



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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ATTORNEY GENERAL

July 1, 2008

I - 08-020

COMPATIBILITY OF OFFICES:
County Board Members and City
Alderman Serving on County Housing
Authority Board Simultaneously

The Honorable John T. Pepmeyer
State's Attorney, Knox County
Knox County Courthouse
200 South Cherry Street
Galesburg, Illinois 61401

Dear Mr. Pepmeyer:

I have your office's letter inquiring whether two members of the Knox County Board and an alderman for the City of Galesburg may serve simultaneously on the Knox County Housing Authority Board. Under section 3 of the Housing Authorities Act (310 ILCS 10/3 (West 2006)), only two "public officers" may serve on the same housing authority board simultaneously. Because the county board members and the city alderman who are the focus of your office's inquiry are all "public officers," as that term is defined in section 3 of the Housing Authorities Act, only two of them may serve on the county housing authority board simultaneously.

BACKGROUND

According to the information your office provided, in 2006 the Knox County Board appointed two Knox County board members to serve as county housing authority commissioners. At the time of the county board members' appointment, an alderman for the City of Galesburg was already serving on the Knox County Housing Authority Board. Your office inquired whether section 3 of the Housing Authorities Act prohibited all three of those individuals from serving on the county housing authority board simultaneously.

ANALYSIS

Housing Authorities Act

Section 3 of the Housing Authorities Act authorizes the creation of a county housing authority, upon the issuance of a certificate by the Department of Commerce and Economic Opportunity, and provides for the appointment of an authority's commissioners. With regard to the qualifications of the commissioners, section 3 provides, in pertinent part:

Any public officer shall be eligible to serve as a commissioner, and the acceptance of appointment as such shall not terminate nor impair his public office, the provision of any statute to the contrary notwithstanding; but no member of the Department shall be eligible to serve as a commissioner, nor shall more than two public officers be commissioners of the same Authority at one time; Provided [sic], that membership on any Authority at the same time of more than two public officers shall not affect or impair the validity of any Act undertaken or power exercised by the Authority pursuant to Law. The term "public officer" as herein used means a person holding a state or local governmental office required to be filled by the vote of electors, and for which provision is made by law for the payment of annual compensation from public funds. (Emphasis added.)

The primary purpose of statutory construction is to ascertain and give effect to the intent of the General Assembly. *In re M.T.*, 221 Ill. 2d 517, 524 (2006). Where statutory language is clear and unambiguous, it must be given effect as written. *DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2006).

Section 3 permits a "public officer" to serve as a county housing authority commissioner, so long as no more than one other "public officer" is simultaneously serving as a commissioner. A "public officer" is defined to include only those individuals: (1) holding a State or local governmental office that is required to be filled by the vote of electors; and (2) "for which provision is made by law for the payment of annual compensation from public funds." The issue, therefore, is whether county board members and city aldermen are "public officers" within the Housing Authorities Act's definition.

County Board Member

Counties are "units of local government." Ill. Const. 1970, art. VII, §1. The powers of a county as a body corporate or politic are exercised by the county board (55 ILCS 5/5-1004 (West 2006)), the members of which are elected by the voters of the county. *See generally* Ill. Const. 1970, art. VII, §3(a); 10 ILCS 5/2A-1.2(a)(5) (West 2006); 55 ILCS 5/2-3009 (West 2006).¹ Accordingly, county board members are persons holding a local governmental office (*see generally* Ill. Att'y Gen. Op. No. 03-008, issued September 8, 2003; 1972 Ill. Att'y Gen. Op. 45, 47) required to be filled by the vote of the county's electors.

Further, section 2-3008 of the Counties Code (55 ILCS 5/2-3008 (West 2006)) expressly provides for county board members to be compensated for their services as such. Pursuant to section 2-3008, at the time of the decennial reapportionment, the county board "shall determine whether the salary to be paid the members to be elected shall be computed on a *per diem* basis, on an annual basis or on a combined *per diem* and annual basis."²

According to the information your office provided, the Knox County board members are compensated on a *per diem* basis. Because Knox County board members are not paid an annual salary, it has been suggested that these county board members may not be considered "public officers," as that term is used in the Housing Authorities Act. A close review of the language of section 3, however, leads to a contrary conclusion.

Under section 3, the term "public officer" refers to a person holding a "local governmental office * * * for which provision is made *by law* for the payment of annual compensation from public funds." (Emphasis added.) Section 3 does not require the actual award of compensation on an annual basis to the officer, but rather simply contemplates that the payment of annual compensation is authorized by law. The term "law" includes the constitution (*see People v. Howard*, No. 104553 (Illinois Supreme Court, April 17, 2008)) and civil or penal statutes, supreme court rules, administrative rules or regulations, and tenets of professional responsibility (*People v. Weber*, 133 Ill. App. 3d 686 (1985)). The term "law" does not

¹Knox County is under township organization. *See* Illinois Secretary of State, Illinois State Archives, Knox County Fact Sheet, <http://www.cyberdriveillinois.com/departments/archives/irad/knox.html>. As a result, it is subject to the provisions of divisions 2-1 and 2-3 of the Counties Code (55 ILCS 5/2-1001 *et seq.*, 2-3001 *et seq.* (West 2006)).

²Section 2-3008 does not define the term "*per diem*." A statutory term which is not defined, however, must be given its ordinary and popularly understood meaning. *Union Electric Co. v. Department of Revenue*, 136 Ill. 2d 385, 397 (1990). The term "*per diem*" commonly refers to compensation or allowance for expenses which is intended to cover twenty-four hours in a day. *County of Christian v. Merrigan*, 191 Ill. 484, 488 (1901); *see also* Ill. Att'y Gen. Inf. Op. No. 1-93-049, issued October 8, 1993.

ordinarily include local ordinances. 1982 Ill. Att'y Gen. Op. 165, 169. Accordingly, although Knox County may elect to compensate its county board members on a *per diem* basis pursuant to county ordinance, under section 2-3008 "provision is made by law for the payment of annual compensation from public funds."

A county board member holds a local government office that is elected by the voters of the county. In addition, provision is made in section 2-3008 for the payment of annual compensation to county board members, and such compensation is paid from the county fisc. *See generally* 55 ILCS 5/6-1002 (West 2006). Therefore, a county board member is a "public officer," as that term is used in the Housing Authorities Act.

City Alderman

Turning to the issue of whether a city alderman is a "public officer," under article VII, section 1, of the Illinois Constitution of 1970, municipalities are "units of local government." Further, under Illinois law, city aldermen are city officers elected by the city's voters. 65 ILCS 5/3.1-15-5 (West 2006); *see also* 10 ILCS 5/2A-1.2(b)(3), (c)(1) (West 2006). Pursuant to section 3.1-50-15 of the Illinois Municipal Code (65 ILCS 5/3.1-50-15 (West 2006)), aldermen are authorized to receive an annual salary for their service. Based on the foregoing, a person holding the position of city alderman is a public officer, for purposes of section 3 of the Housing Authorities Act, because: (1) he or she holds a local government office that is required to be filled by the vote of the electors; and (2) provision is made by statute for the payment of annual compensation.

Because all three of the persons who are the subject of your office's inquiry fall within the statutory definition of "public officer," under the limitations of section 3 of the Act, no more than two of them may serve on the county housing authority board simultaneously.

Public Officer Prohibited Activities Act

I also note that your office's inquiry raises a potential issue under section 1 of the Public Officer Prohibited Activities Act (the Prohibited Activities Act) (50 ILCS 105/1 (West 2006)), which specifically addresses the ability of county board members to hold other public offices. 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.* (Emphasis added.)

Pursuant to section 1 of the Prohibited Activities Act, no county board member may be elected or appointed, during the term of office for which he or she is elected, to any other office other than those specified in section 1 or elsewhere in the law.³ *People v. Wilson*, 357 Ill. App. 3d 204 (2005); see Ill. Att'y Gen. Inf. Op. No. I-08-008, issued March 25, 2008; Ill. Att'y Gen. Inf. Op. No. I-03-012, issued December 19, 2003. Section 1 does not expressly permit one person to serve as both a county board member and a county housing authority commissioner. Section 3 of the Housing Authorities Act, however, provides that "[a]ny public officer shall be eligible to serve as a commissioner, and the acceptance of appointment as such shall not terminate nor impair his public office, the provision of any statute to the contrary notwithstanding[.]" (Emphasis added.) This language expressly authorizes any public officer to serve simultaneously as a housing authority commissioner. Having previously concluded that a county board member is a "public officer" within the Housing Authorities Act's definition, the specific language of section 3 permits county board members to serve as county housing authority commissioners simultaneously, the provisions of section 1 of the Prohibited Activities Act to the contrary notwithstanding.

CONCLUSION

Pursuant to section 3 of the Housing Authorities Act, only two "public officers" may serve on a county housing authority board simultaneously. Because county board members are persons holding local governmental offices required to be filled by the county's electors and because section 2-3008 of the Counties Code authorizes the compensation of county board members on an annual basis, county board members are "public officers," as that term is defined in the Housing Authorities Act. Applying the same analysis, city aldermen are "public officers" within the Housing Authorities Act's provisions. Consequently, only two of the three persons who are the focus of your office's inquiry may serve on the county housing authority board simultaneously.

³For 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).

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

 Very truly yours,

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