



NEIL F. HARTIGAN
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD
62706

March 21, 1989

I - 89-020

COMPATIBILITY OF OFFICES:
The Offices of Assistant State's
Attorney and County Zoning
Commissioner Are Incompatible

Honorable John B. Huschen
State's Attorney, Woodford County
Woodford County Courthouse
Eureka, Illinois 61530

Dear Mr. Huschen:

I have your letter wherein you inquire whether the offices of Assistant State's Attorney and member of the county zoning board of appeals are compatible. Due to the nature of your question, I do not believe that an official opinion of the Attorney General is necessary. I will, however, comment informally upon the question that you have raised.

Incompatibility arises where the constitution or a statute specifically prohibits the occupant of one office from holding another, or where the duties of the two offices are such that the holder of one cannot, in every instance, fully and faithfully discharge the duties of the other. Rogers v. Tinley Park et al. (1983), 116 Ill. App. 3d 437, 440-41; People ex rel. Myers v Haas (1908), 148 Ill. App. 283, 286.

There are no constitutional or statutory provisions which expressly prohibit an individual from simultaneously holding the two offices in question. It is therefore necessary to examine the duties, functions and powers of the offices of county zoning board of appeals member and Assistant State's Attorney to determine whether the duties of either office are such that the holder of one can, in every instance, properly and faithfully perform the duties of the other.

Section 2 of "AN ACT fixing and providing for the payment of the salaries of state's attorneys and their

assistants, defining their duties, etc." (Ill. Rev. Stat. 1987, ch. 53, par. 18) provides for the creation of the office of Assistant State's Attorney. As an assistant to the State's Attorney, such officer performs the general duties of the State's Attorney and has the full power to act in the case of the absence or illness of the State's Attorney in the same manner and to the same extent the State's Attorney could act. People v. Toledo, St. Louis and Western Railroad Company (1915), 267 Ill. 142; People v. Nahas (1973), 9 Ill. App. 3d 570.

The State's Attorney is the legal advisor and attorney for county officers. Section 5 of "AN ACT in regard to attorneys general and state's attorneys" (Ill. Rev. Stat. 1987, ch. 14, par. 5) provides:

"The duty of each State's attorney shall be:

(1) To commence and prosecute all actions, suits, indictments and prosecutions, civil and criminal, in the circuit court for his county, in which the people of the State or county may be concerned.

* * *

(3) To commence and prosecute all actions and proceedings brought by any county officer in his official capacity.

(4) To defend all actions and proceedings brought against his county, or against any county or State officer, in his official capacity, within his county.

* * *

(7) To give his opinion, without fee or reward, to any county officer in his county, upon any question of law relating to any criminal or other matter, in which the people or the county may be concerned.

* * *

(11) To perform such other and further duties as may, from time to time, be enjoined on him by law.

* * *

"

It can be seen from the provisions of the foregoing statute that a State's Attorney may be called upon for advice and assistance with reference to actions taken by the county zoning board. Consequently, an Assistant State's Attorney who was also a zoning board member could be placed in a position of having divided loyalty and conflict of duties.

Section 3.2 of "AN ACT in relation to county zoning" (Ill. Rev. Stat. 1987, ch. 31, par. 3155) provides that zoning board of appeals members are appointed by the presiding officer of the county board, subject to the confirmation of the county board, and are compensated on a per diem basis with a mileage allowance for travel, the amounts to be determined by the county board. Zoning appeal board members hear and decide appeals from and review any order, requirement, decision or determination made by an administrative officer charged with the enforcement of any ordinance or resolution adopted pursuant to this Act. (Ill. Rev. Stat. 1987, ch. 34, par 3156.)

It is conceivable that the appeals board would be in a position to hear and decide appeals from and review orders, requirements, decisions or determinations made by the State's Attorney. (See Ill. Rev. Stat. 1987, ch. 34, par. 3153.) Section 3 of the Act provides that all ordinances or resolutions passed under the terms of this Act shall be enforced by such officer of the county as may be designated by ordinance or resolution. (Ill. Rev. Stat. 1987, ch. 34, par. 3153.)

The State's Attorney is authorized to perform such other and further duties as may from time to time be enjoined on him by law. (Ill. Rev. Stat. 1987, ch. 14, par. 5(11).) It is conceivable that the county board could designate the State's Attorney to enforce zoning ordinances. If this were to transpire, an Assistant State's Attorney who is also a member of the zoning board of appeals would be in a position of conflicting duties.

In addition, the most recent opinion of the Committee on Professional Ethics of the Illinois State Bar Association dealing with a lawyer's serving as a director of a "public" corporation or body (in this instance a planning commission) and at the same time representing the body as its counsel advised:

"We are convinced that a conflict exists and that neither a lawyer member of the Planning Commission nor any of his partners, associates or affiliates may represent the Commission as its attorney. The conflict is there when the lawyer is advising himself as member of the Commission. * * * It could be

Honorable John B. Huschen - 4.

present when the lawyer is advising the Commission as a lawyer on its legal rights, duties and responsibilities and, on the other hand acting as a member of the Commission in protecting the rights of the public." (ISBA Prof. Ethics Opinion No. 803, issued in 1983.)

Those same conflicts would be present for an Assistant State's Attorney who was also a member of the zoning board of appeals. A conflict of duties would be present if the Assistant State's Attorney were to advise herself as a member of the zoning board of appeals. It could be present when the Assistant State's Attorney advises the board of appeals on its legal rights, duties and responsibilities and, on the other hand, acts as a member of the board of appeals protecting the interests of the county. In addition, the county zoning board of appeals is charged with making variances to the ordinances passed by the county board and must present its proposed variances to the county board. Therefore, an Assistant State's Attorney would be placed in the position of promoting the zoning board of appeal's variance before a body which she may be called upon to advise as to the legality and consequences of such variance.

The possibility of conflict is present. The mere possibility of a conflict of duties of offices is sufficient to make them incompatible. (1979 Ill. Att'y Gen. Op. 21.)

For the reasons stated above, it appears that the office of Assistant State's Attorney is incompatible with the office of county zoning board of appeals member, and, therefore, one person cannot simultaneously hold both offices.

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



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

May 31, 2018

I - 18-005

COMPATIBILITY OF OFFICES:
Board of Review Member and
County Zoning Board of Appeals Member

The Honorable John L. McGehee
State's Attorney, Rock Island County
210 - 15th Street, 4th Floor
Rock Island, Illinois 61201

Dear Mr. McGehee:

I have your letter inquiring whether one person may serve simultaneously as both an appointed board of review member and a county zoning board of appeals member. For the reasons stated below, the offices of appointed board of review member and county zoning board of appeals member are not incompatible. Accordingly, an individual 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 an appointed board of review member and a county zoning board of

appeals member.¹ The issue, therefore, is whether the duties of the offices of appointed board of review member and county zoning board of appeals member are such that the holder of one office cannot, in every instance, fully and faithfully discharge all of the duties of the other office.

The Rock Island County Board of Review consists of three members who are appointed by the county board chairman, with the advice and consent of the county board.² 35 ILCS 200/6-5, 6-15 (West 2016). In counties under township organization with populations less than 3,000,000, including Rock Island County, the board of review acts as a quasi-judicial body and local authority on county property assessments. Its purpose is to ensure equitable and just assessments of property within the county. The powers and duties of boards of review in counties with a population of less than 3,000,000 are set out in sections 16-25 through 16-90 of the Property Tax Code. 35 ILCS 200/16-25 through 16-90 (West 2016). Among the powers and duties of the board of review are the authority to receive written complaints submitted by taxing bodies pertaining to property tax assessments and to determine correct assessment amounts (35 ILCS 200/16-25, 16-55 (West 2016)), to act as an equalizing authority to ensure that property assessed within the county has an equalized assessed value of 33 1/3% of the total fair cash value of property in the county (35 ILCS 200/16-60, 16-65 (West 2016)), to hear applications regarding properties claimed to be exempt from taxation and determine whether such property qualifies for exemption (35 ILCS 200/16-70 (West 2016)), and to issue certificates of error to correct any mistakes in assessments (35 ILCS 200/16-75 (West 2016)).

Rock Island County has adopted a county zoning ordinance pursuant to division 5-12 of the Counties Code (55 ILCS 5/5-12001 *et seq.* (West 2016)).³ Rock Island County's zoning board of appeals consists of five members, who are appointed by the presiding officer of the county board, with the advice and consent of the county board. *See* 55 ILCS 5/5-12010 (West 2016). A county zoning board of appeals hears applications for, and makes determinations on, individual variations to county zoning regulations and ordinances, and also grants special use permits in appropriate circumstances. 55 ILCS 5/5-12009, 5-12009.5 (West 2016). Additionally, the county zoning board of appeals hears all matters relating to the amendment of

¹Section 6-35 of the Property Tax Code (35 ILCS 200/6-35 (West 2016)) expressly prohibits individuals serving on *elected* boards of review in counties with between 150,000 and 3,000,000 inhabitants from holding any "other lucrative public office or public employment." Section 6-5 of the Property Tax Code (35 ILCS 200/6-5 (West 2016)) does not contain an analogous prohibition applicable to *appointed* board of review members. Moreover, according to the 2010 Federal decennial census, Rock Island has a population of 147,546. Illinois Blue Book 448 (2017-2018).

²*See* Rock Island County Board of Review website, <http://www.rockislandcounty.org/BoardofReview/Home/> (indicating that the Rock Island County Board of Review consists of three appointed members).

³*See* Rock Island County zoning ordinance, *available at* <http://www.rockislandcounty.org/uploadedFiles/ZoningOrdinance.pdf>.

county zoning ordinances prior to enactment. 55 ILCS 5/5-12014 (West 2016). Finally, the county zoning board of appeals hears and renders decisions on: (1) all appeals from the zoning administrator; (2) all matters referred to it relating to county zoning ordinances, resolutions, or zoning-related provisions of the Counties Code; and (3) all other matters that it is required to pass under ordinance. 55 ILCS 5/5-12011 (West 2016).

A review of applicable provisions of the Counties Code and Property Tax Code indicates that there is no interaction between the duties of the offices of an appointed board of review member and county zoning board of appeals member that would give rise to conflicting duties or interests. A county zoning board of appeals does not have the power to levy taxes and, accordingly, does not have the ability to file an assessment complaint with the board of review.⁴ Similarly, a board of review has no statutory authority to review or otherwise make determinations with respect to zoning matters.⁵ Neither of the offices is subordinate to the other.⁶ Accordingly, there is no conflict of duties or interests between the offices of appointed board of review member and county zoning board of appeals member, that would preclude one person from serving simultaneously in both offices.

⁴*Compare with* 1979 Ill. Att'y Gen. Op. 121 (office of township trustee is incompatible with office of board of review member because a member of the board of review could be placed in the position of having to review an assessment that he or she, as a member of a taxing body, questioned); Ill. Att'y Gen. Inf. Op. No. 1-97-027, issued August 28, 1997 (same conclusion with respect to offices of township supervisor and board of review member); Ill. Att'y Gen. Inf. Op. No. 1-95-014, issued April 17, 1995 (same conclusion with respect to the offices of alderman and board of review member).

⁵*Compare with* 1978 Ill. Att'y Gen. Op. 127, 129 (office of county zoning board of appeals member is incompatible with the offices of school board member, drainage district commissioner, and township supervisor due to possible conflicting interests pertaining to zoning decisions that would "have a direct impact on * * * each of these governmental districts"); 1972 Ill. Att'y Gen. Op. 45 (outlining possible conflicts and divergent interests that may arise between governmental units concerning zoning issues).

⁶In an informal opinion (N.Y. Att'y Gen. Inf. Op. No. 84-14, issued February 22, 1984), the New York Attorney General concluded that one person may serve simultaneously as a member of a town board of assessment review and as chairman of the zoning board of appeals for a village located within the town because neither office was subordinate to the other, or had any right to interfere with the duties or determinations of the other in a manner that could be construed as antagonistic. *See also* N.Y. Att'y Gen. Inf. Op. No. 95-9, issued February 3, 1995 (person may serve simultaneously as a town board of assessment review member and town zoning board of appeals member because there is "no interaction between the duties of these two offices. Nor is one office subordinate to the other").

The Honorable John L. McGehee - 4

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



NEIL F. HARTIGAN
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD
62706

January 19, 1989

I - 89-007

COMPATIBILITY OF OFFICES:
Regional Board of School
Trustee and Member of County
Zoning Board of Appeals

Honorable Dennis Schumacher
State's Attorney, Ogle County
County Court House
Oregon, Illinois 61061 - 0395

ATTENTION: Douglas Floski
Assistant State's Attorney

Dear Mr. Schumacher:

I have your letter wherein you inquire whether one person can simultaneously serve as a member of a regional board of school trustees and as a member of a county zoning board of appeals. Due to the nature of your question, I do not believe that an official opinion of the Attorney General is necessary. I will, however, comment informally upon the question that you pose.

Incompatibility arises where the constitution or a statute specifically prohibits the occupant of one office from holding another, or where the duties of the two offices are such that the holder of one cannot, in every instance, fully and faithfully discharge the duties of the other. Rogers v. Village of Tinley Park et al. (1983), 116 Ill. App. 3d 437, 440-41; People ex rel. Myers v. Haas (1908), 145 Ill. App. 283, 286.

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Section 6-3 of The School Code (Ill. Rev. Stat. 1987, ch. 122, par. 6-3) provides:

"Eligibility for trustee's office. No person shall be eligible to the office of member of the regional board of school trustees who is not a voter of the educational service region and qualified to vote in the election for members of the regional board of school trustees, or who is a member of a school board, or who is a school board employee, or who holds any county office." (Emphasis added.)

You ask whether a member of a county zoning board of appeals holds a "county office" within the meaning of section 6-3, thereby making him ineligible to hold the office of regional board of school trustee.

The term "county office" is not defined in The School Code. (Ill. Rev. Stat. 1987, ch. 122, par. 1-1 et seq.) In the absence of a contrary statutory definition, however, words used in a statute are to be given their popularly understood meaning, or their commonly accepted dictionary interpretation. (Beck v. Board of Education of Harlem Consolidated School District No. 122 (1976), 63 Ill. 2d 10, 13-14; Bowes et al. v. City of Chicago et al. (1954), 3 Ill. 2d 175, 200-201.) Webster's Third New International Dictionary defines an "office" as follows:

"* * * a special duty, charge, or position conferred by an exercise of governmental authority and for a public purpose : a position of authority to exercise a public function and to receive whatever emoluments may belong to it * * *" (Webster's Third New International Dictionary 1567 (1981 ed.).)

In its most general sense, the term "county officer" applies to an officer whose territorial jurisdiction is co-extensive with the county for which he is elected or appointed. Ramsay v. VanMeter (1921), 300 Ill. 193, 200; People of the State of Illinois v. Evans (1910), 247 Ill. 547, 555.

A board of appeals, consisting of members serving fixed terms, is created by section 3.2 of "AN ACT in relation to county zoning" (Ill. Rev. Stat. 1987, ch. 34, par. 3155), which provides in part:

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"The presiding officer of the county board with the advice and consent of the county board shall appoint a board of appeals consisting of 5 members to serve respectively for the following terms: One for one year, one for 2 years, one for 3 years, one for 4 years and one for 5 years, the successor to each member so appointed to serve for a term of 5 years. In counties of less than 1,000,000 population the presiding officer of the county board with the advice and consent of the county board may appoint an additional 2 members to serve for a term of 5 years. At the end of the term of the 2 additional members, the county board may provide for the appointment of successors in the same manner or may allow the board of appeals to revert to a membership of 5.
* * * The appointing authority shall have the power to remove any member of the board for cause, after public hearing. Vacancies shall be filled by the appointing authority for the unexpired term of any member whose place has become vacant. * * *"

In opinion No. 273, issued April 11, 1962, Attorney General Clark advised that members of the board of appeals are officers, stating as follows:

" * * *

It would thus seem that the members of the board of appeals have been delegated some of the functions of government to be exercised by such members for the benefit of the public. The members hold permanent positions for fixed terms with continuous duties.

I conclude that members of the board of appeals are officers. * * *

* * *

(1962 Ill. Att'y Gen. Op. 308, 310.)

Moreover, it appears that members of the board of appeals are county officers within the generally recognized meaning of that term. They are appointed by the presiding officer of the county board with the advice and consent of the county board. Their power and duties are co-extensive with the county. They serve for fixed terms and exercise governmental

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authority for a county in hearing and deciding various county zoning matters. Since members of the board of appeals are county officers, it appears that, pursuant to section 6-3 of The School Code, they are ineligible to serve as members of the regional board of school trustees.

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



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

March 2, 1999

Jim Ryan
ATTORNEY GENERAL

I - 99-014

COMPATIBILITY OF OFFICES:
Regional Planning Commission
Member and County Zoning
Board of Appeals Member

The Honorable Gary W. Pack
State's Attorney, McHenry County
2200 North Seminary Avenue
Woodstock, Illinois 60098

Dear Mr. Pack:

I have your letter wherein you inquire whether the offices of member of a county regional planning commission and alternate member of the county zoning board of appeals 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 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 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 is 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

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are such that the holder of one cannot fully and faithfully discharge all of the duties of the other.

Division 5-12 of the Counties Code (55 ILCS 5/5-12001 et seq. (West 1996)) governs county zoning regulations generally. Section 5-12010 of the Counties Code (55 ILCS 5/5-12010 (West 1996)) provides that when a zoning ordinance or resolution has been adopted:

"* * * The presiding officer of the county board with the advice and consent of the county board shall appoint a board of appeals consisting of 5 members and may appoint 2 alternate members * * *. Alternate members, if appointed, shall serve as members of the board only in the absence of regular members, with the alternate member who has the greatest amount of time remaining in his or her term to have priority over the other alternate member in determining which alternate member shall serve in the absence of a regular member. In counties of less than 1,000,000 population the presiding officer of the county board with the advice and consent of the county board may appoint an additional 2 members to serve for a term of 5 years.
* * * The members of the board of appeals shall be compensated on a per diem basis with a mileage allowance for travel, the amounts to be determined by the county board.
* * *."

Section 5-12009 of the Counties Code (55 ILCS 5/5-12009 (West 1996)) provides:

"* * * The regulations by this Division authorized may provide that a board of appeals may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein contained in cases where there are practical difficulties or particular hardship in the way of carrying out the strict letter of any of such regulations relating to the use, construction or

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alteration of buildings or structures or the
use of land; * * *

* * *

"

Further, section 5-12001 of the Code (55 ILCS 5/5-12011 (West 1996)) provides:

"* * * The board of appeals shall also hear and decide appeals from and review any order, requirement, decision or determination made by an administrative official charged with the enforcement of any ordinance or resolution adopted pursuant to this Division.

It shall also hear and decide all matters referred to it or upon which it is required to pass under any such ordinance or resolution or under the terms of this Division. * * *

* * *

"

Pursuant to section 5-12009 of the Code (55 ILCS 5/5-12009 (West 1996)), the county board of zoning appeals votes on any proposal submitted to the county board which creates a variation to the zoning regulations. If any proposed variation fails to receive the approval of the board of appeals, a three-fourths vote of all the members of the county board is required to pass the resolution, except in counties in which the county board consists of three members, where only a two-thirds vote is required. (55 ILCS 5/5-12009 (West 1996).) Further, under section 5-12014 of the Code (55 ILCS 5/5-12014 (West 1996)), a hearing must be held before the county board of zoning appeals before the county board may amend zoning regulations.

With respect to regional planning commissions, section 5-14001 of the Counties Code (55 ILCS 5/5-14001 (West 1996)) provides:

"Regional plan. Whenever in the judgment of the county board of any county, a portion or all of said county as a region, should have a plan made for the general purpose of guiding and accomplishing a co-

ordinated, adjusted and harmonious development of said region, and of public improvements and utilities therein, and which plans will in the judgment of the county board, in accordance with the present and future needs of the region and of the State, best promote health, safety, morals, order, convenience, prosperity, efficiency and economy in the process of development and the general welfare of said region, the county board is hereby empowered by resolution of record to define the boundaries of such region and to create a regional planning commission for the making of a regional plan for such region so defined. The number of members of such commission, their method of appointment, and their power and authority in the making of such plan, shall be such as the county board may deem proper and not in conflict with law. Said Commission shall be a fact finding body and shall make such investigations and gather such statistics as it shall deem necessary for the planning and development of said region, and shall make a plan of said region to include all matter which it may deem necessary for the development of the region as provided above."

The county regional planning commission serves as an advisory board to the county board. The commissioners receive no salary for their service but may be compensated on a per diem basis with a mileage allowance for travel (55 ILCS 5/5-14004 (West 1996)). In general, plans of the region made by the commission are advisory only. (55 ILCS 5/5-14004 (West 1996).) There are, however, limited exceptions to this rule when a city or county is authorized to adopt a plan or parts of a plan by official action. (See 55 ILCS 5/5-14004 and 5-14006 (West 1996).)

Based upon this review of the respective duties of county regional planning commission members and county zoning board of appeal members, there is no apparent conflict in duties which would prohibit a member of either body from properly and faithfully performing all of the duties of a member of the other. It appears, therefore, that the office of member of a county

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regional planning commission is not incompatible with the office of member of a county zoning board of appeals, including alternate members, and that one person may hold both offices simultaneously.

This conclusion is consistent with previous Attorney Generals' opinions discussing the compatibility of the office of regional planning commissioner and other county zoning officials. For example, in opinion No. S-96, issued December 4, 1969 (1969 Ill. Att'y Gen. Op. 150), Attorney General Scott determined that the offices of regional planning commission member and county zoning commission member were not incompatible. Similarly, in opinion No. UP-1521, issued February 10, 1966, Attorney General Clark advised that the office of regional planning commission member was not incompatible with the office of county zoning administrator. Copies of these opinions are enclosed for your review.

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:LAS:cj

Enclosures



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan

ATTORNEY GENERAL

November 9, 2006

I - 06-041

COMPATIBILITY OF OFFICES:

County Zoning Board of Appeals Member
and Township Plan Commission Member

The Honorable Melissa S. Barnhart
State's Attorney, Kendall County
Kendall County Courthouse
807 West John Street
Yorkville, Illinois 60560

Dear Ms. Barnhart:

I have your letter inquiring whether a county zoning board of appeals member may simultaneously serve as township plan commission member. For the reasons stated below, the office of county zoning board of appeals member is not incompatible with the office of township plan commission member.

BACKGROUND

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, properly and faithfully perform 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 prohibiting one person from simultaneously holding the offices of county zoning board of appeals member and township plan commission member. 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.

ANALYSIS

Powers and Duties of County Zoning Board of Appeals

Kendall County has adopted a county zoning ordinance pursuant to division 5-12 of the Counties Code (the Code) (55 ILCS 5/5-12001 *et seq.* (West 2004)).¹ Members of the county zoning board of appeals are appointed by the presiding officer of the county board, with the county board's advice and consent. 55 ILCS 5/5-12010 (West 2004). The powers and duties of the zoning board of appeals are set out in division 5-12 of the Code. Specifically, section 5-12009 of the Code (55 ILCS 5/5-12009 (West 2004)) provides, in pertinent part:

The regulations by this Division authorized may provide that a board of appeals may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein contained in cases where there are practical difficulties or particular hardship in the way of carrying out the strict letter of any of such regulations relating to the use, construction or alteration of buildings or structures or the use of land * * *.

* * *

Where a variation is to be made by ordinance or resolution, upon the report of the board of appeals such county board may by ordinance or resolution without further public hearing adopt any proposed variation or may refer it back to the board of appeals for further consideration and any proposed variation which fails to receive the approval of the board of appeals shall not be passed except by the favorable vote of 3/4 of all the members of the county board, but in counties in which the county board consists of 3 members only a 2/3 vote is required.

Section 5-12011 of the Code (55 ILCS 5/5-12011 (West 2004)) provides, in pertinent part:

The board of appeals shall also hear and decide appeals from and review any order, requirement, decision or determination

¹The Kendall County zoning ordinance may be accessed on the Internet at <<http://www.co.kendall.il.us/zoning/ordinance.htm>>. Because Kendall County has adopted a county zoning ordinance, article 110 of the Township Code (60 ILCS 1/110-5 *et seq.* (West 2004)) is inapplicable.

made by an administrative official charged with the enforcement of any ordinance or resolution adopted pursuant to this Division.

It shall also hear and decide all matters referred to it or upon which it is required to pass under any such ordinance or resolution or under the terms of this Division.

Further, section 5-12014 of the Code (55 ILCS 5/5-12014 (West 2004)) provides, in pertinent part:

The regulations imposed and the districts created under the authority of this Division may be amended from time to time by ordinance or resolution, after the ordinance or resolution establishing same has gone into effect, but no such amendments shall be made without a hearing before the board of appeals.

Under the foregoing statutory provisions, the county zoning board of appeals votes on any proposal submitted to the county board which creates a variation to the zoning regulations. If any proposed variation fails to receive the approval of the board of appeals, a three-fourths vote of all members of the county board is required to pass the resolution, except in counties in which the county board consists of three members, where only a two-thirds vote is required. The county zoning board of appeals also hears and decides: (1) all appeals from the zoning administrator; (2) all matters referred to it; and (3) all matters upon which it is required to pass under ordinance. Finally, it hears all matters relating to the amendment of zoning regulations.

Powers and Duties of Township Plan Commissions

Section 105-35 of the Township Code (60 ILCS 1/105-35 (West 2004)) authorizes townships located in counties with a population of less than 600,000 to create township plan commissions.² Commissions are comprised of five members who are appointed by the township supervisor with the advice and consent of the township board. 60 ILCS 1/105-35 (West 2004). The powers and duties of township plan commissions include preparing and recommending to the township board a comprehensive plan for the development of unincorporated areas of the township, and thereafter recommending changes to the plan and promoting, generally, realization of the plan. 60 ILCS 1/105-35 (West 2004). Additionally, subsection 105-35(c) of the Township Code provides:

²According to the 2000 Census, Kendall County had a population of 54,544. Illinois Blue Book 422 (2003-2004).

If the county in which the township is located has adopted a county zoning ordinance under Division 5-12 of the Counties Code, the recommendations of the township plan commission may be presented by the township board to the county board of that county.

Because Kendall County has adopted a county zoning ordinance, the township plan commission in this circumstance makes recommendations to the township board of trustees, which in turn may present the recommendations to the county board of Kendall County.

Moreover, section 5-12009 of the Code (55 ILCS 5/5-12009 (West 2004)) provides, in pertinent part:

If a township located within a county with a population of less than 600,000 * * * has a plan commission, and the plan commission objects to a zoning variation which affects unincorporated areas of the township, the township board of trustees within 15 days after the public hearing before the board of appeals on such zoning variation, may submit its written objections to the county board of the county where the unincorporated areas of the township are located. In such case, the county board shall not approve the zoning variation, except by the favorable vote of 3/4 of all members of the county board.

Similarly, section 5-12014 of the Code (55 ILCS 5/5-12014 (West 2004)) provides, in pertinent part:

(c) If a township located within a county with a population of less than 600,000 has a plan commission and the plan commission objects to a text amendment or a map amendment affecting an unincorporated area of the township, then the township board of trustees may submit its written objections to the county board within 30 days after the hearing before the board of appeals, in which case the county board may not adopt the text amendment or the map amendment affecting an unincorporated area of the township except by the favorable vote of at least three-fourths of all the members of the county board.

In addition to submitting recommendations to the township board regarding general development plans within the unincorporated areas of the township, the township plan commission may present objections to the township board regarding zoning variances or

amendments to zoning ordinances after a hearing before the county zoning board of appeals. The township board may, in its discretion, present the objections to the county board, in which case the zoning variance or amendment cannot be approved or adopted unless three-fourths of all members of the county board vote in favor of such variance or amendment.

Conflict of Duties

In opinion No. S-500, issued July 24, 1972 (1972 Ill. Att'y Gen. Op. 195), Attorney General Scott was asked to determine whether a county board member could simultaneously serve as a member of a regional planning commission. In reaching his conclusion that a county board member may simultaneously serve as a member of the regional planning commission, Attorney General Scott stated that there is no conflict of interest in a member of the county board serving on a commission that advises the county board. The regional planning commission cannot implement its own plan; it has no ordinance powers.

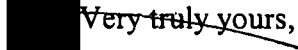

In informal opinion No. I-92-015, issued March 5, 1992, we were asked whether one person may simultaneously serve as the chairman of the township plan commission and county board member. Relying on subsection 13-27(c) of the Township Law (Ill. Rev. Stat. 1989, ch. 139, par. 126.27(c)), the precursor to current section 105-35(c) of the Township Code and opinion No. S-500, we concluded that no conflict of duties would arise from the simultaneous service in both offices because the township plan commission cannot implement its own plan in a county which has adopted a county zoning ordinance. Rather, the commission merely makes recommendations to the township board, which then may present the recommendations to the county board.

A similar analysis applies to the offices of county zoning board of appeals member and township plan commission member. A township plan commission essentially serves as an advisory body to the township board. The commission's plans for the township are merely recommendations that are submitted to the township board for adoption. Similarly, its objections to variances affecting the township or amendments to ordinances affecting the township are merely recommendations that are submitted to the township board for referral to the county board. Although the county zoning board of appeals hears these matters, it is the county board that makes the final determination as to whether to approve a variance affecting the township or to adopt an amendment to a zoning ordinance. The township plan commission thus serves as an indirect advisor to the county board and an indirect objector to hearings held before the county zoning board of appeals which are ultimately decided by the county board. As such, the functions of the offices of county zoning board of appeals member and township plan commission member do not appear to be inconsistent, and an individual holding both offices may fully and faithfully discharge all of the duties of the other.

CONCLUSION

Based on the duties of county zoning board of appeals members and township plan commission members, there is no apparent conflict in duties which would prohibit a member of one body from properly and faithfully performing all of the duties of a member of the other. Therefore, the office of county zoning board of appeals member is not incompatible with the office of township plan commission member, and one person may simultaneously hold both offices.

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

Very truly yours,


LYNNE E. PATTON
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Chief, Opinions Bureau

LEP:KMC:ljk