



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS  
May 28, 1996

**Jim Ryan**  
ATTORNEY GENERAL

I - 96-028

COMPATIBILITY OF OFFICES:  
County Board Member and  
School Board Member;  
County Board Member and  
Deputy Coroner; County  
Board Member and Deputy Sheriff

Honorable Terry C. Kaid  
State's Attorney, Wabash County  
Wabash County Courthouse  
401 Market Street  
Mt. Carmel, Illinois 62863

Dear Mr. Kaid:

I have your letter wherein you inquire whether one person may serve simultaneously in the offices of: 1) county board member and school board member; 2) county board member and deputy coroner; and 3) county board member and deputy sheriff. Because of the nature of your inquiry, I do not believe that the issuance of an official opinion of the Attorney General is necessary. I will, however, comment informally upon the questions you have raised.

Your first inquiry concerns potential incompatibility in the offices of county board member and school board member. 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; Rogers v. Village of Tinley Park (1983), 116 Ill. App. 3d 437, 440-41; People ex rel. Myers v. Haas (1908), 145 Ill. App.

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283, 286.) There are no constitutional or statutory provisions which expressly prohibit simultaneous tenure in the offices of county board member and school board member. Therefore, the issue is whether a conflict in duties could arise if one person were to occupy both offices simultaneously.

In opinion No. 93-011 (Ill. Att'y Gen. Op. No. 93-011, issued May 25, 1993), a copy of which I have enclosed for your review, Attorney General Burriss concluded that the office of county board member is incompatible with that of school board member. He noted therein that one potential area of conflict relates to the several instances in which contracts or agreements are authorized between a county and a school district. (See, e.g., 55 ILCS 5/3-6036, 5/5-1060 (West 1994); 55 ILCS 90/10 (West 1994); 105 ILCS 5/29-16 (West 1994).) Another potential conflict in duties arises with respect to the allocation of revenue sharing funds under section 3 of the State Revenue Sharing Act (30 ILCS 115/3 (West 1994)). These potential conflicts were deemed sufficient to render the offices of county board member and school board member incompatible.

In reviewing the provisions of the Counties Code (55 ILCS 5/1-1001 et seq. (West 1994)) and the School Code (105 ILCS 5/1-1 et seq. (West 1994)), and the pertinent cases decided thereunder, it appears that the reasoning of opinion No. 93-011 is still valid. Consequently, the offices of county board member and school board member are incompatible under the common law doctrine of incompatibility of offices.

This issue cannot be concluded at this point, however. Since incompatibility is a common law doctrine, it may be modified or superseded legislatively. Shortly after opinion No. 93-011 was issued, the General Assembly enacted Public Act 88-471, effective September 1, 1993, which added section 1.2 to the Public Officer Prohibited Activities Act (50 ILCS 105/1.2 (West 1994)). Under section 1.2 of the Act, persons in a county having fewer than 40,000 inhabitants are expressly permitted to hold the offices of county board member and school board member simultaneously. According to 1990 Federal census figures, the population of Wabash County is 13,111 inhabitants. (Illinois Blue Book 424 (1993-94).) Consequently, in this instance, it appears that one person may hold the offices of county board member and school board member in Wabash county simultaneously, notwithstanding that those offices may be incompatible at common law.

You have also asked whether one person may serve simultaneously as a county board member and a deputy coroner in circumstances in which the deputy coroner does not receive a

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salary, but is reimbursed for mileage and other expenses. There are no constitutional or statutory provisions which expressly prohibit simultaneous tenure in the offices of county board member and deputy coroner. Therefore, the issue is whether a conflict in duties could arise if one person were to occupy both offices simultaneously.

In People ex rel. Teros v. Verbeck (1987), 155 Ill. App. 3d 81, the court was asked to determine whether one person could hold the offices of county board member and deputy coroner simultaneously. In reaching its conclusion that the offices of county board member and deputy coroner are incompatible, the court noted:

" \* \* \*

\* \* \*Common law incompatibility may be established where defendant in one position has authority to act upon the appointment, salary and budget of his superior in a second position. (People ex rel. Fitzsimmons v. Swailes (1984), 101 Ill. 2d 458, 463 N.E.2d 431.) In the present case, it is undisputed that the county board is charged with the duty to fix the compensation of the county coroner within statutory limitations (Ill. Rev. Stat. 1985, ch. 53, par. 37a.1 [55 ILCS 5/4-6002 (West 1994)]) and to provide for reasonable and necessary operating expenses for the coroner's office (Ill. Rev. Stat. 1985, ch. 34, par. 432 [55 ILCS 5/5-1106 (West 1994)]). It is further undisputed that the deputy coroner's compensation is fixed by the coroner, subject to budgetary limitations established by the county board. (Ill. Rev. Stat. 1985, ch. 31, par. 1.2 [55 ILCS 5/3-3003 (West 1994)].) Thus, under the statutory scheme, defendant's two offices are fiscally incompatible since defendant as a member of the county board has authority to act upon the salary and budget of the county coroner who, in turn, determines defendant's salary as deputy coroner. The potential for influencing his superior's salary and budget and, ultimately, his own salary, without more, renders defendant's offices incompatible.

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(People ex rel. Teros v. Verbeck (1987), 155  
Ill. App. 3d at 83-4.)

Based upon the foregoing, it is clear that each fiscal year a county board must consider and provide that amount of funding which it considers to be reasonably necessary for the coroner to procure equipment, materials and services, which includes an appropriation for personal services. While you have indicated in your letter that the deputy coroner who is the focus of your inquiry does not currently receive any compensation for his services, there is no requirement that this policy must continue. Thus, a county board member who also serves as a deputy coroner would be called upon to vote upon the budget from which his compensation, if any, would be paid. This creates competing duties of loyalty. Consequently, it does not appear that a county board member may serve as a deputy coroner, even in those circumstances in which the deputy coroner does not receive compensation for carrying out his duties.

Lastly, you have inquired whether one person may serve simultaneously as a county board member and a deputy sheriff in those instances in which the deputy sheriff does not receive a salary for his services, but is reimbursed for mileage and other expenses. There are no constitutional or statutory provision which expressly prohibit simultaneous tenure in the offices of county board member and deputy county sheriff. Therefore, the issue again becomes whether a conflict in duties could arise if one person were to occupy both offices simultaneously.

In Rogers v. Village of Tinley Park (1983), 116 Ill. App. 3d 437, the court was asked to determine whether the offices of village trustee and municipal police officer were incompatible. In reaching its conclusion that one person could not serve simultaneously in those two offices, the court reviewed the elements of the doctrine of common law incompatibility:

" \* \* \*

'It is to be found in the character of the offices and their relationship to each other, in the subordination of the one to the other, and in the nature of the duties and functions which attach to them.

Incompatibility of offices exist where there is a conflict in the duties of the offices, so that the performance of the duties of the one interferes with the performance of the duties of the other. They

are generally considered incompatible where such duties and functions are inherently inconsistent and repugnant, so that because of the contrariety and antagonism which would result from the attempt of one person to discharge faithfully, impartially, and efficiently the duties of both offices, considerations of public policy render it improper for an incumbent to retain both.

At common law, it is not an essential element of incompatibility of offices that the clash of duty should exist in all or in the greater part of the official functions. If one office is superior to the other in some of its principal or important duties, so that the exercise of such duties may conflict, to the public detriment, with the exercise of other important duties in the subordinate office, then the offices are incompatible.'

\* \* \*

"

(Rogers v. Village of Tinley Park (1983), 116 Ill. App. 3d at 441.)

A review of the provisions of the Counties Code (55 ILCS 5/1-1001 et seq. (West 1994)) indicates that the county board is authorized to establish the number of deputy sheriffs to be appointed. (55 ILCS 5/3-6008 (West 1994).) In this regard, a county board member who also serves as a deputy sheriff would be called upon to determine whether his position as a deputy sheriff was necessary for the proper functioning of county government. This creates competing interests and divided loyalties which could hamper a county board member in the full and faithful performance of his duties.

In addition to determining the number of deputy sheriffs the county will employ, the county board is also charged with the duty to fix the compensation of the county sheriff, within statutory limitations (55 ILCS 5/4-6003 (West 1994)), and to provide for reasonable and necessary operating expenses for the sheriff's office (55 ILCS 5/5-1106 (West 1994)). As discussed supra, a county board member who also serves as a deputy sheriff would be required, when voting upon the budget of the county sheriff, to act annually upon the budget from which the sheriff's personal service contracts are satisfied. Thus, a county board member simultaneously serving as a deputy sheriff could create the appearance as well as the actuality of competing

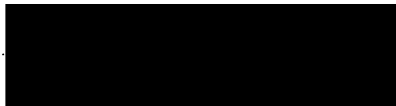
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interests and divided loyalties which could hamper a county board member in the full and faithful performance of his duties. Consequently, it does not appear that one person may serve simultaneously as a county board member and a deputy county sheriff.

I would further note that you have inquired whether any potential conflict in duties which may exist could be resolved by the county board member in question refraining from participation in matters brought before the county board which involve the school district, the county coroner's office or the county sheriff's office, respectively. Our courts have consistently held that abstention will not avoid application of the doctrine of incompatibility of offices. (People ex rel. Teros v. Verbeck (1987), 155 Ill. App. 3d 81, 84; Rogers v. Village of Tinley Park (1983), 116 Ill. App. 3d 437.) Moreover, the court in Rogers v. Village of Tinley Park noted that "[t]he common law doctrine of incompatibility \* \* \* insure[s] that there be the appearance as well as the actuality of impartiality and undivided loyalty." (116 Ill. App. 3d at 442 quoting O'Connor v. Calandrillo (1971), 285 A.2d 275, aff'd, 296 A.2d 326 (1972), cert. denied, 299 A.2d 727 (1973), cert. denied, 93 S.Ct. 2775 (1973).) Therefore, it does not appear that abstention from participation will resolve a conflict of interest or a conflict in duties.

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  
Bureau Chief, Opinions

MJL:LP:dn



**WILLIAM J. SCOTT**

ATTORNEY GENERAL  
STATE OF ILLINOIS  
500 SOUTH SECOND STREET  
SPRINGFIELD  
62706

June 20, 1975

FILE NO. NP-927

CRIMINAL LAW:  
Deputy Sheriff Cannot  
Serve as Probation  
Officer

Honorable Loren S. Golden  
State's Attorney  
Carroll County  
Courthouse  
Mt. Carroll, Illinois 61053

Dear Mr. Golden:

This responds to your letter requesting my opinion as to whether a deputy sheriff may be a probation officer. For the reasons set forth below I do not believe that an individual serving as a deputy sheriff is qualified to serve as a probation officer. Section 204-2 of the Illinois Criminal Code (Ill. Rev. Stat. 1973, ch. 38, par. 204-2), sets forth the qualifications for the position of probation

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officer. That section provides:

"Any reputable private person who shall be of the age of twenty-five years or upwards, may be appointed a probation officer.

Members of the police force of any city or village, if specially detailed by their commanding officer to the work, may be appointed probation officers in said city or village,  
\* \* \*." (emphasis added.)

"Private person", as defined by Black's Law Dictionary,

Revised 4th Edition, is an individual who is not the incumbent of an office. A deputy sheriff is appointed by the sheriff and he takes and subscribes to an oath or affirmation prior to entering upon his duties. (Ill. Rev. Stat. 1973, ch. 125, pars. 7 - 9.) It is my opinion that a deputy sheriff is not a private person within the meaning of the statute, nor is a deputy sheriff included among the enumerated exceptions.

Under the rule of construction referred to as "expressio unius exclusio alterius", the enumeration of certain things in a statute implies the exclusion of all other things. (People ex rel. Cadell v. Board of Fire and Police Commr's of City of East St. Louis, 345 Ill. App. 415.) While the statute provides in plain and unambiguous terms that law enforcement officials from cities and villages may be probation officers, no such provision is made for



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deputy sheriffs. Since no exception for deputy sheriffs is included in the statute, an exception cannot be read into it. Howlett v. Doglio, 402 Ill. 311; In re Tilliski's Estate, 390 Ill. 273.

In conclusion, the statutory language clearly prohibits an individual who is a deputy sheriff from simultaneously being a probation officer. A deputy sheriff is not a private person nor is he included among the officials expressly allowed to be appointed. Therefore, a deputy sheriff may not serve as a probation officer.

Very truly yours,

A T T O R N E Y   G E N E R A L



**OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS**

**Lisa Madigan**  
ATTORNEY GENERAL

May 15, 2008

I - 08-015

**COMPATIBILITY OF OFFICES:**  
Deputy Sheriff and  
Village Police Chief

The Honorable David Nelson  
State's Attorney, Saline County  
Saline County Courthouse  
Harrisburg, Illinois 62946

Dear Mr. Nelson:

I have your letter inquiring whether the offices of deputy sheriff and village police chief are incompatible. Under the circumstances and for the reasons stated below, the office of deputy sheriff is not incompatible with the office of village police chief, and, therefore, one person may hold both offices simultaneously.

**BACKGROUND**

The information you have provided indicates that a deputy sheriff for Saline County has been appointed police chief for the Village of Carrier Mills, a municipality located in Saline County. The village police department which is the focus of your inquiry consists of three or four police officers in addition to the police chief. There is no contractual arrangement between the village and the county for police protection services. You have asked whether the offices of deputy sheriff and police chief are incompatible in these circumstances.

## 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 expressly prohibiting one person from simultaneously serving as deputy sheriff and village police chief. The issue, therefore, is whether the duties of either position are such that the holder of one cannot fully and faithfully discharge all of the duties of the other.

As a preliminary matter, it must be determined whether the position of police chief of the Village of Carrier Mills constitutes a public office. In *Midwest Television, Inc. v. Champaign-Urbana Communications, Inc.*, 37 Ill. App. 3d 926, 931 (1976), the appellate court specifically delineated the criteria to be used in 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.

*See also Wargo v. Industrial Comm'n*, 58 Ill. 2d 234, 237 (1974); *People ex rel. Brundage v. Brady*, 302 Ill. 576, 582 (1922); Ill. Att'y Gen. Inf. Op. No. I-06-021, issued March 13, 2006; Ill. Att'y Gen. Inf. Op. No. I-05-007, issued September 23, 2005. 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.*, 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. *Hall v. County of Cook*, 359 Ill. 528, 539-40 (1935); *Brady*, 302 Ill. at 582.

Applying the several indicia of public office to the position of police chief in the Village of Carrier Mills, the position qualifies as a public office. Although the position of municipal police officer is created by statute (65 ILCS 5/11-1-2 (West 2006)), the position of village police chief is created by ordinance. *See Village of Carrier Mills Ordinance*, art. VII, §2-

67 (effective May 4, 1977) (Ordinance). The position appears to be one of continuing existence; it does not appear occasional or contractual. The police chief is required to file a \$1,000 bond with the village clerk, as well as an oath of office. See Ordinance, art. VII, §2-68. Further, the police chief has an independence beyond that of an employee. The chief is responsible for the performance of the police department, and all persons who serve as members of the police department serve subject to the orders of the police chief. Ordinance, art. VII, §§2-69, 2-74, 2-75. Thus, the police chief bears the responsibility and direction for all functions and personnel of the village police department. See generally *Fabiano v. City of Palos Hills*, 336 Ill. App. 3d 635, 657 (2002), *appeal denied*, 204 Ill. 2d 658 (2003). Significantly, the police chief is a member of the police department. Ordinance, art. VII, §2-66. As such, it is among his duties to preserve order and prevent infractions of the law. Ordinance, art. VII, §2-70. Inherent in this is the responsibility to protect the public and maintain an efficient and effective police force. See *Buege v. Lee*, 56 Ill. App. 3d 793, 796 (1978); Ordinance, art. VII, §2-69. In this regard, the police chief exercises a portion of the sovereign power. Ill. Att'y Gen. Inf. Op. No. I-06-021, issued March 13, 2006.

Based on the foregoing, the position of police chief as created by the Village of Carrier Mills is a public office. See *Village of Round Lake Beach v. Brenner*, 107 Ill. App. 3d 1, 4 (1982) (chief of police is a public office); Ill. Att'y Gen. Inf. Op. No. I-01-025, issued May 23, 2001 (fire chief is a public office); Ill. Att'y Gen. Inf. Op. No. I-94-030, issued June 8, 1994 (fire chief may be either an officer or an employee); 65 ILCS 5/10-2.1-4 (West 2006) (a full-time member of a police department in a municipality that has appointed a board of fire and police commissioners is a "city officer").<sup>1</sup> Accordingly, 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.

The office of deputy sheriff (1971 Ill. Att'y Gen. Op. 93; Ill. Att'y Gen. Inf. Op. No. I-96-028, issued May 28, 1996) is provided for in section 3-6008 of the Counties Code (55 ILCS 5/3-6008 (West 2006)). Deputy sheriffs may perform any and all of the duties of the sheriff, in the name of the sheriff, and the acts of such deputies are held to be acts of the sheriff for which the sheriff is liable (55 ILCS 5/3-6015, 3-6016 (West 2006)). Accordingly, deputy sheriffs are conservators of the peace (55 ILCS 5/3-6021 (West 2006)). As such, they are

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<sup>1</sup>In *Rogers v. Village of Tinley Park*, 116 Ill. App. 3d 437 (1983), the appellate court considered whether the doctrine of incompatibility of offices precluded a village police officer from simultaneously serving as a village trustee. Without specifically discussing whether the position of police officer is an office, the court held that the doctrine of incompatibility of offices precludes a village police officer from simultaneously serving as village trustee because of a conflict of duties between the two offices. *Tinley Park*, 116 Ill. App. 3d at 445. Because the common law doctrine of incompatibility of offices traditionally has been applied only to offices, and not to positions of employment (1975 Ill. Att'y Gen. Op. 278, 280), it must be assumed that the court concluded that the position of police officer was, in fact, a public office. If the position of village police officer is a public office, it then follows that the position of village police chief must similarly be considered a public office.

authorized to prevent crime, maintain the safety and order of the citizens throughout the county, and arrest offenders and cause them to be brought before the proper court. Moreover, deputy sheriffs are authorized to serve and execute warrants, process, orders, and judgments legally directed to the sheriff's office (55 ILCS 5/3-6019 (West 2006)). Further, it is within a deputy sheriff's duties to attend the sessions of the court and to provide security in the courthouse. 55 ILCS 5/3-6023 (West 2006).

In addition to those duties prescribed by ordinance, as a police officer, the police chief's duties and powers generally include acting as a conservator of the peace. As such, the police chief has the power to arrest all persons who breach the peace or are found violating any municipal ordinance or any criminal law of the State. 65 ILCS 5/11-1-2(a) (West 2006). Further, the police chief may serve and execute within the municipality's corporate limits all warrants for the violation of municipal ordinances or the State's criminal laws. Ordinance, art. VII, §2-71. In this regard, a police chief has all of the common law and statutory powers of the sheriff. 65 ILCS 5/11-1-2(b) (West 2006).

As officers responsible for enforcing the law in their respective jurisdictions, the duties of a deputy sheriff and a police chief are substantially similar and complement one another, rather than conflict. Moreover, you have stated that Saline County and the Village of Carrier Mills do not contract for police protection services.<sup>2</sup> Based on these facts, it does not appear that a deputy sheriff's ability to perform his or her duties fully and faithfully would be compromised by simultaneous service as a village police chief.

The only remaining question is whether the deputy sheriff has sufficient time to faithfully and properly perform the duties of the offices of deputy sheriff and village police chief simultaneously. Whether a person has the time to perform the duties of both deputy sheriff and police chief is a factual question that the sheriff and the village president and board of trustees must decide.

## CONCLUSION

Based on the duties of deputy sheriff and village police chief, there is no apparent conflict in duties which would prohibit one person from properly and faithfully performing all of the duties of each office. Therefore, in these circumstances, the office of deputy sheriff is not incompatible with the office of village police chief, and one person may hold both offices simultaneously.

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<sup>2</sup>Thus, the circumstances which form the basis of your inquiry are distinguishable from those in informal opinion No. I-07-006, issued March 2, 2007, wherein it was determined that the offices of village commissioner and county sheriff were incompatible because of a police protection services contract then in effect.

The Honorable David Nelson - 5

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  
Senior Assistant Attorney General  
Chief, Opinions Bureau

LEP:MKL:an



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

**Lisa Madigan**  
ATTORNEY GENERAL

August 26, 2015

I - 15-007

GOVERNMENTAL ETHICS &  
CONFLICT OF INTEREST:  
Sheriff or Deputy Sheriff Serving on County's  
Emergency Telephone System Board

The Honorable Mark R. Isaf  
State's Attorney, Edgar County  
115 West Court Street, Room S  
Paris, Illinois 61944-1787

Dear Mr. Isaf:

I have your letter in which you state that the Edgar County Emergency Telephone System Board (the ETS Board) has agreed to compensate the Edgar County sheriff's office for providing dispatching services for the Edgar County Emergency Telephone System (the System). You inquire whether, in light of this agreement, either the Edgar County sheriff or an Edgar County deputy sheriff may serve simultaneously as a member of the ETS Board. For the reasons discussed below, in these circumstances, the offices of sheriff and deputy sheriff are incompatible with the office of ETS board member. Accordingly, neither the Edgar County sheriff nor an Edgar County deputy sheriff may serve simultaneously as a member of the Edgar County ETS Board. We are hopeful that this analysis will provide guidance for future appointments to ETS boards as consolidation and restructuring of the boards occurs to comply with the requirements of Public Act 99-006, effective in part June 29, 2015, and January 1, 2016.

## BACKGROUND

Pursuant to subsection 15.4(a) of the Emergency Telephone System Act (the Act) (50 ILCS 750/15.4(a) (West 2014)), a county that imposes a telephone surcharge to fund an emergency telephone system is required to establish a governing board for the system:

The corporate authorities shall provide for the manner of appointment and the number of members of the [ETS] Board, provided that the board shall consist of not fewer than 5 members, *one of whom must be a public member who is a resident of the local exchange service territory included in the 9-1-1 coverage area, one of whom (in counties with a population less than 100,000)<sup>1</sup> must be a member of the county board, and at least 3 of whom shall be representative of the 9-1-1 public safety agencies, including but not limited to police departments, fire departments, emergency medical services providers, and emergency services and disaster agencies, and appointed on the basis of their ability or experience. \* \* \* Elected officials, including members of a county board, are also eligible to serve on the board.* (Emphasis added.)<sup>2</sup>

Subsection 15.4(b) of the Act (50 ILCS 750/15.4(b) (West 2014)), which sets out the powers and duties of an ETS board, currently provides, in pertinent part:

(b) The powers and duties of the board shall be defined by ordinance of the \* \* \* county \* \* \*. The powers and duties shall include, but need not be limited to the following:

- (1) Planning a 9-1-1 system.
- (2) Coordinating and supervising the implementation,

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<sup>1</sup>According to the 2010 Federal decennial census, the population of Edgar County is 18,576 inhabitants. Illinois Blue Book 441 (2013-2014).

<sup>2</sup>Public Act 99-006, Article II, effective January 1, 2016, will amend numerous sections of the Act to create a single statewide 9-1-1 system. Specifically, section 15.4 of the Act will be amended to provide that on and after January 1, 2016, no municipality or county may create an ETS board unless it is a joint ETS board, new section 15.4a will be added to require consolidation of certain ETS boards by July 1, 2017, and numerous other changes will be made to implement the recommendations of the 9-1-1 Services Advisory Board. See 9-1-1 Services Advisory Board, Report to the Illinois General Assembly, April 1, 2015, available at <http://www.icc.illinois.gov/911servicesadvisoryboard/>.



upgrading, or maintenance of the system, including the establishment of equipment specifications and coding systems.

(3) *Receiving moneys from the surcharge imposed under Section 15.3, and from any other source, for deposit into the Emergency Telephone System Fund.*

(4) *Authorizing all disbursements from the fund.*

(5) Hiring any staff necessary for the implementation or upgrade of the system.

(6) Participating in a Regional Pilot Project to implement next generation 9-1-1, as defined in this Act, subject to the conditions set forth in this Act. (Emphasis added.)

In addition, subsection 15.4(c) of the Act (50 ILCS 750/15.4(c) (West 2014)) presently authorizes the Board to expend ETS funds for specified purposes:

(c) All moneys received by a board pursuant to a surcharge imposed under Section 15.3 shall be deposited into a separate interest-bearing Emergency Telephone System Fund account. The treasurer of the \* \* \* county that has established the board \* \* \* shall be custodian of the fund. All interest accruing on the fund shall remain in the fund. *No expenditures may be made from such fund except upon the direction of the board by resolution passed by a majority of all members of the board. Expenditures may be made only to pay for the costs associated with the following:*

\* \* \*

(7) \* \* \* products and services necessary for the implementation, upgrade, and maintenance of the system and *any other purpose related to the operation of the system, including costs attributable directly to the construction, leasing, or maintenance of any buildings or facilities or costs of personnel attributable directly to the operation of the system.* Costs attributable directly to the operation of an emergency telephone system do not include the costs of public safety agency personnel who are and equipment that is dispatched in response to an emergency call. (Emphasis added.)

## ANALYSIS

### Composition of an ETS board

A single county ETS board is an agency of the county. *See* Ill. Att'y Gen. Op. No. 96-038, issued December 3, 1996; Ill. Att'y Gen. Inf. Op. No. I-12-003, issued March 2, 2012; Ill. Att'y Gen. Inf. Op. No. I-07-047, issued September 13, 2007. The county board determines the number of members comprising the board and their method of selection. 50 ILCS 750/15.4(a) (West 2014). Subsection 15.4(a) of the Act requires that at least three members of an ETS board be representatives of 9-1-1 public safety agencies, "including but not limited to police departments, fire departments, emergency medical services providers, and emergency services and disaster agencies[.]"<sup>3</sup> The Act defines "public safety agency" as "a functional division of a public agency which provides firefighting, police, medical, or other emergency services." 50 ILCS 750/2.02 (West 2014).

A sheriff is a "conservator of the peace in his or her county," and is under a duty to "prevent crime and maintain the safety and order of the citizens of that county; and may arrest offenders on view[.]" 55 ILCS 5/3-6021 (West 2014). As the supervisor of safety for the county, the sheriff is also charged with enforcing the laws of this State, as well as municipal ordinances, relating to the regulation of motor vehicle traffic and the promotion of safety on public highways. 55 ILCS 5/3-6035, 3-6036 (West 2014). Deputy sheriffs may perform any and all of the duties of the sheriff, in the name of the sheriff, and the acts of the deputies are held to be acts of the sheriff. 55 ILCS 5/3-6015, 3-6016 (West 2014). Because it provides police services, the Edgar County sheriff's office constitutes a "public safety agency," as that term is defined in the Act.<sup>4</sup> Consequently, both the sheriff and a deputy sheriff would meet the requirements to serve on the Edgar County ETS Board as representatives of a public safety agency, unless they are otherwise disqualified from serving.

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<sup>3</sup>Your letter indicates that the Edgar County ETS Board consists of individuals representing the Paris Fire Department, Hume/Metcalf Police Department, Vermilion Fire Service, Paris Police and Fire Board, the sheriff of Edgar County, and a deputy sheriff of Edgar County. It appears that all of these individuals would be classified as representatives of the 9-1-1 public safety agencies. However, an ETS board is also required to include a public member who is a resident of the local exchange service territory included in the 9-1-1 coverage area, as well as a county board member. *See* 50 ILCS 750/15.4(a) (West 2014).

<sup>4</sup>*See also* *People ex rel. Rexses v. Cermak*, 239 Ill. App. 195, 200-01 (1925) (the police function of patrolling highways attaches to the sheriff); *People v. Dittmar*, 2011 IL App (2d) 091112, ¶29, 954 N.E.2d 263, 271-72 (2011) (holding that it was a "reasonable public-safety endeavor" for a deputy sheriff to check on a stopped vehicle because the deputy sheriff had reason to believe that the occupants might need assistance and/or that passing traffic may harm the occupants).

### Incompatibility of Offices

Incompatibility of offices 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 all of the duties of the other. *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 are no constitutional or statutory provisions expressly prohibiting one person from simultaneously holding the offices of sheriff or deputy sheriff<sup>5</sup> and ETS board member. The issue, therefore, is whether the duties of one of the offices are such that its holder could not, in every instance, fully and faithfully discharge all of the duties of the other.

It is our understanding that the Edgar County Board, with the approval of the sheriff, has entered into an agreement with the ETS Board pursuant to which the sheriff's office is compensated for providing dispatching services for the System.<sup>6</sup> According to your letter, the ETS Board "routinely votes on financial contributions to the Edgar County Sheriff's Department" for providing these services.

It has long been established that one person cannot adequately represent the interests of two governmental units when those units contract with one another. 1991 Ill. Att'y Gen. Op. 188, 189; 1975 Ill. Att'y Gen. Op. 37, 43-47; Ill. Att'y Gen. Inf. Op. No. I-07-006, issued March 2, 2007, at 3. Although the Edgar County ETS System is a county agency, it is nonetheless quasi-independent, with its own restricted funding sources and a separate governing body. For purposes of this analysis, therefore, the contractual relationship between the county and the ETS Board is analogous to a contractual relationship between two separate units of government.

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<sup>5</sup>Unlike a police officer, who was not considered an officer of the city at common law, a deputy sheriff is generally held to occupy an office. *See County of Winnebago v. Industrial Comm'n*, 39 Ill. 2d 260, 263-64 (1968). Accordingly, although the doctrine of incompatibility is not applicable to mere employees, it is applicable to deputy sheriffs, who are officers of the county.

<sup>6</sup>ETS boards are authorized to contract for the provision of emergency telephone system dispatching services, such as receiving telephone requests for emergency services and contacting the appropriate public agency for response. 50 ILCS 750/15.4(c)(7) (West 2014); *see also* Ill. Att'y Gen. Inf. Op. No. I-02-040, issued July 23, 2002. In instances where it is agreed that the county sheriff's office should provide dispatching services, the county board is the appropriate contracting entity for the sheriff. 1980 Ill. Att'y Gen. Op. 60; Ill. Att'y Gen. Inf. Op. No. I-02-040 at 6. While ETS boards may use ETS funds for the costs of dispatching services, the Act provides that "[c]osts attributable directly to the operation of an emergency telephone system do not include the costs of public safety agency personnel who are and equipment that is dispatched in response to an emergency call." 50 ILCS 750/15.4(c)(7) (West 2014). Accordingly, ETS boards are not authorized to expend ETS funds on public safety personnel and equipment dispatched on emergency calls.

One of the inherent duties of a county sheriff is to advise the county board on the needs and capabilities of the sheriff's office. *See* 1978 Ill. Att'y Gen. Op. 52; Ill. Att'y Gen. Inf. Op. No. I-96-014, issued January 4, 1996. Even if the Edgar County sheriff does not have the ultimate authority to contract with the ETS Board to provide dispatching services, the sheriff may nonetheless have significant influence over both the county board's and the ETS Board's decisions to enter into the agreement and the terms of the agreement. *See Peabody v. Sanitary District of Chicago*, 330 Ill. 250 (1928) (holding that a contract between the board of trustees of a sanitary district and a contractor was void because the treasurer of the district had a business relationship with the contractor and an interest in the contract); Ill. Att'y Gen. Inf. Op. No. I-07-006 (the offices of village commissioner and county sheriff are incompatible where the village contracts with the county for police protection services). If the sheriff or a deputy sheriff were to serve simultaneously as an ETS board member, he or she would be placed in the untenable position of balancing the interests of the sheriff's office and the ETS System. Because the sheriff's or the deputy sheriff's duties to the county and to the System would conflict in these circumstances, the sheriff (or a deputy sheriff) is necessarily precluded from also serving as a county ETS board member, unless another provision of Illinois law expressly permits such simultaneous tenure.

The General Assembly has established specific membership criteria for ETS boards, including the requirement that at least three members of such board be representatives of 9-1-1 public safety agencies. Although the definition of "public safety agency" in the Act would generally encompass a sheriff's office, there is no express requirement in subsection 15.4(a) that sheriffs or deputy sheriffs serve on an ETS board. Further, while section 15.4 provides that elected officials are eligible to serve on the board, the statutory language does not expressly address the offices of sheriff or deputy sheriff.

The Edgar County sheriff would have an actual conflict of duties if he were to serve simultaneously as a member of the ETS Board. Moreover, because a deputy sheriff is also a county officer whose powers are derived from the sheriff, the sheriff's conflict extends to his deputies. If the General Assembly had intended to permit a sheriff or a deputy sheriff to serve on an ETS board notwithstanding the potential conflicts stemming from simultaneous tenure, we may presume that the General Assembly would have included that specific authorization in the Act. The general language of subsection 15.4(a) that requires an ETS board to include representatives of public safety agencies and that authorizes elected officials to serve as members of ETS boards does not sufficiently demonstrate the legislature's intent to permit a sheriff to serve on an ETS board, conflicting duties notwithstanding. Accordingly, absent express statutory authorization permitting simultaneous tenure in these circumstances, neither the Edgar County sheriff nor an Edgar County deputy sheriff may simultaneously serve as a member of the Edgar County ETS Board.

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### CONCLUSION

Based upon the facts that you have provided, and in the absence of express statutory authorization, the offices of Edgar County sheriff and Edgar County deputy sheriff are incompatible with the office of Edgar County Emergency Telephone System Board member. Accordingly, one person cannot hold both offices simultaneously.

You have also referenced potential conflicts of interest affecting other members of the Edgar County ETS Board. Based on your brief description of these issues, I regret that we cannot address them without additional information. If you wish to supplement your inquiry, we will endeavor to advise you. Alternatively, I am providing two previously issued opinions (Ill. Att'y Gen. Inf. Op. No. I-12-003, issued March 2, 2012; Ill. Att'y Gen. Inf. Op. No. I-01-007, issued February 5, 2001) that may provide you with guidance regarding conflicts of interest generally, and the proper expenditure of emergency telephone system funds.

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:ERV:cj

Enclosures