 Ill. App. 443, 456; see also Rogers v. Village of Tinley Park (1983), 116 Ill. App. 3d 437, 445.) Therefore, it would appear that a county board member may not simultaneously be employed by the sheriff of his county without violating section 3 of the Corrupt Practices Act.

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

Very truly yours,

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

MJL:cj

WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD

April 2, 1974

FILE NO. NP-731

COUNTIES:
Compatibility of Office of County Board Member and Director of Soil and Water Conservation District

-

Honorable Jack Hoogasian
State's Attorney
Lake County
County Building
Waukegan, Illinois 60085

Dear Mr. Hoogasian:

I have your letter wherein you inquire whether the offices of county board member and director of a soil and water conservation district are compatible.

From the general rule announced in People v. Haas, 145 Ill. App. 283, it appears that incompatibility between offices arises where the constitution or a statute specifically prohibits the occupants of either one of the offices from holding the other, or where because of the duties of either office a conflict in

NP 731

interest may arise, or where the duties of either office are such that the holder of one cannot in every instance properly and faithfully perform all the duties of the other.

There are many areas where, because of the nature of powers given to both soil and water conservation districts and counties, a person who simultaneously holds the office of director of a soil and water conservation district and county board member will have, in my opinion, a conflict of interest and be unable to properly and faithfully perform the duties of both offices.

The general policy behind the Soil and Water Conservation Districts Law is set forth in section 2 of said Act (Ill. Rev. Stat. 1973, ch. 5, par. 107), which provides:

> "It is hereby declared to be the policy of the legislature to provide for the conservation of the soil, soil resources, water and water resources of this State, and for the control and prevention of soil erosion, and for the prevention of erosion, floodwater and sediment damages, and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wild life and forests, protect the tax base, protect public lands, and protect and promote the health, safety and general welfare of the people of this State."

To enable a soil and water conservation district to realize these objectives, said Act empowers soil and water conservation districts to cooperate and effectuate agreements with individuals or agencies of government (Ill. Rev. Stat. 1973, ch. 5, par. 127.7a) and to make and execute contracts and other instruments, necessary or convenient to the exercise of their powers. Ill. Rev. Stat. 1973, ch. 5, par. 127.8.

In the area of county government, the powers of a county are exercised by its county board. (Ill. Rev. Stat. 1973, ch. 34, par. 302.) A county board is empowered to manage the county business (Ill. Rev. Stat. 1973, ch. 34, par. 403) and make, on behalf of the county, all contracts in relation to the property and concerns of the county necessary to the exercise of its corporate powers. Ill. Rev. Stat. 1973, ch. 34, par. 303.

Because both soil and water conservation districts and counties possess similar powers, and because they are both empowered to enter into agreements with each other, it is conceivable that a soil and water conservation district and a county might wish to contract as to some matter within the scope of their powers. In such an instance, a person who simultaneously is a director of a soil and water conservation district and a

county board member would be in the untenable position of being a party to both sides of a contract. Since the interest of both parties would not necessarily be identical, and since they would both be attempting to negotiate a contract most advantageous to their side, it is my opinion that such a person would have a conflict of interest and be unable to properly and faithfully perform the duties of both offices.

There are many substantive areas in relation to which both soil and water conservation districts and counties possess powers which could be the subject matter of such cooperative agreements and contract. Soil and water conservation districts are empowered to survey, investigate, research and develop plans (Ill. Rev. Stat. 1973, ch. 5, par. 127.1), and carry out preventive and control measures relating thereto (Ill. Rev. Stat. 1973, ch. 5, par. 127.2) by constructing, improving, operating and maintaining structures (Ill. Rev. Stat. 1973, ch. 5, par. 127.6) programs and projects relating to the conservation of the renewable natural resources of soil, water, forests, fish, wild life and air (Ill. Rev. Stat. 1973, ch. 5, par. 127.7a), and for the control and prevention of soil erosion, floods, floodwater and sediment

damages (Ill. Rev. Stat. 1973, ch. 5, pars. 127.1 and 127.7a) and impairment of dams and reservoirs. (Ill. Rev. Stat. 1973, ch. 5, par. 127.7a.) They can also assist in maintaining the navigability of rivers and harbors and cooperate with local interests and agencies of government in providing domestic and industrial, municipal and agricultural water supplies and recreational project developments and improvements. (Ill. Rev. Stat. 1973, ch. 5, par. 127.7a.) Furthermore, they can make available, on such terms as they prescribe, the use of agricultural and engineering machinery and equipment to assist land owners or occupiers carry on operations for conservation of soil and water resources, and for the prevention of soil erosion and erosion floodwater and sediment damages. Ill. Rev. Stat. 1973, ch. 5, par. 127.5.

Counties, such as yours, which operate under "AN ACT in relation to water supply, drainage, sewage, pollution and flood control in certain counties" (Ill. Rev. Stat. 1973, ch. 34, pars. 3101 et seq.), in order to effect the protection, reclamation or irrigation of the land in the county, are empowered to perform work relating to ditches, drains, sewers, rivers, water courses, ponds, canals, lakes, creeks, natural streams, levees, dikes, dams,

sluices, revetments, reservoirs, holding basins and floodways. (Ill. Rev. Stat. 1973, ch. 34, par. 3106.) They can, under said Act, perform work required for the production, development, and delivery of adequate, pure and wholesome water supplies. (Ill. Rev. Stat. 1973, ch. 34, par. 3110.) They can also: Purchase and hold real estate for the preservation of forests and maintain and regulate the use thereof (Ill. Rev. Stat. 1973, ch. 34, par. 303); take all necessary measures to prevent forest fires and encourage the maintenance and planting of trees and the preservation of forests (Ill. Rev. Stat. 1973, ch. 34, par. 303); provide for the conservation, preservation and propagation of insectivorous birds (Ill. Rev. Stat. 1973, ch. 34, par. 303); acquire title to real estate for parks and recreational purposes (Ill. Rev. Stat. 1973, ch. 34, par. 303) and maintain such lands (Ill. Rev. Stat. 1973, ch. 34, par. 418.1); remove obstructions from natural and other water courses (Ill. Rev. Stat. 1973, ch. 34, par. 430); and lease equipment and machinery required for corporate purposes. Ill. Rev. Stat. 1973, ch. 34, par. 418.3.

In addition to conflicts that can arise due to the contractual and cooperative powers possessed by both soil and water conservation districts and counties, conflicts of interest

can also arise due to potential competition between said bodies which would prevent a person who is simultaneously a director of a soil and water conservation district and a county board member from properly and faithfully discharging duties of both offices. Soil and water conservation districts and counties may find themselves competing for the same funds. Soil and water conservation districts are empowered to receive money from the United States or from the State or any of its agencies and to use such monies in carrying out their operations. (Ill. Rev. Stat. 1973, ch. 5, par. 127.7.) County boards are empowered to create within their respective counties an office of Coordinator of Federal and State aid to report to and assist them with development programs for which State and Federal funds are or may be available, and assist in the application for such funds. (Ill. Rev. Stat. 1973, ch. 34, par. 403-1.) Soil and water conservation districts and counties may also find themselves competing in the acquisition of property. Soil and water conservation districts are empowered to acquire property necessary for the purposes of the district. (Ill. Rev. Stat. 1973, ch. 5, par. 127.4.) Counties are also empowered to acquire property for the benefit of the county. Ill. Rev. Stat. 1973, ch. 34, par. 303.

A third area in which conflicts of interest can arise involves the power of soil and water conservation districts to furnish financial aid to governmental agencies in carrying on erosion - control and flood prevention operations within the districts. (Ill. Rev. Stat. 1973, ch. 5, par. 127.3.) For the purposes of illustration, assume that a soil and water conservation district lying within more than one county has as a director a person who is also a county board member of one of the counties in which the district lies. Where two counties, one being the county in which the director is a county board member, are competing for limited available financial assistance from said district, the ability of said director to act impartially would be open to question.

Finally, a fourth area in which conflicts of interest can arise involves the powers possessed by both soil and water conservation districts and counties in relation to land use control. Soil and water conservation districts are empowered to adopt (Ill. Rev. Stat. 1973, ch. 5, par. 128) and enforce (Ill. Rev. Stat. 1973, ch. 5, par. 129) land use regulations. Counties are also empowered to regulate the use of land. (Ill. Rev. Stat. 1973, ch. 34, par. 3151.) The interests of soil and

water conservation districts in regulating land use relate to conservation, and although counties in regulating land use are also concerned with conservation, there are other interests, such as business and industrial development, which can influence their decisions. Once again, a person who is simultaneously a director of a soil and water conservation district and a county board member would have a conflict of interest and would be unable to properly and faithfully perform the duties of both offices.

Very truly yours,

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

WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD

December 17, 1971

FILE NO.: NP-375

COUNTY OFFICERS:
Supervisor of Assessments

Honorable Paul R. Welch
State's Attorney
McLean County
220 Unity Building
Bloomington, Illinois

Dear Mr. Welch:

I have your recent letter wherein you state:

"This office has been asked the following question: Can a member of the Board of Supervisors, whose four year term expired April, 1971, but who is retaining his office by virtue of your opinion holding that no new election for supervisors was necessary in view of the upcoming reapportionment and resulting election of County Board Supervisors in 1972, seek the office of Supervisor of Assessments of McLean County? The relevant statute bearing upon the answer to the question is Chapter 102, Section 1, wherein it states:

No supervisor or county commissioner, during the term of office for which he is elected,

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> 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.
>
> "I would appreciate your early opinion with regard to whether or not this statutory provision places the Board member, who is being held over by operation of law, and not by any voluntary act of his own or action of the electorate, he having been originally elected to a four year term which is now expired, as being disqualified from accepting the position of Supervisor of Assessments.
>
> "It should be further noted that the Supervisor in question will no longer be a member of the Board at the time of his consideration for the position of Supervisor of Assessments.
>
> "I am enclosing herewith a copy of an opinion I have rendered in connection with this matter. It is necessary in view of the exigencies of time that your answer be received as soon as possible."

You have referred to my opinion No. S-237 which was issued on December 2, 1970. In that opinion I held that those assistant supervisors whose successors would have been elected in April, 1971 serve until their successors are elected and qualified. I believe, however, that this hold over period is a part of his term of office. He is a member of the county board just as much as if he were in his four year term.

As you know, 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. Stats. 1969, ch. 102, par. 1) reads as follows:

> "No supervisor or county commissioner, 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."

The foregoing statute prohibits a board member from being appointed to any office by appointment by the county board during the term of office for which he is elected, except chairman of the county board or member of the regional planning commission.

Section 3a of "An Act to revise the law in relation to the assessment of property and the levy and collection of taxes, and to repeal certain Acts herein named," (1970 Supplement to Ill. Rev. Stats. 1969, ch. 120, par. 484a) provides:

> "In counties containing less than 1,000,000 inhabitants and not having an elected board of assessors, the office of supervisor of assessments or county assessor, shall be filled by appointment by the county board, as herein provided.
>
> * * * * *"

The foregoing statute states that the supervisor of assessments

is an office filled by the county board.

You have indicated, however, that the supervisor in question will no longer be a member of the county board at the time of his consideration for the position of Supervisor of Assessments. If the supervisor resigns from the county board he still may not be appointed Supervisor of Assessments during the term for which he was elected (including any hold over period). If he will no longer be a member of the county board because his term has expired (including any hold over period), then in my opinion, there would be no violation of Section 1 of "An Act to prevent fraudulent * * *," (Illinois Revised Statutes 1969, ch. 102, par. 1).

Very truly yours,

ATTORNEY GENERAL

ROLAND W. BURRIS
ATTORNEY GENERAL
STATE OF ILLINOIS

March 5, 1992

I - 92-015

COMPATIBILITY OF OFFICES:
Township Planning Commission
and County Board Member

Honorable Thomas J. McCracken, Jr.
State Representative, 81st District
5757 South Cass Avenue
Westmont, Illinois 60559

Dear Representative McCracken:

I have your letter wherein you inquire whether one person may serve simultaneously as the chairman of a township plan commission and a member of the county board of the county in which the township is located. Because the Attorney General is authorized to advise officers and spokesmen of the General Assembly only in matters which relate to their duties as such (Ill. Rev. Stat. 1989, ch. 14, par. 4), we cannot issue an official opinion in response to your request. I will, however, comment informally upon the question you have raised.

It is my understanding that the township in question lies within Will County, and that Will County has adopted a county zoning ordinance in accordance with the provisions of Division 5-12 of the Counties Code. (Ill. Rev. Stat. 1989, ch. 34, par. 5-12001 et seq.) Therefore, the provisions of the Township Zoning Act (Ill. Rev. Stat. 1989, ch. 139, par. 301 et seq.) are inapplicable in this situation. The plan commission is organized pursuant to section 13-37 of the Township Law (Ill. Rev. Stat. 1989, ch. 139, par. 126.27).

Section 13-37 of the Township Law authorizes a township with a population of more than 12,000 which is located within a county with a population of less than 600,000 to create a plan commission. The powers of the plan commission include preparing and recommending to the township board a comprehensive plan for the development of unincorporated areas of the township, and thereafter recommending changes to the plan and promoting, generally, realization of the plan. Subsection 13-37(c) of the Township Law (Ill. Rev. Stat. 1989, ch. 139, par. 126.27(c)), however, provides:

" * * *

> (c) If a county in which a township is located has adopted a county zoning ordinance pursuant to 'An Act in relation to county zoning', approved June 28, 1935, as amended [now Division 5-12 of the Counties Code], the recommendations of the township plan commission may be presented by the township board of trustees to the county board of the county where the township is located."

Therefore, because Will County has adopted a county zoning ordinance, the township plan commission in this circumstance makes recommendations to the township board of trustees, which in turn may present the recommendations to the county board of Will County.

The doctrine of incompatibility is applicable where the constitution or a statute specifically prohibits the occupant of one office from holding another, or where the duties of either office are such that the holder of one cannot, in every instance, properly and faithfully perform the duties of the other. (People ex rel. Myers v. Haas (1908), 145 Ill. App. 283, 286.) One person may not simultaneously hold two incompatible offices.

There appear to be no constitutional or statutory provisions which prohibit a county board member from simultaneously serving on a township plan commission. Moreover, it appears that no conflict of duties would arise from such simultaneous service. The plan commission cannot implement its own plan in a county which has adopted a county zoning ordinance, but rather presents its recommendations to the township board, which may present them to the county board. In this respect, the plan commission indirectly advises the county board. In opinion No. S-500, issued July 24, 1972, Attorney General Scott concluded that a member of a county

board may serve as a member of a regional planning commission, reasoning that the regional planning commission serves to advise the county board, and that there would be no conflict of duties if a member of a county board serves on a commission that advises the county board. The position of the township plan commission appears to be analogous to that of a regional planning commission in these circumstances.

Therefore, it appears that the offices of county board member and township plan commission chairman are not incompatible, and one person may simultaneously hold both offices.

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

NEIL F. HARTIGAN
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD
62706

March 7, 1989

I - 89-019

COMPATIBILITY:
County Board Member and
Township Supervisor

County Board Member and
Township Trustee

Township Trustee and School
Board Member

Honorable Vincent Moreth
State's Attorney, Macoupin County
Macoupin County Courthouse
Post Office Box 480
Carlinville, Illinois 62626

Dear Mr. Moreth:

I have your letter of February 22, 1989, wherein you inquire whether the offices of (1) county board member and member of the township board of trustees, (2) township supervisor and county board member, and (3) township trustee and local school board member are incompatible. Because of the nature of your question, I do not believe that an official opinion of the Attorney General is necessary. I will, therefore, comment informally upon your inquiry.

At common law, incompatibility of offices arises where the constitution or a statute specifically prohibits the occupant of one office from holding another 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.) Because of the inability of a person holding both offices to fairly represent the conflicting interests of both the county and township, Attorney General Scott advised in opinion No. S-877, issued March 17, 1975, (1975 Ill. Att'y Gen. Op. 37), that the offices of county board member and township supervisor were incompatible and, in opinion No. NP-1108, (Ill. Att'y Gen. Op. No. NP-1108, issued June 15, 1976), that the offices of county board member and township auditor (trustee) were incompatible. Since the issuance of those opinions, however, the General Assembly has declared it to be lawful for any person to hold simultaneously the offices of county board member and township supervisor and, in counties of less than 100,000 population, the offices of county board member and township trustee. (Ill. Rev. Stat. 1987, ch. 102, par. 4.11.) The offices of township trustee and county board member remain incompatible in counties with a population of 100,000 or more. See People ex rel. Fitzsimmons v. Swailes (1984), 101 Ill. 2d 458 (offices of county board member and township assessor incompatible in counties of over 300,000 population).

Because there is no constitutional or statutory provision prohibiting one person from simultaneously holding the offices of township trustee and school board member, the issue with respect to those offices devolves to whether the duties of either office are such that the holder of one cannot, in every instance, properly and faithfully perform all of the duties of the other.

Section 13-16 of the Township Law of 1874 (Ill. Rev. Stat. 1987, ch. 139, par. 126.6) provides in part as follows:

> "To the extent that moneys in the general fund of the township have not been appropriated for other purposes, the board of town trustees may direct that distributions be made from that fund as follows:
>
> (1) either or both to school districts maintaining grades 1 through 8 which are wholly or partly located within the township or to governmental units, as defined in Section 1 of the 'Community Mental Health Act', providing mental health facilities and services, including facilities and services for the mentally retarded, under that Act within the township;
>
> * * *"

(Emphasis added.)

As a school board member, one has a duty to provide for the revenue necessary to maintain the schools in his or her district. (Ill. Rev. Stat. 1987, ch. 122, par. 10-20.3.) In the instance of a school district which lies partly or wholly within the township and which maintains grades 1 through 8, a conflict could arise between a dual officerholder's duty to determine how township funds should be spent to best serve the needs of the township and his or her duty as a member of the board of education to provide for the revenue necessary to maintain the district's schools.

Accordingly, it appears that the offices of town trustee or township supervisor and school board member of a school district, which lies wholly or partly within the township, and which maintains grades 1 through 8, are incompatible. Our research has disclosed nothing, however, which would render the office of town trustee or township supervisor incompatible with that of a school board member of a school district not eligible for township funds under section 13-16 of the Township Law of 1874. See Informal Opinion No. I-88-003, issued February 16, 1988.

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

WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD
62706

June 15, 1976

FILE NO. NP-1108

COMPATIBILITY OF OFFICES:
Township Auditor and
County Board Member

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

Dear Mr. Drolet:

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

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

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may arise, or where the duties of either office are such that the holder of one cannot in every instance, properly and faithfully perform all the duties of the other. (People ex rel. Meyer v. Haas, 145 Ill. App. 283.)

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

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

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

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

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

> "§ 1. The General Assembly finds and declares that questions raised regarding the legality of simultaneously holding the office of county board member and township supervisor are unwarranted; that the General Assembly viewed the office of county board member and township supervisor as compatible; and that to settle the question of legality and avoid confusion among such counties and townships as may be affected by such questions it is lawful to hold the office of county board member simultaneously with the office of township supervisor in accordance with this Act.
>
> § 2. It is lawful for any county board member who may be elected in 1977 or before 1977 to the office of township supervisor to hold the office of county board member and township supervisor simultaneously until the expiration of his term of office as county board member; thereafter it is unlawful for the same individual to hold both such offices simultaneously.
>
> § 3. All actions of such person, as township supervisor after December 1, 1974, which are otherwise in accordance with law, are hereby validated."

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

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

" * * *

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

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

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

Very truly yours,

ATTORNEY GENERAL

NEIL F. HARTIGAN
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD
62706

March 7, 1989

I - 89-019

COMPATIBILITY:
County Board Member and
Township Supervisor

County Board Member and
Township Trustee

Township Trustee and School
Board Member

Honorable Vincent Moreth
State's Attorney, Macoupin County
Macoupin County Courthouse
Post Office Box 480
Carlinville, Illinois 62626

Dear Mr. Moreth:

I have your letter of February 22, 1989, wherein you inquire whether the offices of (1) county board member and member of the township board of trustees, (2) township supervisor and county board member, and (3) township trustee and local school board member are incompatible. Because of the nature of your question, I do not believe that an official opinion of the Attorney General is necessary. I will, therefore, comment informally upon your inquiry.

At common law, incompatibility of offices arises where the constitution or a statute specifically prohibits the occupant of one office from holding another 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.) Because of the inability of a person holding both offices to fairly represent the conflicting interests of both the county and township, Attorney General Scott advised in opinion No. S-877, issued March 17, 1975, (1975 Ill. Att'y Gen. Op. 37), that the offices of county board member and township supervisor were incompatible and, in opinion No. NP-1108, (Ill. Att'y Gen. Op. No. NP-1108, issued June 15, 1976), that the offices of county board member and township auditor (trustee) were incompatible. Since the issuance of those opinions, however, the General Assembly has declared it to be lawful for any person to hold simultaneously the offices of county board member and township supervisor and, in counties of less than 100,000 population, the offices of county board member and township trustee. (Ill. Rev. Stat. 1987, ch. 102, par. 4.11.) The offices of township trustee and county board member remain incompatible in counties with a population of 100,000 or more. See People ex rel. Fitzsimmons v. Swailes (1984), 101 Ill. 2d 458 (offices of county board member and township assessor incompatible in counties of over 300,000 population).

Because there is no constitutional or statutory provision prohibiting one person from simultaneously holding the offices of township trustee and school board member, the issue with respect to those offices devolves to whether the duties of either office are such that the holder of one cannot, in every instance, properly and faithfully perform all of the duties of the other.

Section 13-16 of the Township Law of 1874 (Ill. Rev. Stat. 1987, ch. 139, par. 126.6) provides in part as follows:

> "To the extent that moneys in the general fund of the township have not been appropriated for other purposes, the board of town trustees may direct that distributions be made from that fund as follows:
>
> (1) either or both to school districts maintaining grades 1 through 8 which are wholly or partly located within the township or to governmental units, as defined in Section 1 of the 'Community Mental Health Act', providing mental health facilities and services, including facilities and services for the mentally retarded, under that Act within the township;
>
> * * * "
>
> (Emphasis added.)

As a school board member, one has a duty to provide for the revenue necessary to maintain the schools in his or her district. (Ill. Rev. Stat. 1987, ch. 122, par. 10-20.3.) In the instance of a school district which lies partly or wholly within the township and which maintains grades 1 through 8, a conflict could arise between a dual officerholder's duty to determine how township funds should be spent to best serve the needs of the township and his or her duty as a member of the board of education to provide for the revenue necessary to maintain the district's schools.

Accordingly, it appears that the offices of town trustee or township supervisor and school board member of a school district, which lies wholly or partly within the township, and which maintains grades 1 through 8, are incompatible. Our research has disclosed nothing, however, which would render the office of town trustee or township supervisor incompatible with that of a school board member of a school district not eligible for township funds under section 13-16 of the Township Law of 1874. See Informal Opinion No. I-88-003, issued February 16, 1988.

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

WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD
62706

August 28, 1975

FILE NO. NP-953

OFFICERS:
Eligibility of County Board Member
For Appointment as County Tuberculosis
Sanitarium Director

Honorable Jack Hoogasian
State's Attorney
Lake County
County Building
Waukegan, Illinois 60085

Dear Mr. Hoogasian:

I have your letter in which you query whether the appointment of a county board member to a director's post on the county tuberculosis sanitarium board is prohibited.

Section 1 of the Corrupt Practices Act (Ill. Rev. Stat. 1973, ch. 102, par. 1) provides:

> "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

NP 953

> 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."

In addition to those offices specifically exempted by section 1, I have previously concluded in opinion No. S-877, dated March 17, 1975, that an exemption for county board members also existed where a statute specifically provided for their appointment to the office. This conclusion was reached by applying the rule that where a general and a specific statute deal with the same subject, they must be read together with a view towards a consistent legislative policy and, to the extent that they are inconsistent, the specific will prevail over the general.

The specific post you inquire about is a director on the county tuberculosis sanitarium board. Section 3 of "AN ACT relating to the care and treatment by counties of persons afflicted with tuberculosis, etc." (Ill. Rev. Stat. 1973, ch. 34, par. 5104) provides:

> "When in any county such a proposition, for the levy of a tax for a county tuberculosis sanitarium has

> been adopted as aforesaid, the chairman or president, as the case may be, of the county board of such county, shall, with the approval of the county board, proceed to appoint a board of 3 directors, one at least of whom shall be a licensed physician, and all of whom shall be chosen with reference to their special fitness for such office. * * *" (emphasis added.)

The above statute does not specifically provide for the appointment of a county board member. Your question is whether the language "with reference to their special fitness" might be interpreted as permitting the appointment of a county board member. It is my opinion that the statute cannot be so interpreted. If two statutes are capable of being so construed that both may be given effect, it is the duty of a court to so construe them. (People v. Holderfield, 393 Ill. 138.) It is clear that the emphasized language in the statute above is not necessarily inconsistent with section 1 of the Corrupt Practices Act. Although some county board members may have special fitness to be directors of county tuberculosis sanitariums, they are clearly prohibited from holding such appointive offices by section 1 of the Corrupt Practices Act. Simply stated, the emphasized language in the statute above

is not a specific authorization for appointment of county board members, rather, it is a statement of general qualifications. As such, it cannot be the basis for excepting the office of director of the county tuberculosis sanitarium board from the proscription of section 1 of the Corrupt Practices Act.

Very truly yours,

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

WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD

December 12, 1972

FILE NO. NP-546

OFFICERS:
Compatibility

Honorable William J. Cowlin
State's Attorney
Court House Annex Building
P.O. Box 545
Woodstock, Illinois 60098

Dear Mr. Cowlin:

I have your recent letter wherein you state:

"I would request an opinion as to whether or not a Village Clerk may also run for the County Board of Supervisors without a conflict of interests. I believe your last opinion on this type of matter was #324 dated 1961."

From the general rules laid down in People v. Haas, 145 Ill. App. 283, it appears that incompatibility between offices arises 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,

NP-546

or where the duties of either office are such that the holder of one cannot, in every instance, properly and faithfully perform all the duties of the other.

There are no express constitutional or statutory prohibitions against simultaneously serving as village clerk and as a member of the county board.

The interests of a village and county can often be conflicting. An individual holding a policy-making office in each of these governmental units would be confronted with many potential conflicts of interest. As a member of a county board, an individual certainly holds a policy-making office, since the powers of a county are exercised through the county board. (Ill. Rev. States. 1971, ch. 34, par. 302.) The duties of a village clerk, however, are ministerial rather than policy-making:

> "The municipal clerk shall keep the corporate seal, to be provided by the corporate authorities, and all papers belonging to the municipality the custody and control of which are not given to other officers. He shall attend all meetings of the corporate authorities, and keep a full record of its proceedings in the journal.
>
> Copies of all papers duly filed in his office, and transcripts from the journals and other records and files of his office, certified by him under the corporate seal, shall be evidence in all courts in like manner as if the originals were produced." Ill. Rev. Stats. 1971, ch. 24, par. 3-10-7.

The above duties of a village clerk would not conflict with the individual's duties as a county board member.

Therefore, in my opinion, a village clerk may also serve on a county board without a conflict of interest.

Very truly yours,

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

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

March 5, 2009

I - 09-001

COMPATIBILITY OF OFFICES:
County Board Member
and Village President

The Honorable James A. Mack
State's Attorney, Putnam County
120 North 4th Street
P.O. Box 20
Hennepin, Illinois 61327

Dear Mr. Mack:

I have your letter inquiring whether one person may simultaneously serve in the offices of county board member and village president, if the county's population is under 10,000 inhabitants and the village's population is under 1,000 inhabitants. If the offices are determined to be incompatible, you have also asked: (1) whether a county board member, if elected to the office of village president, may choose which office to retain; (2) what procedures should be followed by the county board member if he or she wishes to maintain his or her county board position; and (3) what procedures should be followed if the county board member prefers to assume the office of village president. For the reasons stated below, a county board member, during his or her term of office, may not serve simultaneously in the office of village president. Any such election is void under section 1 of the Public Officer Prohibited Activities Act (the Prohibited Activities Act) (50 ILCS 105/1 (West 2006)). Further, because such an election is void, (1) a county board member who obtains the most votes for the office of village president has no discretion to accept the office of village president; (2) the county board member remains entitled to hold the office of county board member; and (3) if an incumbent county board member desires to hold the office of village president, he or she must resign from the county board prior to the election.

BACKGROUND

Based on information you have provided, a current Putnam County Board member has filed to run for the office of village president at the consolidated election to be held on April

7, 2009. Based on 2000 census figures, Putnam County's population is 6,086 inhabitants. Illinois Blue Book 427 (2003-2004). You have stated that the village in question has a population of less than 1,000 inhabitants.

ANALYSIS

Your first question is whether one person may simultaneously hold the offices of county board member and village president. 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 prohibits one person from simultaneously serving as a county board member and a village president. 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 village president.

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.)

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 applied 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 law.[1] Neither section 1 nor any other statute expressly permits one person to serve as a county board member and a village president simultaneously.[2] Therefore, pursuant to section 1 of the

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[1]For example, in the Public Officer Simultaneous Tenure Act (50 ILCS 110/0.01 *et seq.* (West 2006)), the General Assembly has specifically declared that it is lawful for one person to hold the offices of county board member and township supervisor simultaneously and, in certain counties, for a county board member to also serve as a township trustee, township assessor, or township clerk. *See* 50 ILCS 110/2 (West 2006).

[2]Your inquiry involves a sitting county board member in a county with a population under 10,000 seeking the office of village president in a village with a population under 1,000. Although section 1 of the Prohibited Activities Act expressly permits a member of the county board to hold the office of alderman of a city or member of the board of trustees of a village or incorporated town, if the village has fewer than 1,000 inhabitants and is located in a county having fewer than 50,000 inhabitants, section 1 contains no corresponding exception expressly allowing a county board member to serve as village president in such circumstances. The references in the Illinois Municipal Code (65 ILCS 5/1-1-1 *et seq.* (West 2006)) to "corporate authorities" indicates that the term refers to "the president and trustees or similar body when the reference is to villages or incorporated towns" (65 ILCS 5/1-1-2 (West 2006)). Thus, it is clear that the village president is not a member of the village board of trustees. Accordingly, the language in section 1 of the Prohibited Activities Act authorizing county board members to also hold the office of member of a village board does not authorize a county board member to serve simultaneously as a village president.

In opinion No. S-419, issued March 13, 1972 (1972 Ill. Att'y Gen. Op. 45), Attorney General Scott was asked to determine whether one person may simultaneously hold the offices of county board member and city mayor. Based on the number of statutory provisions expressly authorizing counties and municipalities to enter into contracts with each other and granting municipalities the authority to exercise their powers outside their corporate boundaries, Attorney General Scott concluded that the office of county board member was incompatible with that of mayor because of potential conflicts between the duties delegated to those offices. Although the statutes have been amended several times since Attorney General Scott's opinion, the conclusion reached in opinion No. S-419 still reflects current Illinois law. Consequently, one person may not serve simultaneously in the offices of county board member and city mayor. There is no significant difference in the statutory duties of a city mayor and village president. Therefore, under the reasoning of opinion No. S-419, one person may not hold the offices of county board member and village president simultaneously.

Prohibited Activities Act, a county board member may not be appointed or elected to the office of village president. If a county board member, during his or her term of office, is elected to the office of village president, the election is void under section 1 of the Prohibited Activities Act.

Having concluded that the offices of county board member and village president are incompatible, you have also asked whether an incumbent county board member who receives the most votes at an election for the office of village president may choose which office to hold. Under the common law, the acceptance of an incompatible office by the incumbent of another office constitutes an *ipso facto* resignation of the first office held. *See Brown*, 356 Ill. App. 3d at 1101; *Myers*, 145 Ill. App. at 287; 1991 Ill. Att'y Gen. Op. 188, 189; 1991 Ill. Att'y Gen. Op. 177, 178; 1981 Ill. Att'y Gen. Op. 47, 48; 1980 Ill. Att'y Gen. Op. 81, 84; 1972 Ill. Att'y Gen. Op. 45, 47. Thus, under the common law, if an incumbent officer chooses not to accept an incompatible second office, no resignation from the first office results.

Under section 1 of the Prohibited Activities Act, as applied in *Wilson*,[3] however, any election of a county board member to another office not specifically authorized by law is void. Therefore, in the circumstances that form the basis of your inquiry, the county board member only holds one office, and is only entitled to hold one office – county board member. Even if the county board member receives the highest number of votes for the office of village president, the election is void. Therefore, based on the information you have provided, there is no other office for the county board member to choose to accept. In such circumstances, the county board member is not required to follow any particular procedures. Rather, the county board member holds and will continue to hold only one office, that of the county board member. Therefore, the member remains entitled to complete his or her term on the county board.[4]

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[3]As noted in informal opinion No. I-06-013, issued January 31, 2006, on the same day that the Appellate Court handed down its decision in *Wilson*, the court also decided another compatibility of office case. In *Brown*, the Appellate Court determined that the offices of park district board member and city alderman were incompatible due to a conflict of duties between the offices. In that case, the defendant was elected to the park district board in 2001 and to the position of alderman in 2003. Because the court found the two positions to be incompatible, the court concluded that the defendant's acceptance of the position of alderman was an *ipso facto* resignation as park district board member. *Brown*, 356 Ill. App. 3d at 1098, 1101. Because of the different holdings in *Wilson* and *Brown*, confusion may have resulted as to which incompatible office an officer must vacate, or whether the officer must vacate a specific office as a matter of law. The distinction between the two cases is based on the fact that a specific statute prohibited election to the one office (*Wilson*, 357 Ill. App. 3d at 207), while no such statute existed in the other case to prohibit election to the second office (*Brown*, 356 Ill. App. 3d at 1098).

[4]In *Wilson*, because the defendant was an incumbent county board member when he was elected to the school board, his election to the school board was void, and he was ordered removed from the school board, rather than from the county board. *Wilson*, 357 Ill. App. 3d at 207; *see also* Ill. Att'y Gen. Inf. Op. No. I-06-013, issued January 31, 2006.

You have also asked what procedures an incumbent county board member should follow if he or she desires to seek election to the office of village president. As quoted above, section 1 specifically provides that no county board member may, during the term of office for which he or she is elected, hold any other office "unless he or she first resigns from the office of county board member[.]" Under the plain and unambiguous language of section 1, a county board member who desires to hold the office of village president must resign from the county board prior to the conduct of the election.

CONCLUSION

Pursuant to section 1 of the Public Officer Prohibited Activities Act, a county board member may not be elected to or hold the office of village president simultaneously. If a county board member, during his or her term of office, is elected to the office of village president, the election is void under section 1 of the Prohibited Activities Act. Because any such election is void, a county board member who obtains the most votes in an election for the office of village president has no discretion to accept the office of village president. The incumbent county board member, however, remains entitled to hold the office of county board member. Should an incumbent county board member wish to seek election to the office of village president, he or she must resign from the county board prior to the election.

Should the county board member who is the focus of your inquiry desire to continue in office as a county board member and seek to hold the office of village president simultaneously, then the county or the county board member may wish to seek the modification of section 1 of the Public Officer Prohibited Activities Act, or other appropriate statute, through amendatory legislation to so authorize.

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

[redacted] Very truly yours,

[redacted]

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

LEP:LAS:lk

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

May 7, 2014

I - 14-005

COMPATIBILITY OF OFFICES:
County Board Member and
Village Trustee

The Honorable Heath H. Hooks
State's Attorney, Washington County
101 East St. Louis Street
Nashville, Illinois 62263

Dear Mr. Hooks:

I have your letter inquiring whether one person may serve simultaneously in the offices of county board member and municipal trustee. In a telephone conversation following the receipt of your letter, you clarified that your question pertains to the Village of Okawville, which is situated within Washington County. For the reasons stated below, the offices of member of the Washington County Board and village trustee of the Village of Okawville are incompatible, and one person may not hold 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). The provisions of section 1 of the Public Officer Prohibited Activities Act (the

Prohibited Activities Act) (50 ILCS 105/1 (West 2012)) address the ability of county board members to hold other public offices simultaneously. Section 1 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 concluded that the offices of county board member and school board member 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. *Wilson*, 357 Ill. App. 3d at 206. Accordingly, unless simultaneous tenure in the offices of county board member and village trustee is expressly permitted by statute, the reasoning of the *Wilson* decision prohibits one person from holding both offices at the same time.[1]

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[1]Prior to the court's opinion in *Wilson*, Attorney General Scott determined in opinion No. S-419, issued March 13, 1972 (1972 Ill. Att'y Gen. Op. 45), that the offices of county board member and city alderman were incompatible. This conclusion was based on the possibility of a conflict of interest that could arise when serving in both offices, including the ability of cities and counties to contract with each other on a myriad of issues. Attorney General Scott noted that although "[t]he powers of * * * alderman or councilman vary, depending on the particular organization of the municipality[,] [i]n every case, * * * each of these officers has sufficient power to influence city actions so that a conflict of interest could arise." 1972 Ill. Att'y Gen. Op. at 47.

At the time that opinion No. S-419 was issued, 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. 1971, ch. 102, par. 1), the precursor to section 1 of the Prohibited Activities Act, only prohibited county board members from holding other public offices by appointment or election of the county board itself. *See* 1980 Ill. Att'y Gen. Op. 123, 124; Ill. Att'y Gen. Inf. Op. No. I-10-006, issued June 10, 2010, at 2 n.1.

Subsection 1(ii) of the Prohibited Activities Act does expressly permit a county board member to hold the office of village trustee "if the * * * village * * * has fewer than 1,000 inhabitants *and* is located in a county having fewer than 50,000 inhabitants[.]" (Emphasis added.) According to the 2010 Federal decennial census, the population of Washington County was 14,716.[2] The population of the Village of Okawville, however, was 1,434 inhabitants.[3] Therefore, although the population of Washington County is fewer than 50,000 inhabitants, the population of Okawville exceeds 1,000, the statutory maximum for the exception found in subsection 1(ii) to apply. Accordingly, that provision does not permit a member of the village board of the Village of Okawville to serve simultaneously as a member of the Washington County Board.

CONCLUSION

Pursuant to section 1 of the Public Officer Prohibited Activities Act, as construed by the court in *Wilson*, a county board member may not 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. Neither subsection 1(ii) nor any other statute expressly permits one person to serve simultaneously as a county board member and a village trustee in these circumstances. Therefore, pursuant to section 1 of the Prohibited Activities Act, a member of the Washington County Board cannot serve simultaneously as a trustee of the Village of Okawville.

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

Very truly yours,

[redacted]

LYNN E. PATTON
Senior Assistant Attorney General
Chief, Public Access and Opinions Division

LP:KMC:LAS:an

[2]Illinois Blue Book 450 (2013-2014).

[3]Illinois Blue Book 464 (2013-2014).