



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

October 2, 2008

I - 08-027

COMPATIBILITY OF OFFICES:
County Board of Health Member
and City Council Member

The Honorable Michael L. Wepsiec
State's Attorney, Jackson County
Jackson County Courthouse
Third Floor
Murphysboro, Illinois 62966

Dear Mr. Wepsiec:

I have your letter inquiring whether the offices of city council member and county board of health member are compatible. For the reasons discussed below, the offices of city council member and county board of health member are incompatible, and, therefore, one person may not hold both offices simultaneously.

BACKGROUND

Based on the information you have provided, it appears that the Jackson County Health Department operates under division 5-25 of the Counties Code (55 ILCS 5/5-25001 *et seq.* (West 2006)), rather than division 5-20 of the Counties Code (*see* 55 ILCS 5/5-20001 *et seq.* (West 2006)). Pursuant to section 5-25012 of the Counties Code (55 ILCS 5/5-25012 (West 2006)), each county health department is managed by a board of health consisting of 8 to 12 members appointed as prescribed by law. Further, your letter indicates that the county board of health member who is the focus of your inquiry also serves as a member of the city council of a municipality with a weak mayor city managerial form of government. *See* 65 ILCS 5/5-1-1 *et seq.* (West 2006). The mayor and city council constitute the corporate authorities for a city (*see generally* 65 ILCS 5/1-1-2 (West 2006)) and are authorized to exercise the powers thereof. 65 ILCS 5/11-1-1 *et seq.* (West 2006).

ANALYSIS

The common law doctrine of incompatibility of offices precludes simultaneous tenure in two public offices if the constitution or a statute specifically prohibits the occupant of either office from holding the other, or if the duties of the two offices conflict so that the holder of one cannot, in every instance, fully and faithfully discharge all of the duties of the other office. *People ex rel. Fitzsimmons v. Swailes*, 101 Ill. 2d 458, 465 (1984); *People ex rel. Smith v. Brown*, 356 Ill. App. 3d 1096, 1098 (2005); *People ex rel. Myers v. Haas*, 145 Ill. App. 283, 286 (1908). There is no constitutional or statutory provision which expressly prohibits one person from simultaneously serving as a city council member and county board of health member. The issue, therefore, is whether the duties of either office are such that the holder of one cannot fully and faithfully discharge all of the duties of the other.

County boards of health established under division 5-25 of the Counties Code are charged with managing the county health department. In this regard, the county board of health is required to provide offices, facilities, and appliances for the health department; investigate the existence of any contagious or infectious disease; make all necessary sanitary and health investigations; submit an annual budget to the county board; and appoint officers and employees, as necessary. 55 ILCS 5/5-25013(A) (West 2006). Section 5-25013 of the Counties Code (55 ILCS 5/5-25013 (West 2006)) vests county boards of health with certain powers and duties, including the authority to "[e]nter into contracts with the State, municipalities, other political subdivisions and non-official agencies for the purchase, sale or exchange of health services[.]" 55 ILCS 5/5-25013(B)(5) (West 2006). By its express terms, subsection 5-25013(B)(5) of the Counties Code authorizes county boards of health to enter into contracts with municipalities to effectuate various duties with which they are charged relating to facilitating the provision of health services.

Similarly, section 11-20-5 of the Illinois Municipal Code (the Municipal Code) (65 ILCS 5/11-20-5 (West 2006)) authorizes the corporate authorities of each municipality to do all acts and make all regulations which may be necessary or expedient for the promotion of health or the suppression of diseases. Further, section 1-1-5 of the Municipal Code (65 ILCS 5/1-1-5 (West 2006)) authorizes a city council to jointly exercise with "other municipal corporations or governmental subdivisions or districts"¹ the powers set forth in the Municipal Code, which include various duties relating to facilitating the provision of specified health services. *See, e.g.*, 65 ILCS 5/7-4-1, 11-20-3 (West 2006).

¹For purposes of section 1-1-5 of the Municipal Code, the phrase "municipal corporations or governmental subdivisions or districts" includes, among other things, counties. 65 ILCS 5/1-1-5 (West 2006).

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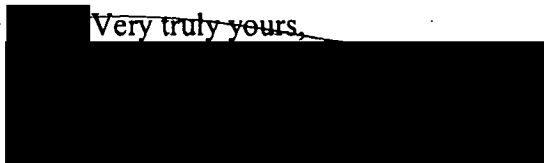
A county board of health member, in exercising the powers granted to the board by division 5-25 of the Counties Code, is under a duty to represent and protect the best interests of the health department and the county he or she serves. Likewise, a city council member is under a duty to represent and protect the interests of the municipality which he or she serves. 65 ILCS 5/3.1-10-25 (West 2006); Ill. Const. 1970, art. XIII, §3. Given the potential conflicts of duties that arise when one governmental unit contracts with another (*see, e.g.*, 1991 Ill. Att'y Gen. Op. 188; Ill. Att'y Gen. Inf. Op. No. I-92-060, issued December 8, 1992), a person who simultaneously serves as both a county board of health member and a city council member would not be able to represent the interests of both entities adequately, fully, and faithfully. Thus, these offices are incompatible.

CONCLUSION

The offices of city council member and county board of health member are incompatible. One person, therefore, may not 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,


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

LEP:MMS:lk



WILLIAM J. SCOTT

ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD
62706



October 23, 1975

FILE NO. NP-985

COUNTIES:

County Board - Compatibility
of Member of County Board and
County Board of Public Health

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

Dear Mr. Hoogasian:

This responds to your request for an opinion as to whether section 1 of "AN ACT to prevent fraudulent and corrupt practices, etc." (Ill. Rev. Stat. 1973, ch. 102, par. 1) precludes the appointment of a county board member as a voting member of a county board of health. Section 1 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. This Section shall not preclude a member of the county

NP 985

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board from being selected or from serving as
a member of the County Personnel Advisory
Board * * * "

Section 13 of "AN ACT in relation to the establishment
and maintenance of county and multiple-county health departments"
(Ill. Rev. Stat. 1973, ch. 111 1/2, par. 20c12), provides in
part as follows:

"§ 13. Except in those cases where a board
of 12 members is provided for as authorized in
this Section, each county health department shall
be managed by a board of health consisting of 8
members appointed by the president or chairman
of the county board, with the approval of the
county board, for a 3 year term, except that of
the first appointees 2 shall serve for one year,
2 for 2 years, 3 for 3 years and the term of the
member appointed from the county board, as pro-
vided in this Section, shall be one year and shall
continue until reappointment or until a successor
is appointed.

* * * At least two members of each county board
of health shall be physicians licensed in Illinois
to practice medicine in all of its branches, at
least one member shall be a dentist licensed in
Illinois and one member shall be chosen from the
county board of supervisors or commissioners as
the case may be. At least one member from each
county on each multiple-county board of health
shall be a physician licensed in Illinois to
practice medicine in all of its branches, one
member from each county on each multiple-county
board of health shall be chosen from the county
board of supervisors or commissioners, as the
case may be, and at least one member of the board
of health shall be a dentist licensed in Illinois.
* * * "

There is a conflict between the provisions of this

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section and those of section 1 of the Corrupt Practices Act. This conflict may be resolved by reference to the applicable rules of statutory construction. It is the rule in Illinois that where a conflict exists between two statutes, one general and one specific, the specific statute will prevail. East Maine Township, Community Assoc. v. Pioneer Trust and Savings Bank, 15 Ill. App. 250; People v. Hale, 55 Ill. App. 2d 260; Jansen v. Illinois Municipal Retirement Fund, 58 Ill. 2d 97.

It is, therefore, my opinion that the provisions of section 13 of "AN ACT in relation to the establishment and maintenance of county and multiple-county health departments", supra, being specific, must prevail over those of section 1 of the Corrupt Practices Act to the extent of any conflict. It is clear that the General Assembly intended by adoption of section 13 to require that a county board of health include one member from each county board.

In response to your other questions, I refer you to opinions No. S-419, issued March 13, 1972; No. NP-866, issued February 4, 1975; and No. S-877, issued March 17, 1975; Public Acts 79-457 and 79-458. I am unable to advise you specifically on your questions concerning "other committees", youth service bureaus and criminal justice councils without more detailed

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information, other than to note that the prohibition of section 1 of the Corrupt Practices Act is broad and generally prohibits the county board from appointing or electing its own members to other offices. If you have additional questions, I will advise you further.

Very truly yours,

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



ROLAND W. BURRIS

ATTORNEY GENERAL
STATE OF ILLINOIS



August 24, 1994

I - 94 - 044

COMPATIBILITY OF OFFICES:
County Board of Health Member
and Forest Preserve District
Commissioner

Honorable Clark E. Erickson
State's Attorney, Kankakee County
189 East Court Street
Kankakee, Illinois 60901-3992

Attn: Brenda Gorski, Assistant
State's Attorney

Dear Mr. Erickson:

I have Assistant State's Attorney Brenda L. Gorski's letter wherein she inquired, on your behalf, whether the offices of county board of health member and forest preserve district commissioner may be held by the same person simultaneously. Because of the nature of this inquiry, I do not believe that the issuance of an official opinion will be necessary. I will, however, comment informally upon the question which has been raised.

Offices are deemed to be incompatible where the constitution or a statute specifically prohibits the occupant of one office from holding the other, or where the duties of the two offices conflict so that the holder of one cannot, in every instance, fully and faithfully discharge the duties of the other. (People ex rel. Myers v. Haas (1908), 145 Ill. App. 283, 286; Stephens v. Education Officers Electoral Board (1992), 236 Ill. App. 3d 159, 162-63; see generally People ex rel. Teros v. Verbeck (1987), 155 Ill. App. 3d 81.) There appear to be no constitutional or statutory provisions which expressly prohibit one person from simultaneously holding the two offices in

question. It is, therefore, necessary to examine the duties, functions and powers of the offices of forest preserve district commissioner and county board of health member to determine whether a conflict of duties could arise if one person were to occupy both offices.

The provisions of the Downstate Forest Preserve District Act (70 ILCS 805/0.001 et seq. (West 1992)) govern the operations of forest preserve districts in counties having a population of less than 3,000,000. (70 ILCS 805/.01 (West 1992).) As provided in the Act, the powers of the forest preserve district are exercised by its board of commissioners. (70 ILCS 805/3a (West 1993 Supp.)) The duties of the forest preserve district board include, inter alia, acquiring and holding lands for the use of the forest preserve district (70 ILCS 805/5 (West 1992)); contracting with local governmental entities to pay for the costs of improving or maintaining public roadways which provide access to the lands and facilities of the district (70 ILCS 805/5 (West 1992)); controlling and policing navigable bodies of water located adjacent to a district (70 ILCS 805/5c (West 1992)); passing and enforcing necessary ordinances, rules and regulations for management of the district's property and for conducting the business of the district (70 ILCS 805/8 (West 1992)); appointing and maintaining a police force for the enforcement and observance of ordinances and laws (70 ILCS 805/8a (West 1992)); levying taxes for the operation of the district (70 ILCS 805/13.1 (West 1993 Supp.)); appropriating monies required to defray necessary expenses and liabilities of the district (70 ILCS 805/13.3 (West 1992)); and maintaining and operating recreational and cultural facilities, including, but not limited to, natatoriums, swimming pools, ice skating rinks and botanical gardens (70 ILCS 805/18.1 (West 1992)).

The functions of the county board of health, on the other hand, relate to the management of the county's health department. (55 ILCS 5/5-25012 (West 1992).) In this regard, the county board of health is required, inter alia, to provide offices, facilities and appliances for the health department; investigate the existence of any contagious or infectious disease; make all necessary sanitary and health investigations; submit an annual budget to the county board; and appoint officers and employees, as necessary. (55 ILCS 5/5-25013(A) (West 1993 Supp.)) Moreover, a county board of health is authorized, inter alia, to initiate and carry out programs which promote and protect the public health; recommend to the county board the adoption of ordinances to promote and protect public health; and enter into contracts with the State, municipalities, other political subdivisions and non-official agencies for the purchase, sale or exchange of health services. (55 ILCS 5/5-

25013(B) (West 1993 Supp.) .)

A review of the duties of the two specified offices has failed to disclose any potential conflicts which would prevent one person from faithfully discharging the duties of the two offices simultaneously. As is apparent from the summaries of duties listed above, a forest preserve district and a county board of health perform very different functions which do not overlap. There is no express authorization for one entity to contract with the other, nor any obvious circumstances in which there would be interaction between the two governing bounds. Consequently, in the absence of potentially conflicting duties, it appears that one person may serve as county board of health member and forest preserve district commissioner simultaneously.

- This is not an official opinion of the Attorney General. Please note that it is the Attorney General's policy that all requests for opinions originating in a State's Attorney's office be addressed to the Attorney General, and be signed or endorsed by, the State's Attorney. See 1991 Ill. Att'y Gen. Op. v, vi.

Very truly yours,



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

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