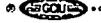




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ATTORNEY GENERAL
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January 6, 1995

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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.

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

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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