



**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

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:

\* \* \*

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

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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.

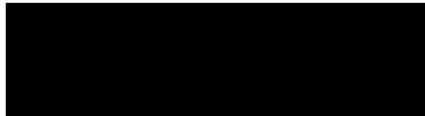
In reviewing the statutes setting forth the duties of county clerks and recorders, it does not appear that a county clerk and recorder would be a party to a contract entered into by a county sheriff. Moreover, in contrast to the circumstances in Peabody v. Sanitary District of Chicago (1928), 330 Ill. 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

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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

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,



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

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