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NP-769

COUNTIES:

Compatibility - County Board
Member and Attorney for Fire
Protection District

Honorable John J. Bowman
State's Attorney
DuPage County
207 South Reber Street
Wheaton, Illinois 60187

Dear Mr. Bowman:

I have your letter wherein you state:

"Does a conflict exist when a County Board
Member who is an attorney serves contempor-
aneously as attorney for a County Fire
Protection District whose members are appoint-
ed by the County Board?"

From the general rule laid down in People v. Haas,
145 Ill. App. 283, it appears that incompatibility between
offices arises where the Constitution, or a statute, specifi-
cally prohibits the occupant of either one of the offices
from holding the other, or where, because of the duties of

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either office a conflict of interest may arise, or where the duties of either office are such that the holder of one cannot, in every instance, properly and faithfully perform all the duties of the other.

There are no constitutional or statutory provisions which expressly prohibit an individual from simultaneously holding the two positions referred to in your letter. Therefore, the question arises whether, because of the duties or powers of either office, a conflict of interest exists in simultaneously holding the two offices.

In opinion No. 1426, issued September 1, 1965, the question of compatibility between the offices of county board member and fire district trustee was considered. In that opinion, it was held that there were no conflicting duties between the respective offices and that consequently the offices were compatible. However, since that opinion was issued, county boards and fire protection districts have acquired additional powers and duties.

While your request raises the question of compatibility of the office of county board member in relation to the position of attorney rather than trustee of the fire protection district, this opinion is not to be construed as determining whether such attorney is an officer or an employee.

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An attorney has a duty to protect his client's interests.

(Holmes v. Williamson, 33 Ill. App. 2d 458.) Consequently, an attorney for the fire protection district would be obligated to assist and advise the trustees in the execution of their statutory powers and duties. Thus, whether the attorney is viewed as an officer or employee, any conflict in regard to duties would exist in either case. Peabody v. Sanitary District, 330 Ill. 250.

There are several areas where, because of the nature of powers given to both county boards and fire protection districts, a person who simultaneously holds the positions of county board member and attorney for the fire protection district will have, in my opinion, a conflict of interest and be unable to properly and faithfully perform the duties of both offices.

One area where a conflict could arise is in the provision and operation of ambulance service. Under section 22 of "AN ACT in relation to fire protection districts" (Ill. Rev. Stat. 1973, ch. 127 1/2, par. 38.5(c)(2)), the trustees of a fire protection district have the power to contract with other governmental units for the provision and operation of ambulance service. Under section 25.12-1 of "AN ACT to revise the law in relation to counties" (Ill. Rev. Stat. 1973, ch. 34,

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par. 419.1(c)(2)), county boards have the same power to contract with other governmental units for the provision and operation of ambulance service. Thus, it is conceivable that a county and a fire protection district might wish to contract as to ambulance service. In such an instance, a person who simultaneously is a county board member and attorney for the fire protection district would be in the untenable position of being a party to both sides of a contract. Since both as board member and attorney, such person would be attempting to negotiate a contract most advantageous to his side, it is my opinion that such person would be unable to properly and faithfully perform the duties of both offices.

Another area where a conflict could arise is in the regulation of ambulance service. The trustees of a fire protection district have the power to adopt rules and regulations relating to ambulance service. (Ill. Rev. Stat. 1973, ch. 127 1/2, par. 38.5.) County boards have the same power. Ill. Rev. Stat. 1973, ch. 34, par. 419.1.

A conflict could also arise in another area of regulation. The trustees of a fire protection district have the duty to prescribe necessary regulations for the prevention and control of fire in the district. (Ill. Rev. Stat. 1973, ch. 127 1/2, par. 31.) County boards have the power to prescribe reasonable

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rules and regulations governing the construction, alteration, and maintenance of buildings and other structures in a condition reasonably safe from hazards of fire. (Ill. Rev. Stat. 1973, ch. 34, pars. 422 and 423.) It is conceivable that the regulations which the county board would adopt might conflict with the regulations of the fire protection district and that, in either position, the attorney would assist in drafting the regulations.

The trustees of a fire protection district have broad powers to further their main object which is the prevention and control of fire. (Ill. Rev. Stat. 1973, ch. 127 1/2, par. 21.) County boards have the specific duty to take all necessary measures to prevent forest fires. (Ill. Rev. Stat. 1973, ch. 127 1/2, par. 303.) It is conceivable that, in the execution of these duties, a conflict might arise.

The trustees of a fire protection district have the power to purchase personal property by contract for the purposes of the district. (Ill. Rev. Stat. 1973, ch. 127 1/2, par. 26.) County boards have the power to acquire and maintain a radio broadcasting station for fire protection purposes. (Ill. Rev. Stat. 1973, ch. 34, par. 416.) In regard to the radio broadcasting station, the county board has the power to furnish fire protection officers and employees with radio receiving sets and

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equipment necessary for receiving messages from and sending messages to the broadcasting station. While the method by which such equipment would be furnished to fire protection officers is not clear, it is conceivable that some kind of contractual arrangement might be made. If this were to occur, then a person who is simultaneously a county board member and attorney for a fire protection district would be in the untenable position mentioned above in regard to contracts for ambulance service. Thus, it is my opinion that such person would be unable to properly and faithfully perform the duties of both offices.

Finally, a person who is simultaneously a county board member and attorney for the fire protection district is in a questionable position in regard to the trustees of the fire protection district. In the situation described in your request, such a person is in a position where he can appoint the trustees who in turn can employ him as counsel for the fire protection district. While it is not clear to what extent any one member of the county board could influence the appointments, it would be preferable to avoid such a situation.

Consequently, in answer to your question, it is my

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opinion that the positions of county board member and attorney
for the fire protection district are incompatible.

Very truly yours,

A T T O R N E Y G E N E R A L