



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Jim Ryan

ATTORNEY GENERAL

March 14, 2001

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COMPATIBILITY OF OFFICES:

Mayor and Director of
Fox Waterway Agency

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

Dear Mr. Pack:

I have your letter wherein you inquire whether one person may serve simultaneously as a director of the Fox Waterway Agency and as the mayor of a city located within the territory of the Agency. 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.

You have stated that one of the directors of the Fox Waterway Agency is considering seeking election to the office of mayor of the city of McHenry, a municipality that is contiguous to the Fox River and contains territory included within the boundaries of the Agency. She wishes to retain her position as a director of the Agency if she is elected mayor. You have noted that the city government is organized pursuant to article 6 of the Municipal Code (65 ILCS 5/6-1-1 et seq. (West 1998)), the strong mayor form of government.

Public offices are deemed to be incompatible where the constitution or a statute specifically prohibits the occupant of

either one of the offices from holding the other, or where, because of the nature of the duties of either office, a conflict of duties may arise or the duties of either office are such that the holder of one cannot, in every instance, fully and faithfully perform all of the duties of the other. (People ex rel. Myers v. Haas (1908), 145 Ill. App. 283, 286; People ex rel. Fitzsimmons v. Swailes (1984), 101 Ill. 2d 458, 465.) There is no statutory or constitutional provision that prohibits one person from serving as both the mayor of a city and a director of the Agency simultaneously. Therefore, it must be determined whether the duties of the two offices are such that the holder of one cannot fully and faithfully perform all of the duties of the other.

The Fox Waterway Agency is organized pursuant to the Fox Waterway Agency Act (615 ILCS 90/1 et seq. (West 1998)), and is governed by an elected board of directors comprised of six directors and a chairman (615 ILCS 90/5 (West 1998)). Its powers and duties are set out in sections 7.1 through 7.12 of the Act (615 ILCS 90/7.1 - 7.12 (West 1998)). In general, the Agency is charged with improving and maintaining the Fox River/Chain of Lakes waterway for recreational uses, preventing or controlling flooding, preventing pollution and otherwise improving the quality of the waterway, promoting tourism and creating and administering a procedure for establishing restricted areas. (615 ILCS 90/7.1 (West 1998).) The drafters of the legislation apparently anticipated the possibility that conflicts might arise between the interests of the agency and those of units of local government within its territory. Thus, section 7.1 of the Act provides, in part:

"* * * In the case of a local ordinance relating to the establishment of restricted areas, speed limits, or other boating restrictions that is adopted by another unit of local government and conflicts with an Agency ordinance or rule, the Agency ordinance or rule shall control even if the conflicting ordinance is more restrictive, except that municipalities with corporate boundaries that are both adjacent to and at the southern terminus of the Agency's jurisdiction over the Fox River shall retain the right to establish reasonable no-wake zones within their corporate boundaries. The Agency may develop programs and build

projects to minimize pollution in the watershed from otherwise entering the waterway. Prior to establishing any restricted area, the Agency shall provide 21 days notice to any municipality in which the proposed area borders upon or is located. Notice shall be filed with the Clerk of the municipality. If such a municipality, by resolution of the corporate authority of the municipality, files an objection to the establishing of the proposed restricted area, then that restricted area shall not be approved except by a favorable vote of two-thirds of the Chairman and Board of Directors. All Agency programs, ordinances and rules shall be in conformance with the Rivers, Lakes, and Streams Act. The Agency shall coordinate efforts of State, federal and local governments to improve and maintain the waterway."

The mayor of a municipality organized pursuant to article 6 of the Municipal Code is the head of the city government and has been delegated the power to veto ordinances adopted by the city council. (65 ILCS 5/6-4-1 (West 1998).) Moreover, the mayor is responsible for enforcing municipal ordinances, for appointing and removing a variety of city officers, boards and commissions, for exercising control over the departments and divisions of the city, for attending and participating in council meetings and for recommending measures for adoption by the council. (65 ILCS 5/6-4-7 (West 1998).) Clearly, the mayor exercises significant authority with respect to the actions of the city council.

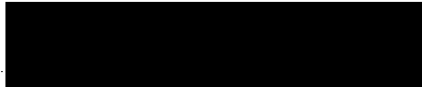
It appears that a person who served as both a director of the Fox Waterway Agency and as mayor of a municipality along the waterway could not, in every instance, fully and faithfully perform all of the duties of each office. Those duties potentially could conflict whenever the city acts with respect to regulation or development along the waterway and whenever the Agency proposes to initiate a project or to make a regulation affecting that part of the waterway contiguous to the municipality. The mayor has a duty to enforce the ordinances of the municipality, but the Agency can adopt rules which supersede municipal ordinances. Further, the Agency can adopt proposed

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restrictions over the objection of municipal authorities, which could place a person who served on the governing authority of each entity in the position of representing conflicting governmental interests. Therefore, because the duties of the offices of director of the Fox Waterway Agency and mayor of the city of McHenry may conflict, it appears that the offices are incompatible and that one person may not serve simultaneously in both offices.

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

Sincerely,

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

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

MJL:KJS:ab