



TYRONE C. FAHNER  
ATTORNEY GENERAL  
STATE OF ILLINOIS  
SPRINGFIELD

November 10, 1982

FILE NO. 82-039(NP)

COMPATIBILITY OF OFFICES:  
County Treasurer and Park  
District Commissioner

Honorable Edward F. Petka  
State's Attorney  
Will County  
Courthouse  
Joliet, Illinois 60431

Dear Mr. Petka:

I have your letter wherein you inquire whether the office of park district commissioner is compatible with that of county treasurer. For the reasons hereinafter stated, it is my opinion that the offices in question are compatible.

Incompatibility arises where the written law prohibits the occupant of one office from holding the other or where the duties of either office are such that the holder of the office cannot in every instance, fully and faithfully perform all the duties of the other. (People ex rel. Myers v. Haas (1908), 145

Honorable Edward F. Petka - 2.

Ill. App. 283, 286.) There is no constitutional or statutory provision prohibiting one person from holding the offices of county treasurer and park district commissioner simultaneously. Therefore, the question which arises is whether 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.

Park district commissioners, as members of the governing board of a park district, constitute the corporate authority for such district. They have the general responsibility of managing the property, controlling the officers and conducting the business of the district. (Ill. Rev. Stat. 1981, ch. 105, par. 4-1.) Pursuant to section 8-1 of The Park District Code (Ill. Rev. Stat. 1981, ch. 105, par. 8-1), which sets forth the principal duties and corporate powers of the park district, the board is empowered:

" \* \* \*

(d) To pass all necessary ordinances, rules and regulations for the proper management and conduct of the business of the board and district and to establish by ordinance all needful rules and regulations for the government and protection of parks, boulevards and driveways and other property under its jurisdiction, and to effect the objects for which such districts are formed.

\* \* \*

(f) To manage and control all officers and property of such districts \* \* \* .

\* \* \*

"

Honorable Edward F. Petka - 3.

The principal duties of the county treasurer are set forth in section 4 of "AN ACT to revise the law in relation to county treasurer" (Ill. Rev. Stat. 1981, ch. 36, par. 4) which provides in pertinent part:

"\* \* \* He shall receive and safely keep the revenues and other public moneys of the county, and all money and funds authorized by law to be paid to him, and disburse the same pursuant to law. \* \* \*"

The duties of a county treasurer are not judicial or discretionary, but ministerial. Mitchell v. Short (1929), 251 Ill. App. 357, 359.

There is no relationship between the duties of the county treasurer and the duties of a park district commissioner which would render the offices incompatible. Although the county treasurer does have a duty to pay over a share of real property taxes to a park district (Ill. Rev. Stat. 1981, ch. 120, par. 761), the duty is ministerial and would not involve any exercise of discretion resulting in a conflict of duties or interests.

Therefore, it is my opinion that the office of county treasurer is compatible with that of park district commissioner. The character of the offices of county treasurer and park district commissioner is such that the holder of either office could, in every instance, fully and faithfully perform all the duties of the other.

Very truly yours,

  
ATTORNEY GENERAL



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

Lisa Madigan  
ATTORNEY GENERAL

January 4, 2018

I - 18-001

COMPATIBILITY OF OFFICES:  
County Treasurer and School  
Board Member

The Honorable Sean Featherstun  
State's Attorney, Jefferson County  
Jefferson County Courthouse  
100 South 10th Street, Room 203  
Mount Vernon, Illinois 62864

Dear Mr. Featherstun:

I have your letter inquiring whether one person may serve simultaneously as a county treasurer and a school board member for a school district in the same county. According to the information you have provided, the Jefferson County treasurer is interested in running for the office of school board member in School District 80. The school district is located entirely within Jefferson County and entirely within one township and one high school district. For the reasons stated below, the offices of county treasurer and school board member are not incompatible and, therefore, one person may hold both offices simultaneously.

The common law doctrine of incompatibility of offices precludes simultaneous tenure in two public offices if the constitution or a statute specifically prohibits the occupant of either office from holding the other, or if the duties of the two offices conflict so that the holder of one cannot, in every instance, fully and faithfully discharge all of the duties of the other office. *People ex rel. Fitzsimmons v. Swailes*, 101 Ill. 2d 458, 465 (1984); *People ex rel. Smith v. Brown*, 356 Ill. App. 3d 1096, 1098 (2005); *People ex rel. Myers v. Haas*, 145 Ill. App. 283, 286 (1908). There is no constitutional or statutory provision that expressly prohibits one person from

serving simultaneously as both a county treasurer and a school board member. The issue, therefore, is whether the duties of either office are such that the holder of one office cannot, in every instance, fully and faithfully discharge all of the duties of the other.

A school board is a body politic and corporate. 105 ILCS 5/10-2 (West 2016). The school board exercises the corporate powers of a school district. 105 ILCS 5/10-20.1 through 10-23.13 (West 2016). The principal duties of school board members are set forth in article 10 of the School Code (105 ILCS 5/10-1 *et seq.* (West 2016)) and include supervising the education of children, maintaining schools, raising revenue by tax levy, and hiring teachers and superintendents. 105 ILCS 5/10-20.1 through 10-23.13 (West 2016); *see* Ill. Att'y Gen. Inf. Op. No. I-11-003, issued March 31, 2011; Ill. Att'y Gen. Inf. Op. No. I-09-002, issued March 12, 2009; Ill. Att'y Gen. Inf. Op. No. I-94-030, issued June 8, 1994; Ill. Att'y Gen. Inf. Op. No. I-89-066, issued December 5, 1989. School board members have a duty to act in a manner that represents and protects the interests of the school district that they serve (*see* 105 ILCS 5/10-16.5 (West 2016)), and school boards, acting as a whole, possess wide discretion in the exercise of their statutory powers. *Tyska v. Board of Education of Township High School District 214*, 117 Ill. App. 3d 917, 923, *citing People ex rel. McCollum v. Board of Education of School District No. 71*, 396 Ill. 14 (1947), *rev'd on other grounds*, 333 U.S. 203, 68 S. Ct. 461 (1948).

The county treasurer is primarily responsible for the safekeeping and disbursement of county funds. The duties of the county treasurer are found in division 3-10 of the Counties Code (55 ILCS 5/3-10001 *et seq.* (West 2016)) and include receiving and safely keeping the revenues and public moneys of the county and all money and funds authorized by law to be paid to the office, and disbursing those money and funds pursuant to law (55 ILCS 5/3-10005 (West 2016)), filing monthly financial reports with the county clerk and chairman of the county board (55 ILCS 5/3-10005.2 (West 2016)), and maintaining special funds (55 ILCS 5/3-10005.3 (West 2016)). Additionally, the county treasurer acts as the *ex-officio* county collector (35 ILCS 200/19-35 (West 2016)). As such, the county treasurer is charged with receiving and distributing property tax proceeds and applicable interest to the various taxing districts, including school districts, in accordance with the Property Tax Code (*see* 35 ILCS 200/20-85 through 20-150 (West 2016)). Further, under section 19-27 of the School Code (105 ILCS 5/19-27 (West 2016)), county treasurers are to pay over surplus bond funds to the school treasurer in qualifying circumstances.

A review of the applicable provisions of the Counties Code, Property Tax Code, and School Code indicates that there is no relationship between the duties of the county treasurer and the duties of a school board member that would give rise to conflicting duties or interests. The duties of the county treasurer are ministerial in nature. *See Mitchell v. Short*, 251 Ill. App. 357, 359 (1929) (the duties of a county treasurer are ministerial and, as such, they may be performed by an individual appointed as deputy treasurer); Ill. Att'y Gen. Inf. Op. No. I-92-009,

issued February 4, 1992, at 2 (county treasurer's duties are ministerial and involve no exercise of discretion). None of the applicable provisions vest the county treasurer with any discretion concerning when to act, or the amount of funds to be paid over to the school district. Therefore, no potential benefit to the county treasurer or the school district, or disadvantage to any other school district within the county, could arise from the treasurer's performance of his or her statutory duties.<sup>1</sup> Additionally, there are no statutory provisions authorizing the school district to take any action with respect to the office of county treasurer. Accordingly, the offices of county treasurer and school district board member are not incompatible, and an individual may serve simultaneously in both positions.<sup>2</sup>

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

Very truly yours,

LYNN E. PATTON  
Senior Assistant Attorney General  
Chief, Public Access and Opinions Division

LEP:KMC:KAS:MAD:lh

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<sup>1</sup>See also Ill. Att'y Gen. Op. No. 82-039(NP), issued November 10, 1982, at 3 (although county treasurers are required by law to pay over a portion of real property tax revenue to various taxing districts, the offices of county treasurer and park district commissioner are compatible because the treasurer's duties are ministerial and do not involve an exercise of discretion that could give rise to conflicting duties or interests); Ill. Att'y Gen. Inf. Op. No. I-92-009 at 2 (applying the same analysis as opinion No. 82-039(NP) to the offices of county treasurer and township trustee).

<sup>2</sup>We note that, in opinion No. 978, issued April 15, 1927 (1927 Ill. Att'y Gen. Op. 151), Attorney General Carlstrom concluded that the offices of county treasurer and school board president were incompatible because a county treasurer might be required to make a discretionary determination concerning the allocation of interest earned on funds levied and collected for the benefit of both the county and school district at issue. Subsequent changes in applicable law relating to the duties of county treasurers have mooted this concern. See 35 ILCS 200/20-135 (West 2016) (requiring the payment of "interest in the same proportionate ratio that district shared in the distribution of principal taxes to all units of local government" (emphasis added)).



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

**Lisa Madigan**  
ATTORNEY GENERAL

April 5, 2018

I - 18-003

COMPATIBILITY OF OFFICES:  
County Treasurer and Township  
Supervisor

County Treasurer and School  
Treasurer

The Honorable R. John Alvarez  
State's Attorney, Cass County  
Cass County Courthouse  
P.O. Box 167  
100 East Springfield Street  
Virginia, Illinois 62691

Dear Mr. Alvarez:

I have your letter inquiring whether a county treasurer may serve simultaneously as either a township supervisor or a school treasurer. For the reasons stated below, the offices of: (1) county treasurer and township supervisor; and (2) county treasurer and school treasurer are not incompatible.

**BACKGROUND**

According to the information you provided, the current Cass County treasurer submitted her notice of resignation. The deputy county treasurer, who currently holds the offices of township supervisor and school treasurer, is expected to be appointed to serve as the interim county treasurer. You have inquired whether the interim county treasurer may serve simultaneously as either a township supervisor or school treasurer.

## ANALYSIS

The common law doctrine of incompatibility of offices precludes simultaneous tenure in two public offices if the constitution or a statute specifically prohibits the occupant of either office from holding the other, or if the duties of the two offices conflict so that the holder of one cannot, in every instance, fully and faithfully discharge all of the duties of the other office. *People ex rel. Fitzsimmons v. Swailes*, 101 Ill. 2d 458, 465 (1984); *People ex rel. Smith v. Brown*, 356 Ill. App. 3d 1096, 1098 (2005); *People ex rel. Myers v. Haas*, 145 Ill. App. 283, 286 (1908). There is no constitutional or statutory provision that expressly prohibits one person from serving simultaneously as both county treasurer and township supervisor. Similarly, there is no constitutional or statutory provision that expressly prohibits one person from serving simultaneously as county treasurer and school treasurer. The issue, therefore, is whether the duties of the indicated offices are such that the holder of one office cannot, in every instance, fully and faithfully discharge all of the duties of the other office.

### County Treasurer and Township Supervisor

Your first question concerns whether a county treasurer may serve simultaneously as a township supervisor. The county treasurer is primarily responsible for the safekeeping and disbursement of county funds. The duties of the county treasurer are generally found in division 3-10 of the Counties Code (55 ILCS 5/3-10001 *et seq.* (West 2016)) and include receiving and safely keeping the revenues and public moneys of the county and all money and funds authorized by law to be paid to the office, and disbursing those moneys and funds pursuant to law (55 ILCS 5/3-10005 (West 2016)), filing monthly financial reports with the county clerk and chairman of the county board (55 ILCS 5/3-10005.2 (West 2016)), and maintaining special funds (55 ILCS 5/3-10005.3 (West 2016)). Additionally, the county treasurer acts as the *ex-officio* county collector (35 ILCS 200/19-35 (West 2016)). As such, the county treasurer is charged with receiving and distributing property tax proceeds and applicable interest to the various taxing districts, including school districts and, in certain circumstances, townships, in accordance with the Property Tax Code (*see* 35 ILCS 200/20-85 through 20-150 (West 2016)). Further, under section 19-27 of the School Code (105 ILCS 5/19-27 (West 2016)), county treasurers are to pay over surplus bond funds to the school treasurer in qualifying circumstances. These duties are ministerial in nature and do not involve the exercise of discretion or judgment.

The township supervisor is the chief executive officer of the township. 60 ILCS 1/70-15 (West 2016). Article 70 of the Township Code (60 ILCS 1/70-5 *et seq.* (West 2016)) outlines the duties of the township supervisor, which include the receipt and distribution of all moneys raised in the township (60 ILCS 1/70-15 (West 2016)), the preparation and filing of annual financial reports for both township meetings and for use by the township board (60 ILCS 1/70-15, 70-30 (West 2016)), maintaining the township's accounts of receipts and expenditures

(60 ILCS 1/70-25 (West 2016)), and acting as *ex officio* supervisor of general assistance.<sup>1</sup> The township supervisor also acts as the chairman of the township board and is a voting member thereof. 60 ILCS 1/80-5(a) (West 2016). In this capacity, the township supervisor, together with the township's trustees, exercises many of the township's corporate powers. *See* 60 ILCS 1/85-5 *et seq.* (West 2016).

A review of the applicable provisions of the Counties Code, Property Tax Code, and Township Code indicates that there is no relationship between the duties of county treasurer and township supervisor that would give rise to conflicting duties or interests. Township supervisors have discretionary powers with respect to voting upon matters that come before the township board of trustees. The township may act, through its board of trustees, to contract or otherwise associate with the county for law enforcement, fire protection, and other specified services (60 ILCS 1/30-155, 30-165, 105-20, 215-10 (West 2016)). In such instances, the township supervisor would be in a position to vote upon or influence township actions.

The duties of the county treasurer, being purely ministerial, do not include voting or acting on matters affecting the county generally. *See, e.g., Mitchell v. Short*, 251 Ill. App. 357, 359 (1929) (the duties of a county treasurer are ministerial and, as such, they may be performed by an individual appointed as deputy treasurer); Ill. Att'y Gen. Inf. Op. No. I-18-001, issued January 4, 2018, at 2 (duties of a county treasurer are ministerial in nature); Ill. Att'y Gen. Inf. Op. No. I-92-009, issued February 4, 1992, at 2 (county treasurer's duties are ministerial and involve no exercise of discretion, therefore, there is no possibility that a conflict of duties or interests could arise with respect to the offices of county treasurer and township trustee).<sup>2</sup>

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<sup>1</sup>As *ex officio* supervisor of general assistance, a township supervisor has the duty to oversee the general assistance program within the township, which includes the distribution of township financial aid to individuals with an illness or disability who cannot afford their medical care or supplies. 305 ILCS 5/6-1 (West 2016), as amended by Public Act 100-538, effective January 1, 2018. The township supervisor must also pay out township moneys upon a claim submitted against the township for medical treatment or supplies provided to those individuals who qualify for financial aid under the general assistance rules of the township. 305 ILCS 5/6-1 (West 2016), as amended by Public Act 100-538, effective January 1, 2018. However, like any other claim made against the township, the township supervisor must be presented with a certificate by the township clerk which states the amount and to whom the funds are owing; only then may the claim be paid, thereby eliminating any individual judgment or discretion by the supervisor. 60 ILCS 1/70-15, 80-50(a) (West 2016).

<sup>2</sup>*See also* Ill. Att'y Gen. Op. No. 82-039(NP), issued November 10, 1982, at 3 (concluding that although county treasurers are required by law to pay over a portion of real property tax revenue to various taxing districts, the offices of county treasurer and park district commissioner are not incompatible because the treasurer's duties are ministerial and do not involve an exercise of discretion that could give rise to conflicting duties or interests); Ill. Att'y Gen. Inf. Op. No. I-04-008, issued May 21, 2004, at 2-3 (examining the compatibility of the offices of city treasurer and township supervisor, and concluding that although some duties of a township supervisor, such as the ability of the supervisor to vote upon or influence actions of the township board of trustees to contract or otherwise associate with another governmental unit, were discretionary, the duties of the office of city treasurer were wholly ministerial, involved no individual discretion, and therefore were incapable of giving rise to any conflicts of duties with respect to these offices).

Further, there are no statutory provisions authorizing townships or township supervisors to take any action with respect to the office of county treasurer. Accordingly, the offices of county treasurer and township supervisor are not incompatible, and one individual may serve simultaneously in both offices.

### **County Treasurer and School Treasurer**

Your second question is whether a county treasurer may serve simultaneously as a school treasurer. The school treasurer is responsible for the financial activities of the school district. The duties of a school treasurer are governed by article 8 of the School Code (105 ILCS 5/8-1 *et seq.* (West 2016)) and include acting as the only lawful custodian of school funds (105 ILCS 5/8-6, 8-7 (West 2016)), maintaining all school district accounts and their balances (105 ILCS 5/8-6, 8-7 (West 2016)), and producing a monthly reconciliation of the district's accounts, including verifying any account balance if called upon to do so by the school board (105 ILCS 5/8-15 (West 2016)). A school treasurer is authorized to pay out school district funds upon order of the school board.<sup>3</sup> 105 ILCS 5/8-16 (West 2016). A school treasurer is also authorized to designate one or more banks or savings and loan associations in which to keep school funds and moneys and may enter into agreements regarding the deposit, redeposit, investment, reinvestment, or withdrawal of such funds. 105 ILCS 5/8-7 (West 2016). As noted above, the duties of a county treasurer are purely ministerial.

A review of the applicable provisions of the Counties Code and School Code indicates that there is no conflict between the duties of county treasurer and school treasurer. Although there may be circumstances in which there are transactions between the offices, those transactions are required by, and governed by, statute. Neither a county treasurer nor a school treasurer has been granted the authority to exercise discretion with respect to their statutory duties. Therefore, there is no potential benefit to the county or the school district, or disadvantage to any other school district within the county, that could arise from an office holder's performance of these ministerial duties. Accordingly, the offices of county treasurer and school treasurer are not incompatible and one individual may serve simultaneously in these offices.

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<sup>3</sup>In Class I county school units (school units with less than 2,000,000 inhabitants (105 ILCS 5/5-1(a) (West 2016), as amended by Public Act 100-374, effective August 25, 2017), the school board either elects one of its members to serve as school treasurer, or appoints an individual who is not a member of the board to serve as school treasurer. 105 ILCS 5/8-1(b) (West 2016). Your letter does not indicate that the individual in question also serves as a school board member. Accordingly, we will assume for purposes of your inquiry that the individual at issue was appointed to the office of school treasurer by the school board, and is not a member of the school board. See Ill. Att'y Gen. Inf. Op. No. I-18-001 (concluding that the offices of school board member and county treasurer are not incompatible).

The Honorable R. John Alvarez - 5

**CONCLUSION**

Because the duties of the county treasurer are purely ministerial, a county treasurer may serve simultaneously as either a township supervisor or school treasurer.

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

Very truly yours,

LYNN E. PATTON  
Senior Assistant Attorney General  
Chief, Public Access and Opinions Division

LEP:KMC:KAS:MAD:lh



**ROLAND W. BURRIS**

ATTORNEY GENERAL  
STATE OF ILLINOIS



February 4, 1992

I - 92-009

COMPATIBILITY OF OFFICES:  
County Treasurer and  
Township Trustee

Honorable William R. Haine  
State's Attorney, Madison County  
103 Purcell Street, 3rd Floor  
Edwardsville, Illinois 62025

Dear Mr. Haine:

I have your letter wherein you inquire whether one person may simultaneously hold the offices of county treasurer and township trustee. 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. (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 prohibiting one person from simultaneously serving as

a county treasurer and as a township trustee. Therefore, the issue 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.

Township trustees, as members of the governing board of a township, exercise the corporate powers of the township. (Ill. Rev. Stat. 1989, ch. 139, pars. 117-126.28.) The principal duties of the county treasurer are set forth in section 3-10005 of the Counties Code (Ill. Rev. Stat. 1989, ch. 34, par. 3-10005) which provides, in pertinent part:

"\* \* \* He shall receive and safely keep the revenues and other public moneys of the county, and all money and funds authorized by law to be paid to him, and disburse the same pursuant to law. \* \* \*"

The duties of a county treasurer are not judicial or discretionary, but are ministerial. Mitchell v. Short (1929), 251 Ill. App. 357, 359.

In opinion No. 82-039(NP), issued November 10, 1982, Attorney General Fahner concluded that the offices of county treasurer and park district commissioner were not incompatible, stating:

" \* \* \*

There is no relationship between the duties of the county treasurer and the duties of a park district commissioner which would render the offices incompatible. Although the county treasurer does have a duty to pay over a share of real property taxes to a park district (Ill. Rev. Stat. 1981, ch. 120, par. 761), the duty is ministerial and would not involve any exercise of discretion resulting in a conflict of duties or interest.

\* \* \*

A similar analysis may be applied to the offices of county treasurer and township trustee. The duty of the county treasurer to disburse tax monies to the township is ministerial (Ill. Rev. Stat. 1989, ch. 120, par. 761) and, as such, would not involve any exercise of discretion resulting in a conflict of duties or interests. There is, therefore, no relationship between the duties of the county treasurer and the duties of a township trustee which would render the offices incompatible.

Honorable William R. Haine - 3.

Accordingly, because there are no conflicting duties, it appears that one person may simultaneously hold the offices of county treasurer and township trustee.

This is not an official opinion of the Attorney General. I apologize for our delayed response to your inquiry.

Very truly yours,

A solid black rectangular redaction box covering the signature of Michael J. Luke.

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