



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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I - 04-017

COMPATIBILITY OF OFFICES:

County Board Chairman Elected
At-Large and County Liquor Control
Commissioner; County Board Chairman
Elected At-Large and County Emergency
Services and Disaster Agency Coordinator

The Honorable Stewart J. Umholtz
State's Attorney, Tazewell County
342 Court Street, Suite 6
Pekin, Illinois 61554-3298

Dear Mr. Umholtz:

I have your letter wherein you inquire whether it is permissible for a county board chairman who is elected at-large:

- (1) to serve simultaneously as the county liquor control commissioner and to receive compensation therefor; and
- (2) to serve simultaneously as the county Emergency Services and Disaster Agency coordinator and receive compensation for performing those duties?

As background, your letter states that the chairman of the Tazewell County board is elected at-large by the voters of the county rather than being elected by the members of the county board.

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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 questions you have raised.

With regard to your first inquiry, sections 4-2 and 4-3 of the Liquor Control Act of 1934 (235 ILCS 5/4-2, 4-3 (West 2002)) respectively provide, in pertinent part:

The mayor or president of the board of trustees of each city, village or incorporated town, and the president or chairman of the county board, shall be the local liquor control commissioner for their respective cities, villages, incorporated towns and counties, and shall be charged with the administration in their respective jurisdictions of the appropriate provisions of this Act and of such ordinances and resolutions relating to alcoholic liquor as may be enacted[.]

The city council of each city and the president and board of trustees of each village and incorporated town and the county board are authorized to fix and pay compensation to the local liquor control commissioner of the particular city, village, incorporated town or county[.] (Emphasis added.)

It is well established that where the language of a statute is clear and unambiguous, it must be given effect as written. *Land v. Board of Education of the City of Chicago*, 202 Ill. 2d 414, 426 (2002). Under the plain language of section 4-2 of the Liquor Control Act, the county board chairman is expressly designated to serve as the county liquor control commissioner. The language of the section makes no distinction between a county board chairman who is elected at-large and a county board chairman who is elected by the members of the county board. Therefore, because county board chairmen are required by express statutory provision to serve as county liquor control commissioners, without reference to the manner of their selection, a county board chairman who is elected at-large may serve simultaneously in that capacity.

Further, section 4-3 of the Liquor Control Act expressly provides that the "county board * * * [is] authorized to fix and pay compensation to the local liquor control commissioner." Again, no distinction is made between chairmen elected at-large and those elected by the members of the county board. Construing sections 4-2 and 4-3 of the Liquor Control Act together, it is clear that the county board chairman is eligible to receive additional compensation for serving as the liquor control commissioner. Because the county board chairman serves by virtue of that office as the county liquor control commissioner, however, any compensation provided must be established in accordance with the provisions of section 2 of the

Local Government Officer Compensation Act (50 ILCS 145/2 (West 2002)) (compensation of elected officers of units of local government must be fixed at least 180 days before the beginning of the terms of the officers) and article VII, section 9(b), of the Illinois Constitution of 1970 (which prohibits a change in the salary of an elected officer of a unit of local government that takes effect during the term for which the officer is elected). Consequently, a county board chairman who is elected at-large may receive additional compensation for serving as the county liquor control commissioner, if the additional compensation is set in accordance with the applicable constitutional and statutory provisions.

Your second inquiry addresses the issue of whether a county board chairman who is elected at-large may serve simultaneously as the county Emergency Services and Disaster Agency (ESDA) coordinator. In contrast to the position of county liquor control commissioner, the statutes are silent on the question of whether a county board chairman may also serve as county ESDA coordinator. Under the common law, however, two public offices are deemed to be incompatible where one of the public offices has the power to appoint the incumbent to the other public office. *See Ehlinger v. Clark*, 8 S.W.2d 666, 674 (Tex. 1928) ("It is because of the obvious incompatibility of being both a member of a body making the appointment and an appointee of that body that the courts have with great unanimity throughout the country declared that all officers who have the appointing power are disqualified for appointment to the offices to which they may appoint."); *State v. Thompson*, 246 S.W.2d 59, 61-62 (Tenn. 1952); 1917-1918 Ill. Att'y Gen. Op. 781.

Based upon the foregoing, a county board chairman may not serve simultaneously as the county ESDA coordinator, if: (1) the position of ESDA coordinator is a public office; and (2) the county board chairman appoints the ESDA coordinator. With respect to the latter issue, under the language of subsection 10(i) of the Illinois Emergency Management Agency Act (the Emergency Management Act) (20 ILCS 3305/10(i) (West 2002)), the ESDA coordinator is appointed by the "principal executive officer of the political subdivision," a phrase that is defined to refer to the county board chairman. *See* 20 ILCS 3305/4 (West 2003 Supp.). It must be determined, however, whether the position of county ESDA coordinator constitutes a public office.

In *Midwest Television, Inc. v. Champaign-Urbana Communications, Inc.*, 37 Ill. App. 3d 926, 931 (1976), the appellate court delineated the criteria to be used when determining whether a position constitutes a public office, stating:

The characteristics of a public office are generally agreed upon, although the distinction between an office and employment may be vague in particular fact situations. The characteristics of a public office include: (1) creation by statute or constitution; (2) exercise

of some portion of the sovereign power; (3) a continuing position not occasional or contractual; (4) fixed tenure; (5) an oath is required; (6) liability for misfeasance or nonfeasance; and (7) the official has an independence beyond that of employees.

The court further indicated that "[n]ot all [of] these factors are required in order to determine that a position is an office." *Midwest Television, Inc. v. Champaign-Urbana Communications, Inc.*, 37 Ill. App. 3d at 932. The most important of the factors, however, is the exercise of some portion of the sovereignty of the State. *People v. Brady*, 302 Ill. 576, 582 (1922).

Applying the several indicia of public office to the position of county ESDA coordinator, the position qualifies as a public office. The position of ESDA coordinator is created by a statute, in this case, subsection 10(i) of the Emergency Management Act. A review of the duties of the ESDA coordinators indicates that, among other things, the ESDA coordinators possess direct responsibility for the organization, administration, training and operation of the emergency services and disaster agency, subject only to the direction and control of the county board chairman (20 ILCS 3305/10(i) (West 2002)), and the authority to execute and enforce the orders, rules and regulations as may be made by the Governor under the authority of the Emergency Management Act. 20 ILCS 3305/18(b) (West 2002). In carrying out these duties, the ESDA coordinators exercise a portion of the sovereign power to preserve the public health and the public peace. *See generally* 20 ILCS 3305/2 (West 2002); *People ex rel. Barmore v. Robertson*, 302 Ill. 422 (1922); *City of Chicago v. Chicago League Ball Club*, 196 Ill. 54 (1902). Because counties generally are required to maintain an emergency services and disaster agency (20 ILCS 3305/10(b) (West 2002)) and because the county board chairman is required to appoint the ESDA coordinator (20 ILCS 3305/4 (West 2003 Supp.); 20 ILCS 3305/10(i) (West 2002)), the position of ESDA coordinator is one of continuing existence. It is not occasional or contractual.

Although the Emergency Management Act contains no specified term of office, section 20 of the Emergency Management Act (20 ILCS 3305/20 (West 2002)) requires the filing of a written oath by all persons "appointed to serve in any capacity in * * * an emergency services and disaster agency." The ESDA coordinators also are subject to penalties for misfeasance and nonfeasance to the same extent as other local governmental officers and employees. *See* 20 ILCS 3305/15 (West 2002); 745 ILCS 10/1-101 *et seq.* (West 2002). Finally, a review of the statutory duties of the ESDA coordinators indicates a degree of discretion not generally granted to employees. As previously noted, the ESDA coordinators possess direct responsibility for the organization, administration, training and operation of the emergency services and disaster agency, subject only to the direction and control of the county board chairman, and the authority to execute and enforce the orders made by the Governor.

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When considered as a whole, the position of county ESDA coordinator appears to satisfy the criteria for a public office. The most important of the indicia have been satisfied: the ESDA coordinators exercise a portion of the sovereign power; their positions are created by statute; and they subscribe an oath of office. Because officers who have appointing power are disqualified for appointment to the offices to which they appoint, a county board chairman who is elected at-large may not simultaneously hold the office of county ESDA coordinator. Having resolved your second question in the negative, the issue of whether the county board chairman is eligible to receive additional compensation for serving as the county ESDA coordinator is rendered moot.

This is not an official opinion of the Attorney General. I apologize for the delayed response to your inquiry. If we may be of additional assistance, please advise.

Very truly yours,

A large black rectangular redaction box covering the signature of Lynne E. Patton.

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