



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

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**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.

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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.

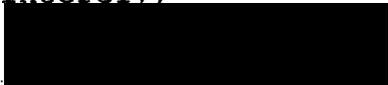
As noted above, a circuit clerk is required to attend personally to the duties of his or her office, to attend upon sessions of the court and to keep his or her office open during regular business hours. A county clerk is similarly required to keep regular office hours. (55 ILCS 5/3-2007 (West 1994).) 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

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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,

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

MJL:KJS:cj