



OFFICE OF THE ATTORNEY GENERAL

STATE OF ILLINOIS

August 23, 1995

Jim Ryan

ATTORNEY GENERAL

I - 95-026

COMPATIBILITY OF OFFICES:
County Clerk and Recorder
and City Alderman;

GOVERNMENTAL ETHICS AND
CONFLICT OF INTEREST:
County Clerk and Recorder
and City Alderman; County
Clerk and Recorder Operating
Grocery Store Doing Business
with County Sheriff

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

Dear Mr. Knight:

I have your letter wherein you inquire whether one person may serve simultaneously in the offices of county clerk and recorder and city alderman. You have also asked whether there would be a violation of section 3 of the Public Officer Prohibited Activities Act if the county clerk and recorder owns a grocery store from which the county sheriff makes purchases for governmental purposes. Because of the nature of your inquiries, I do not believe the issuance of an official opinion is necessary. I will, however, comment informally upon the questions you have raised.

With respect to your first question, 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

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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; Stephens v. Education Officers Electoral Bd. (1992), 236 Ill. App. 3d 159, 163; People ex rel. Myers v. Haas (1908), 145 Ill. App. 283, 286.) There is no constitutional or statutory provision which prohibits one person from simultaneously serving in the offices of county clerk and recorder and city alderman. Therefore, the issue is whether the duties of either office are such that the holder of one cannot, in every instance, fully and faithfully discharge the duties of the other.

Initially, questions have been raised concerning whether the duties of these offices would conflict because the county clerk is required to extend taxes for the various taxing districts in the county, including the city which he represents as alderman. Section 18-45 of the Property Tax Code (35 ILCS 200/18-45 (West 1994)) provides, in pertinent part:

"Except as provided below, each county clerk shall estimate and determine the rate per cent upon the equalized assessed valuation for the levy year of the property in the county's taxing districts and special service areas, as established under Article VII of the Illinois Constitution, so that the rate will produce, within the proper divisions of that county, not less than the net amount that will be required by the county board or certified to the county clerk according to law. Prior to extension, the county clerk shall determine the maximum amount of tax authorized to be levied by any statute. If the amount of any tax certified to the county clerk for extension exceeds the maximum, the clerk shall extend only the maximum allowable levy.

* * *

In People ex rel. Carr v. Pittsburgh, Cincinnati, Chicago and St. Louis Railway Co. (1925), 316 Ill. 410, 414, the court discussed the nature of the duties performed by the county clerk in the extension of taxes:

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* * *

* * * After a tax is once levied or imposed, i.e., ordered to be laid, further

Honorable John Knight - 3.

proceedings, such as extending, assessing and collecting the tax, are administrative. The county clerk extends taxes where the levy is complete. He has no power to levy taxes nor to determine whether taxes have been legally assessed. The duties which he is required to perform in the extension of taxes are prescribed by law, and are neither legislative nor judicial but purely ministerial in character. * * *

* * *

"

In general, ministerial duties have not been deemed to conflict with discretionary duties in determining whether two offices are incompatible. See, e.g. informal opinion No. I-93-043, issued August 31, 1993.

The duty of the county clerk to set the rate percent at which taxes will be extended against the assessed valuation of property is a ministerial act and, as such, does not involve any exercise of discretionary judgment. No conflict, therefore, would appear to exist between the duty of the county clerk to extend taxes and the duty of a city alderman to provide for the levy and collection of taxes for corporate purposes of the municipality. (65 ILCS 5/8-3-1 et seq. (West 1994).)

Similarly, other tax-related duties of the county clerk, such as verifying that a projected tax rate does not exceed the maximum rate allowed by law or that a taxing district is in compliance with the Truth in Taxation Act (see 35 ILCS 200/18-105 (West 1994)), are also ministerial in character since they do not require discretionary judgments on the part of the clerk. The abatement of taxes is another ministerial tax-related duty of the county clerk, since the decisions to abate are made solely by the respective taxing districts. (See 35 ILCS 200/18-45, 200/18-170, 200/18-175 (West 1994).) Accordingly, because there appears to be no conflict between the various tax-related duties of a county clerk and the discretionary duties of a city alderman, the offices would not be rendered incompatible on this basis.

I would further note that the county clerk's duty to act as secretary to the county board would not appear to preclude the county clerk from serving simultaneously as a city alderman. The county clerk's secretarial duties to the county board (55 ILCS 5/3-2013 (West 1994)) are clearly ministerial. The county clerk is not considered to be a county board member even when acting in his or her capacity as secretary to the county board.

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Thus, the county clerk would not be in a position to act or vote upon a contract entered into with the city, an event which Attorney General Scott concluded gives rise to a conflict of interest. (See 1972 Ill. Att'y Gen. Op. 45.)

In addition to his duties as county clerk, the individual who is the focus of your inquiry also serves as county recorder, as is provided for in those counties having a population of less than 60,000 inhabitants. (55 ILCS 5/3-5001 (West 1994).) Article 3-5 of the Counties Code (55 ILCS 5/3-5001 et seq. (West 1994)) sets forth the duties of a county recorder. A review of the statutes indicates, inter alia, that it is the recorder's duty to record "* * * bills of sale and personal property, chattel mortgages and releases, extensions and assignments thereof, * * * certificates of discharge * * * from the military, aviation and naval forces of the United States * * *" (55 ILCS 5/3-5012 (West 1994)), deeds, assignments of mortgages, leases or liens and maps or plats of subdivisions (55 ILCS 5/3-5018 (West 1994)).

Many of the acts set forth above have been found to be ministerial in nature. (See Interstate Bond Co. v. Baran (1950), 406 Ill. 161, 164; 1978 Ill. Att'y Gen. Op. 97.) As previously indicated, ministerial duties have not generally been deemed to conflict with discretionary duties in determining whether two offices are incompatible. A review of the other duties of a county recorder fails to indicate a conflict with those of a city alderman. Accordingly, it appears that the offices of county clerk and recorder and city alderman are not incompatible, and, therefore, one person may hold both offices simultaneously.

You have also inquired whether a prohibited interest in a contract would arise because the county clerk and recorder owns a grocery store from which the county sheriff makes purchases for governmental purposes. Section 3 of the Public Officer Prohibited Activities Act (50 ILCS 105/3 (West 1994)) prohibits a public officer from having any interest in any contract or work the making or letting of which he or she may be called upon to act or vote. It is well settled that the interest prohibited by section 3 is one which is pecuniary in nature. Panozzo v. City of Rockford (1940), 306 Ill. App. 443.

In reviewing the statutes setting forth the duties of county clerks and recorders, it does not appear that a county clerk and recorder would be a party to a contract entered into by a county sheriff. Moreover, in contrast to the circumstances in Peabody v. Sanitary District of Chicago (1928), 330 Ill. 250, in which the supreme court held that a contract between the board of trustees of a sanitary district and a contractor was void because

Honorable John Knight - 5.

the duties of the district's treasurer included serving as financial advisor to the trustees, and the treasurer might have been called upon to advise the board as to the financial status of the bidders, it does not appear that a county clerk and recorder is under a duty to advise the county sheriff or the county board regarding the financial status of potential contractors or otherwise to act on the letting of a contract by the county sheriff. Consequently, it does not appear that section 3 of the Public Officer Prohibited Activities Act would be violated in these circumstances.

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:LP:dn



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

February 28, 1996

Jim Ryan
ATTORNEY GENERAL

I - 96-018

COMPATIBILITY OF OFFICES:
City Commissioner and County Commissioner,
County Clerk or Circuit Clerk

Honorable David N. Stanton
State's Attorney, Perry County
One Public Square
Pinckneyville, Illinois 62274

Dear Mr. Stanton:

I have your letter wherein you inquire whether one person may simultaneously hold the offices of city commissioner and either county commissioner, county clerk or circuit clerk. Because of the nature of your inquiry, I do not believe that the issuance of an official opinion is necessary. I will, however, comment informally upon the question you have raised.

Offices are deemed to be incompatible where the constitution or a statute specifically prohibits the occupant of 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 city commissioner and county clerk, circuit clerk or county commissioner. Therefore, the issue is whether the duties of the offices are such that the holder of one cannot, in every instance, fully and faithfully discharge the duties of the other.

Honorable David N. Stanton - 2.

In opinion No. S-419, issued March 13, 1972 (1972 Ill. Att'y Gen. Op. 45), Attorney General Scott concluded that a county board member could not simultaneously serve as the mayor of a city or as an alderman or village trustee. Potential areas of conflict between the interests of a county and a municipality located within the county, as cited in opinion No. S-419, include numerous contractual relationships likely to arise, the extraterritorial jurisdiction of municipalities, competition for State or Federal funding in some areas and zoning issues. Attorney General Scott's analysis is equally applicable where the city and the county are organized under the commission form of government. Therefore, it appears that the offices of city commissioner and county commissioner are incompatible.

Although I recognize that it is not applicable in the specific circumstances concerning which you have inquired, I note that the General Assembly has recently enacted an exception to the general common law rule of incompatibility. Public Act 88-623, effective January 1, 1995, amended section 1 of the Public Officer Prohibited Activities Act to permit a county board member to hold certain other offices during his or her term, including 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. I understand that the city in question has a population of approximately 3,000; therefore, this exception is not relevant to your inquiry.

In informal opinion I-95-026, issued August 23, 1995, it was concluded that the offices of city alderman and county clerk and recorder are not incompatible. This conclusion was based upon the fact that any duties of the county clerk and recorder which might concern the city are entirely ministerial in nature. Ministerial, or non-discretionary, duties have not been deemed to conflict with discretionary duties in determining whether two offices are incompatible. (Ill. Att'y Gen. Op. No. 82-039(NP), issued November 10, 1982.) This conclusion would also be applicable to the offices of city commissioner and county clerk.

The election and duties of circuit clerks are governed by the Clerks of Courts Act (705 ILCS 105/0.01 et seq. (West 1994)). Each clerk of the circuit court is required to keep office hours as ordered by the court (705 ILCS 105/6 (West 1994)), to attend personally to the duties of the office (705 ILCS 105/8 (West 1994)), including attendance at sessions of the court (705 ILCS 105/13 (West 1994)), and to keep the records of the court (705 ILCS 105/14, 16, 24, 25, 26 (West 1994)). Fur-

ther, the clerk is responsible for collecting and disbursing various fees, fines, costs, penalties and other amounts. (705 ILCS 105/27.1-27.6 (West 1994).)

A clerk of a court is an officer of the court who has charge of its clerical functions. As such, he or she is an officer of the judicial department of the State. (People ex rel. Vanderburg v. Brady (1916), 275 Ill. 261, 262.) The clerk is a ministerial officer of the court. (People ex rel. Pardridge v. Windes (1916), 275 Ill. 108, 113.) Therefore, the circuit clerk is not an officer of the county, and has no responsibilities with respect to county government. Further, apart from the administration of the internal affairs of his or her office, the circuit clerk has no discretionary duties.

A circuit clerk would be responsible for receiving for filing any document required to be filed with the court on behalf of or in opposition to the city. Further, the clerk would be required to disburse to the city any funds received on its behalf. (See, e.g., 705 ILCS 105/27.5, 27.6 (West 1994).) Both of these tasks, however, are ministerial in nature. They are governed entirely by statute, and the clerk has no discretion in the manner of their performance. As discussed above with respect to the position of county clerk, such ministerial duties are not deemed to conflict with discretionary duties in determining whether two offices are compatible.

In a city having a commission form of government, each commissioner is a part of the council, but has executive and administrative duties as well as legislative duties. (65 ILCS 5/4-5-1, 4-5-2 (West 1994).) Each commissioner is a superintendent of a municipal department. (65 ILCS 5/4-5-3 (West 1994).) While the ministerial duties of the office of circuit court clerk, like those of a county clerk, will not give rise to interests which conflict with the duties of a city commissioner, it must be considered whether, as a practical matter, one individual can properly attend to all the duties of each office.

As noted above, a circuit clerk is required to attend personally to the duties of his or her office, to attend upon sessions of the court and to keep his or her office open during regular business hours. A county clerk is similarly required to keep regular office hours. (55 ILCS 5/3-2007 (West 1994).) It may be presumed that the administration of a municipal department in a city of any substantial size will require the personal attention of a city commissioner on a regular basis. Therefore, depending upon the specific circumstances to be found in any particular city, county, and court, incompatibility may arise if

Honorable David N. Stanton - 4.

issues of time and space preclude one person from properly fulfilling all of the duties of each office. (People ex rel. Myers v. Haas (1908), 145 Ill. App. 283, 288.) Whether sufficient time is available to execute the duties of both offices presents a factual question which we cannot resolve.

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

Sincerely,

A black rectangular redaction box covering the signature of Michael J. Luke.

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

MJL:KJS:cj



ROLAND W. BURRIS

ATTORNEY GENERAL
STATE OF ILLINOIS



January 6, 1995

I - 95 - 001

COMPATIBILITY OF OFFICES:
County Clerk and County
Historic Museum Board Member

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

Dear Mr. Kaid:

I have your letter wherein you inquire whether the offices of county clerk and county historic museum board member are incompatible. 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.) There is no constitutional or statutory provision which prohibits one person from simultaneously serving as a county clerk and as a county historic museum board member. Therefore, the issue is whether the duties of either office are such that the holder of one cannot fully and faithfully discharge the duties of the other in every instance.

Honorable Terry C. Kaid - 2 -.

Initially, you have asked whether the duties of these offices would conflict because the county is authorized to levy a tax to maintain a historical museum (see 55 ILCS 5/6-23001 (West 1992)), and the county clerk is required to extend taxes for the various taxing districts in the county. Section 18-45 of the Property Tax Code (35 ILCS 200/18-45 (West 1993 Supp.)) provides, in pertinent part:

"Except as provided below, each county clerk shall estimate and determine the rate per cent upon the equalized assessed valuation for the levy year of the property in the county's taxing districts and special service areas, as established under Article VII of the Illinois Constitution, so that the rate will produce, within the proper divisions of that county, not less than the net amount that will be required by the county board or certified to the county clerk according to law. Prior to extension, the county clerk shall determine the maximum amount of tax authorized to be levied by any statute. If the amount of any tax certified to the county clerk for extension exceeds the maximum, the clerk shall extend only the maximum allowable levy.

* * *

"

In People ex rel. Carr v. Pittsburgh, Cincinnati, Chicago and St. Louis Railway Co. (1925), 316 Ill. 410, 414, the court discussed the nature of the duties performed by the county clerk in the extension of taxes:

"

* * *

* * * After a tax is once levied or imposed, -i.e., ordered to be laid, -further proceedings, such as extending, assessing and collecting the tax, are administrative. The county clerk extends taxes where the levy is complete. He has no power to levy taxes nor to determine whether taxes have been legally assessed. The duties which he is required to perform in the extension of taxes are prescribed by law, and are neither

legislative nor judicial but purely
ministerial in character. * * *

* * *

In general, ministerial duties have not been deemed to conflict with discretionary duties in determining whether two offices are incompatible. See opinion No. I-93-043, issued August 31, 1993.

The duty of the county clerk to set the rate percent at which taxes will be extended against the assessed valuation of property is a ministerial act and, as such, does not involve any exercise of discretionary judgement. No conflict, therefore, would appear to exist between the duty of the county clerk to extend taxes and the duty of a county historic museum board member to propose to the county board the amount of revenue to be levied for the county historical museum. (55 ILCS 5/6-23001 (West 1992).)

Similarly, other tax-related responsibilities of the county clerk, such as verifying that a projected tax rate does not exceed the maximum rate allowed by law or that a taxing district is in compliance with the Truth in Taxation Act (see 35 ILCS 200/18-105 (West 1993 Supp.)), are also ministerial in character since they do not require discretionary judgements on the part of the clerk. Abatement of taxes on certain property is another ministerial tax related duty of the county clerk as the decisions to abate are made solely by the respective taxing districts. (See 35 ILCS 200/18-45, 200/18-170, 200/18-175 (West 1993 Supp.).)

Accordingly, because there appears to be no conflict between the various tax-related duties of a county clerk and the discretionary duties of a county historic museum board member, the offices would not be rendered incompatible on this basis.

I would further note that the county clerk's duty to act as secretary to the county board, which appoints the county historic museum board members, would not appear to preclude the county clerk from serving simultaneously as a county historic museum board member. The county clerk's secretarial duties to the county board (55 ILCS 5/3-2013 (West 1992)) are clearly ministerial. There is nothing in the nature of the county board's role as appointing authority for the county historic museum board which would appear to render the county clerk ineligible for appointment there to. I note, parenthetically, that section 1 of the Public Officer Prohibited Activities Act (50 ILCS 105/1 (West 1992)), which prohibits county board members


Honorable Terry C. Kaid - 4 -.

from being appointed by the county board to other offices, is not applicable since the county clerk is not considered to be a county board member even when acting in his or her capacity as secretary to the county board.

Accordingly, it appears that the offices of county clerk and county historic museum board member are not incompatible, and, therefore, one person may hold both offices simultaneously.

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

Very truly yours,


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

MJL:LP:dn



ROLAND W. BURRIS

ATTORNEY GENERAL
STATE OF ILLINOIS



August 31, 1993

I - 93-043

COMPATIBILITY OF OFFICES:
County Clerk and Hospital District Director

Honorable H. Wesley Wilkins
State's Attorney, Union County
309 West Market
Jonesboro, Illinois 62952

Dear Mr. Wilkins:

I have your letter wherein you inquire whether the offices of county clerk and hospital district director are incompatible. 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. (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 is no constitutional or statutory provision which prohibits one person from simultaneously serving as a county clerk and as a hospital district director. Therefore, the issue 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.

Initially, you have asked whether the duties of these offices would conflict because the hospital is an independent taxing authority, and the county clerk is required to extend

taxes for the various taxing districts in the county. Section 162 of the Revenue Act of 1939 (Ill. Rev. Stat. 1991, ch. 120, par. 643; 35 ILCS 205/162 (West 1992)) provides, in pertinent part:

"Except as provided below, each county clerk shall estimate and determine the rate per cent upon the equalized assessed valuation for the levy year * * * of the property in the respective taxing districts * * * in his county that will produce, within the proper divisions of such county, not less than the net amount of the several sums that will be required by the county board or certified to him according to law; * * *

* * *

Each county clerk shall determine the maximum rate authorized for each county, taxing district or school district other than a home rule unit prior to the extending taxes. * * * If the amount of any tax certified to the county clerk for extension shall exceed the maximum allowed by law, determined as above provided, such excess shall be disregarded, and the residue only treated as the amount certified for extension.

* * *

"

In People ex rel. Carr v. Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company (1925), 316 Ill. 410, 414, the court discussed the administrative or ministerial nature of the duties performed by the county clerk in the extension of taxes:

"

* * *

After a tax is once levied or imposed, --i.e., ordered to be laid,--further proceedings, such as extending, assessing and collecting the tax, are administrative. The county clerk extends taxes where the levy is complete. He has no power to levy taxes nor to determine whether taxes have been legally assessed. The duties which he is required to perform in the extension of taxes are pre-

scribed by law, and are neither legislative nor judicial but purely ministerial in character. * * *

* * *

"

In general, purely ministerial duties have not been deemed to conflict with discretionary duties in determining whether two offices are incompatible. See opinion No. 82-039 (NP), issued November 10, 1982.

The duty of the county clerk to set the rate percent at which taxes will be extended against the assessed valuation of property is a ministerial act and, as such, does not involve any exercise of discretionary judgment. No conflict, therefore, would appear to exist between the duty of the county clerk to extend taxes and the duty of a hospital district director to authorize the amount of revenue to be levied for the hospital district. (Ill. Rev. Stat. 1991, ch. 23, par. 1270; 70 ILCS 910/20 (West 1992).)

Similarly, other tax-related responsibilities of the county clerk, such as verifying that a projected tax rate does not exceed the maximum rate allowed by law and that a taxing district is in compliance with the Truth in Taxation Act (see Ill. Rev. Stat. 1991, ch. 120, par. 643; 35 ILCS 205/162 (West 1992)), are also ministerial in character since they do not require discretionary judgments on the part of the clerk. Abatement of taxes on certain property is another ministerial tax-related duty of the county clerk as the decisions to abate are made solely by the respective taxing districts. (See Ill. Rev. Stat. 1991, ch. 120, pars. 643, 643e, 643f, 643h; 35 ILCS 205/162, 162e, 162f, 162h (West 1992).)

Accordingly, because there appears to be no conflict between the various tax-related duties of a county clerk and the discretionary duties of a hospital district director, the offices would not be rendered incompatible on this basis.

You have also asked whether the county clerk's duty to act as secretary to the county board, which appoints the hospital district directors, would bar the county clerk from being appointed a hospital district director. The county clerk's secretarial duties to the county board (Ill. Rev. Stat. 1991, ch. 34, par. 3-2013; 55 ILCS 5/3-2013 (West 1992)) are clearly ministerial. A hospital district is an independent municipal corporation, separate and apart from the county. (Ill. Rev. Stat. 1991, ch. 23, par. 1265; 70 ILCS 910/15 (West 1992).) There is nothing in the nature of the county board's role as

Honorable H. Wesley Wilkins - 4.

appointing authority for the hospital district board (Ill. Rev. Stat. 1991, ch. 23, par. 1261; 70 ILCS 910/11 (West 1992)) which would appear to render the county clerk ineligible for appointment to the hospital district board. I note, parenthetically, that section 1 of the Public Officer Prohibited Activities Act (Ill. Rev. Stat. 1991, ch. 102, par. 1; 50 ILCS 105/1 (West 1992)), which prohibits county board members from being appointed by the county board to other offices, is not applicable since the county clerk is not considered to be a county board member even when acting in his or her capacity as secretary to the county board.

I would also point out that no conflict appears to exist between the other ministerial duties of a county clerk and the duties of a hospital district director who, as a member of the governing board of a hospital district, exercises the corporate powers of the hospital district. (See Ill. Rev. Stat. 1991, ch. 23, par. 1265; 70 ILCS 910/15 (West 1992).) Other duties of a county clerk include the care and custody of various county records and papers (Ill. Rev. Stat. 1991, ch. 34, par. 3-2012; 55 ILCS 5/3-2012 (West 1992)); the recording of county ordinances (Ill. Rev. Stat. 1991, ch. 34, par. 5-29005; 55 ILCS 5/5-29005 (West 1992)); the maintenance of certain special funds (Ill. Rev. Stat. 1991, ch. 34, par. 3-2003.4; 55 ILCS 5/3-2003.4 (West 1992)); and various election duties, such as voter registration and the printing of ballots (Ill. Rev. Stat. 1991, ch. 46, pars. 16-5, 17-8; 10 ILCS 5/16-5, 17-8 (West 1992)). As is apparent, there is no relationship between these non-discretionary duties of the county clerk and the corporate duties of a hospital district director which would conflict and render the offices incompatible.

Accordingly, it appears that the offices of county clerk and hospital district director are not incompatible, and, therefore, 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

MJL:JM:cj



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

January 27, 2000

Jim Ryan
ATTORNEY GENERAL

I - 00-002

COMPATIBILITY OF OFFICES:
County Clerk and Recorder
and Park District Commissioner

The Honorable Timothy J. McCann
State's Attorney, Kendall County
807 West John Street
Yorkville, Illinois 60560

Dear Mr. McCann:

I have your letter wherein you inquire whether a county clerk and recorder may simultaneously serve as a commissioner of a park district which is located within the county. 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 public offices where the constitution or a statute specifically prohibits the occupant of either office from holding the other, or where the duties of the two offices may 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; People ex rel. Myers v. Haas (1908), 145 Ill. App. 283, 286.) There appears to be no constitutional or statutory provision which prohibits a person from holding both of the offices in question. 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.

The office of park district commissioner is created by, and the duties thereof are set forth in, the Park District Code (70 ILCS 1205/1-1 et seq. (West 1998)). In reviewing the provisions of the Code, it appears that park districts are expressly authorized to enter into lease agreements with other units of local government for the provision of swimming pools and ice skating rinks (70 ILCS 1205/9-1d (West 1998)), golf course facilities (70 ILCS 1205/9.1-5 (West 1998)), tennis, handball, racquetball or squash courts (70 ILCS 1205/9.2-5 (West 1998)) and zoo facilities (70 ILCS 1205/9.2-5 (West 1998)). Section 8-10b of the Code (70 ILCS 1205/8-10b (West 1998)) additionally authorizes a park district and another unit of local government to take any action jointly relating to recreational programs for the handicapped that could be taken individually. Although the term "unit of local government" is not defined in the Park District Code, under article VII, section 1 of the Illinois Constitution of 1970, the phrase includes, inter alia, counties. In addition to the provisions of the Park District Code, section 6 of the Airports Act (620 ILCS 20/6 (West 1998)) expressly authorizes park districts and counties to enter into agreements for the joint establishment and operation of airports and airport facilities..

The board of commissioners of a park district constitutes the corporate authority of the district (70 ILCS 1205/4-1 (West 1998)). Therefore, the commissioners have the discretion and authority collectively to exercise the powers noted above.

The office of county clerk is created by article VII, section 4(c) of the Illinois Constitution of 1970. Section 3-2013 of the Counties Code (55 ILCS 5/3-2013 (West 1998)) sets out the general duties of the county clerk, which include, inter alia, the duty:

"

* * *

1st. To act as clerk of the county board of his county and to keep an accurate record of the proceedings of said board, file and preserve all bills of account acted upon by the board, and when any account is allowed or disallowed, he shall note that fact thereon, and when a part of any account is

allowed he shall note particularly the items allowed.

* * *

The duties of a county clerk are essentially ministerial in nature. As a general principle, ministerial duties have not been deemed to conflict with discretionary duties in determining whether two offices are incompatible. See, e.g., Ill. Att'y Gen. Op. No. 98-002, issued January 15, 1998; Ill. Att'y Gen. Op. No. 82-039, issued November 10, 1982; informal opinion No. I-96-018, issued February 28, 1996; informal opinion No. I-95-026, issued August 23, 1995; informal opinion No. I-93-043, issued August 31, 1993.

Under the provisions of the Park District Code and the Joint Airports Act, it is foreseeable that counties and park districts may enter into agreements regarding certain park and airport functions. Such agreements would require the exercise of discretion by the boards of the respective units of local government. The county clerk's duty to act as secretary of the county board, however is clearly ministerial. The county board, not the county clerk, is responsible for entering into intergovernmental agreements in relation to the property and concerns of the county. (55 ILCS 5/5-1005 (West 1998).) The county clerk is not considered to be a county board member by virtue of his or her duty to act as a secretary of the county board. Thus, the county clerk would not be in a position to act or vote upon a contract entered into with the park district.

Additionally, it does not appear that the duty of the county clerk to extend taxes for the various taxing districts in the county, including the park district he or she would represent as park district commissioner, would create a conflict of duties. Section 18-45 of the Property Tax Code (35 ILCS 200/18-45 (West 1998)) provides, in pertinent part:

"* * * Except as provided below, each county clerk shall estimate and determine the rate per cent upon the equalized assessed valuation for the levy year of the property in the county's taxing districts and special service areas, as established under Article VII of the Illinois Constitution, so that the rate will produce, within the proper

divisions of that county, not less than the net amount that will be required by the county board or certified to the county clerk according to law. Prior to extension, the county clerk shall determine the maximum amount of tax authorized to be levied by any statute. If the amount of any tax certified to the county clerk for extension exceeds the maximum, the clerk shall extend only the maximum allowable levy.

* * *

In People ex rel. Carr v. Pittsburgh, Cincinnati, Chicago and St. Louis Ry. Co. (1925), 316 Ill. 410, 414, the court discussed the nature of the duties performed by the county clerk in the extension of taxes:

"

* * *

* * * After a tax is once levied or imposed,--i.e., ordered to be laid,--further proceedings, such as extending, assessing and collecting the tax, are administrative. The county clerk extends taxes where the levy is complete. He has no power to levy taxes nor to determine whether taxes have been legally assessed. The duties which he is required to perform in the extension of taxes are prescribed by law, and are neither legislative nor judicial but purely ministerial in character. * * *

* * *

(Emphasis added.)

The duty of the county clerk to set the rate percent at which taxes will be extended against the assessed valuation of property is a ministerial act and, as such, does not involve the exercise of discretionary judgment. No conflict, therefore, would appear to exist between the duty of the county clerk to extend taxes and the duty of a park district commissioner to provide for the levy and collection of taxes for corporate purposes of the park district. (70 ILCS 1205/5-1 et seq. (West 1998).)

Similarly, other tax-related duties of the county clerk, such as verifying that a projected tax rate does not exceed the maximum rate allowed by law or that a taxing district is in compliance with the Truth in Taxation Law (see 35 ILCS 200/18-105 (West 1998)), are also ministerial in nature, as is the duty to abate taxes, since the decision to abate is made solely by the respective taxing district. (See 35 ILCS 200/18-45, 200/18-165 et seq. (West 1998).) Based upon these statutes, there appears to be no conflict between the various tax-related duties of a county clerk and the discretionary duties of a park district commissioner.

With respect to the duties of recorder, section 3-5001 of the Counties Code (55 ILCS 5/3-5001 (West 1998)) provides that in counties having a population of less than 60,000 inhabitants, including Kendall County, the county clerk shall also serve as the recorder of his or her county. Article 3-5 of the Counties Code (55 ILCS 5/3-5001 et seq. (West 1998)) sets forth the duties of the county recorder. It is the recorder's duty to record "* * * bills of sale of personal property, chattel mortgages and releases, extensions and assignments; thereof * * * certificates of discharge of discharged members of the military, aviation and naval forces of the United States * * *" (55 ILCS 5/3-5012 (West 1998)), deeds, assignments of mortgages, leases or liens and maps and plats of subdivisions (55 ILCS 5/3-5018 (West 1998)).

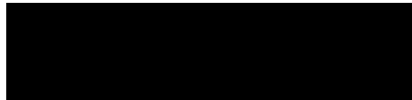
The duties referred to above are generally ministerial in nature. (See Interstate Bond Co. v. Baran (1950), 406 Ill. 161, 164; 1978 Ill. Att'y Gen. Op. 97.) As previously noted, ministerial duties are not generally considered to conflict with discretionary duties in determining whether two offices are incompatible.

Consequently, it appears that the duties of a county clerk and recorder and a park district commissioner would not conflict. Therefore, it appears that the offices of county clerk and park district commissioner are not incompatible, and one person may hold both such offices simultaneously.

The Honorable Timothy J. McCann - 6.

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

Sincerely,



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