



ROLAND W. BURRIS

ATTORNEY GENERAL
STATE OF ILLINOIS



July 9, 1993

I - 93-037

COMPATIBILITY OF OFFICES:

Village Trustee and Fire Protection
District Trustee; Township Clerk
and School Board Member; Fire Protection
District Trustee and Community College Trustee

Honorable Jack O'Malley
State's Attorney, Cook County
500 Richard J. Daley Center
Chicago, Illinois 60602

Dear Mr. O'Malley:

I have Assistant State's Attorney Jeanette Sublett's letter wherein she inquired, on your behalf, regarding the potential incompatibility of several local offices. Because of the nature of these inquiries, 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 which have been raised.

Offices are deemed to be incompatible where the constitution or a statute specifically prohibits the occupant of one office from holding the other, or where the duties of the two offices conflict so that the holder of one cannot, in every instance, fully and faithfully discharge the duties of the other. (People ex rel. Myers v. Haas (1908), 145 Ill. App. 283, 286; see generally People ex rel. Teros v. Verbeck (1987), 155 Ill. App. 3d 81.) There are no constitutional or statutory provisions which prohibit simultaneous tenure in the offices which are the

focus of this inquiry. Therefore, the issue is whether a conflict of duties could arise if one person were to occupy the particular offices in question.

Your first question concerns whether the offices of village trustee and fire protection district trustee are incompatible. Sections 10b and 11a of the Fire Protection District Act (Ill. Rev. Stat. 1991, ch. 127 1/2, pars. 30b, 31a; 70 ILCS 705/10b, 11a) respectively provide, in pertinent part:

"Any two or more fire districts or one or more fire protection districts and one or more cities, villages or incorporated towns may provide for joint ownership of fire fighting equipment, communication equipment, rescue and resuscitator equipment and real and personal property necessary for the care and housing of such equipment. In case of joint ownership the term of the agreement shall be fair, just and equitable to all parties and shall be set forth in a written agreement entered into by the corporate authorities of each participating unit.

* * *

"

"The Board of Trustees of any fire protection district organized hereunder may contract with any corporation organized to furnish fire protection service or with any association organized to furnish fire protection service or with any city, village, incorporated town, or organized fire protection district lying adjacent to such district for fire protection service to be furnished by such corporation or such association or such municipality or fire protection district for the property within such district or to be furnished by such district for the property within such municipality. The board of trustees may also contract for the installation, rental or use of fire hydrants within the fire protection district and for the furnishing of water to be used within such district for fire protection purposes, and for mutual aid from and to other fire protection districts, and for mutual aid from and

to corporations and associations organized to furnish fire protection service and for mutual aid from and to municipalities.

* * *

"

(Emphasis added.)

Similarly, section 11-6-1 of the Illinois Municipal Code (Ill. Rev. Stat. 1991, ch. 24, par. 11-6-1; 65 ILCS 5/11-6-1 (West 1992)) provides:

"The corporate authorities of each municipality may provide and operate fire stations, and all material and equipment that is needed for the prevention and extinguishment of fires, and may enter into contracts or agreements with other municipalities and fire protection districts for mutual aid consisting of furnishing equipment and man power from and to such other municipalities and fire protection districts." (Emphasis added.)

Under the statutes quoted above, it is foreseeable that a village and a fire protection district could enter into a contract for the provision of equipment and other materials necessary for the prevention and extinguishment of fires. Moreover, under section 11 of the Act, the board of trustees of a fire protection district is authorized to provide emergency ambulance service. (Ill. Rev. Stat. 1991, ch. 127 1/2, par. 31; 70 ILCS 705/11 (West 1992).) Municipalities possess the authority to provide or contract for ambulance services, as well as the power to license and to regulate the operation of ambulances. (Ill. Rev. Stat. 1991, ch. 24, par. 11-5-7; 65 ILCS 5/11-5-7 (West 1992).)

It is well established that one person cannot adequately represent the interests of two governmental units when those units contract with one another. (Ill. Att'y Gen. Op. No. 91-023, issued June 6, 1991; Ill. Att'y Gen. Op. No. 85-019, issued November 19, 1985.) Because of the potential for conflicts in duties to arise when one governmental unit is authorized to contract with another, an individual serving as both a village trustee and a fire protection district trustee would be unable to represent the units of both entities adequately, fully and faithfully. Therefore, it appears that one person may not simultaneously hold the offices of village trustee and fire protection district trustee.

Secondly, you inquire whether the offices of township clerk and board of education member are incompatible. Township clerks are custodians of all records, books and papers of the town (Ill. Rev. Stat. 1991, ch. 139, par. 111; 60 ILCS 5/12-1 (West 1992)) and are authorized to certify to the county clerks the amount of taxes required to be raised for town purposes (Ill. Rev. Stat. 1991, ch. 139, par. 114; 60 ILCS 5/12-4 (West 1992)). Board of education members are responsible for conducting the business affairs of a school district (Ill. Rev. Stat. 1991, ch. 122, pars. 10-22 through 10-23.12; 105 ILCS 5/10-22 - 10-23.12 (West 1992)). The clerk's duties are ministerial in nature and do not require the exercise of discretion. A review of the duties of the two specified offices has failed to disclose any potential conflicts which could prevent one person from faithfully discharging the duties of either office. Consequently, it appears that one person may serve as township clerk and school board member simultaneously.

Lastly, you have asked whether a person may serve as both a fire protection district trustee and a community college board trustee. Section 3-38.2 of the Public Community College Act (Ill. Rev. Stat. 1991, ch. 122, par. 103-38.2; 110 ILCS 805/3-38.2 (West 1992)) authorizes a community college board:

"To enter into contracts with any municipality or fire protection district in which any community college buildings are located for the purpose of reimbursing such fire protection district or municipality for the additional costs of providing fire fighting equipment, apparatus or additional paid personnel occasioned by the presence of community college buildings within the municipality or fire protection district." (Emphasis added.)

Under section 3-38.2 of the Public Community College Act, it appears that the General Assembly specifically contemplated that a fire protection district and a community college could enter into a contract to reimburse the fire protection district for costs associated with the provision of fire fighting services on the community college campus or to the community college's buildings. As noted earlier, one person cannot represent the interests of two governmental units when those units contract with one another. (1991 Ill. Att'y Gen. Op. No. 91-023; 1985 Ill. Att'y Gen. Op. No. 85-019.) Consequently, given the authorization for the two bodies to contract for services, it

Honorable Jack O'Malley - 5.

does not appear that one person may simultaneously hold the positions of fire protection district trustee and community college board trustee.

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

MJL:LP:cj



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

February 17, 2012

I- 12-001

COMPATIBILITY OF OFFICES:
County Board Member and
Fire Protection District Trustee

The Honorable Randall J. Brinegar
State's Attorney, Vermilion County
Court House
7 North Vermilion Street
Danville, Illinois 61832

Dear Mr. Brinegar:

I have your letter inquiring whether one person may serve simultaneously in the offices of county board member and fire protection district trustee. For the reasons stated below, a county board member, during his or her term of office, may not be appointed to serve as a fire protection district trustee. The appointment of an incumbent county board member to the office of fire protection district trustee is void under section 1 of the Public Officer Prohibited Activities Act (the Prohibited Activities Act) (50 ILCS 105/1 (West 2010)).

BACKGROUND

Your letter states that the Vermilion County Board is the appointing authority for a three-member board of trustees of a fire protection district that lies entirely within Vermilion County and that is organized under section 4 of the Fire Protection District Act (70 ILCS 705/4 (West 2010)), which provides, in pertinent part:

(a) A board of trustees consisting of 3 members for the government and control of the affairs and business of a fire protection district incorporated under this Act shall be created in the following manner:

* * *

(3) *If the district is wholly contained within a single county but does not lie wholly within a single township or a single municipality, the trustees for the district shall be appointed by the presiding officer of the county board with the advice and consent of the county board[.]* (Emphasis added.)

You inquire whether a county board member may be appointed to serve as a fire protection district trustee.

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 which expressly prohibits one person from serving simultaneously as a county board member and a fire protection district trustee. However, the provisions of section 1 of the Prohibited Activities Act, which address the ability of county board members to hold other public offices, necessarily preclude a county board member from simultaneously holding the office of fire protection district trustee in these circumstances.

Section 1 of the Prohibited Activities Act provides, in pertinent part:

No member of a county board, during the term of office for which he or she is elected, may be appointed to, accept, or hold any office other than (i) chairman of the county board or member of the regional planning commission by appointment or election of the board of which he or she is a member, (ii) alderman of a city or member of the board of trustees of a village or incorporated town if the city, village, or incorporated town has fewer than 1,000 inhabitants and is located in a county having fewer than 50,000 inhabitants, or (iii) trustee of a forest preserve district created under Section 18.5 of the Conservation District Act, unless he or she first resigns from the office of county board member or unless the holding of another office is authorized by law. Any such prohibited appointment or election is void. (Emphasis added.)

The Illinois Appellate Court construed section 1 in *People v. Wilson*, 357 Ill. App. 3d 204 (2005), and concluded that the offices of county board member and school board member were incompatible under the Prohibited Activities Act. The court held that, under the plain language of section 1, and except to the extent specifically authorized by law, a county board member is prohibited from simultaneously holding another public office. *Wilson*, 357 Ill. App. 3d at 206. The court further concluded that, except in the limited circumstances specifically authorized by law, if a county board member is elected to another office, the election is void. *Wilson*, 357 Ill. App. 3d at 206. Section 1 makes no distinction between election to an office and appointment to an office.

CONCLUSION

Pursuant to section 1 of the Public Officer Prohibited Activities Act, as construed by the court in *Wilson*, no county board member may be elected or appointed, during the term of office for which he or she is elected, to any office other than those specified in section 1 or elsewhere in law.¹ Neither section 1 nor any other statute expressly permits one person to serve simultaneously as a county board member and a fire protection district trustee.² Therefore,

¹For example, the Public Officer Simultaneous Tenure Act (50 ILCS 110/0.01 *et seq.* (West 2010)) specifically authorizes one person to hold the offices of county board member and township supervisor simultaneously and, in certain counties, for a county board member to serve simultaneously as a township trustee, township assessor, or township clerk. *See* 50 ILCS 110/2 (West 2010).

²Your letter notes that section 4 of the Fire Protection District Act states that "no township official who is eligible to vote on the appointment shall be eligible for such appointment" but does not include similar language applicable to county board members. The legislative histories of section 4 of the Fire Protection District Act and section 1 of the Prohibited Activities Act, however, are instructive regarding this apparent disparity. Public Act 78-1128, effective October 1, 1974, initially added language to section 4 of "AN ACT in relation to fire protection districts" (Ill. Rev. Stat. 1973, ch. 127½, par. 24), the precursor to section 4 of the Fire Protection District Act, which provided that "no township official is eligible for such appointment[.]" Public Act 85-1178, effective August 13, 1988, amended the language to its current form. Public Act 89-588, effective January 1, 1997, included identical language in provisions which made township officials responsible for appointing the trustees for certain Cook County fire protection districts.

When Public Act 78-1128 was enacted, section 1 of "AN ACT to prevent fraudulent and corrupt practices in the making or accepting of official appointments and contracts by public officers" (Ill. Rev. Stat. 1973, ch. 102, par. 1), the precursor to section 1 of the Prohibited Activities Act, already provided that "[n]o member of a county board, during the term of office for which he is elected, may be appointed to, accept or hold any office other than chairman of the county board or member of the regional planning commission by appointment or election of the board of which he is a member." Public Act 88-623, effective January 1, 1995, amended section 1 to prohibit county board members from holding other public offices. However, section 2a of the Prohibited Activities Act (50 ILCS 105/2a (West 2010)), which provides that "[n]o township supervisor or trustee, during the term of office for which he or she is elected, may accept, be appointed to, or hold any office by the appointment of the board of township trustees unless he or she first resigns * * * or unless the appointment is specifically authorized by law" was not added to the Prohibited Activities Act until after the General Assembly enacted Public Act 86-717, effective January 1, 1990.

pursuant to section 1 of the Prohibited Activities Act, a Vermilion County Board member may not be appointed to the office of fire protection district trustee during his or her term of office, and any such appointment would be void under section 1 of the Prohibited Activities Act.³

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:LAS:cj

Enclosure

³This conclusion is also consistent with other analogous opinions of the Attorney General's office. In opinion No. NP-769, issued May 28, 1974, a copy of which is enclosed for your review, Attorney General Scott was asked to determine whether one person could serve simultaneously in the positions of county board member and attorney for a county fire protection district. Because of potential conflicts in exercising the powers granted to the county board and fire protection districts, Attorney General Scott concluded that the positions of county board member and attorney for a fire protection district were incompatible. Our review of the provisions of the Counties Code (55 ILCS 5/1-1001 *et seq.* (West 2010)) and the Fire Protection District Act (70 ILCS 705/0.01 *et seq.* (West 2010)) indicates that there have been no significant changes in the powers exercised by counties and fire protection districts, and that both still possess those powers cited in opinion No. NP-769 as creating potential conflicts in duties. The county board's authority to appoint the fire protection district trustees who could employ the attorney as counsel was among the potential conflict in duties identified in opinion No. NP-769. A potential conflict also arises from language added to subsection 5-1006.5(i) of the Counties Code (55 ILCS 5/5-1006.5(i) (West 2010)), by Public Act 96-124, effective August 4, 2009, which authorizes a county that imposes a special county retailers' occupation tax for public safety, public facilities, or transportation, to share the tax proceeds received for public safety purposes with any fire protection district. There is not a significant distinction between the duties of a fire protection district trustee and a fire protection district attorney that would compel a contrary conclusion. Accordingly, the reasoning previously relied upon in opinion No. NP-769 would apply equally to a fire protection district trustee.



OFFICE OF THE ATTORNEY GENERAL

STATE OF ILLINOIS

May 23, 2001

Jim Ryan

ATTORNEY GENERAL

I - 01-025

COMPATIBILITY OF OFFICES:

Fire Protection District Trustee and
Fire Chief of Fire Protection District;
Drainage District Commissioner and
Township Highway Commissioner

The Honorable John C. Piland
State's Attorney, Champaign County
101 East Main Street
Post Office Box 785
Urbana, Illinois 61803-0785

Dear Mr. Piland:

I have Assistant State's Attorney Joel D. Fletcher's letter wherein he inquired, on your behalf, whether the following positions are incompatible: fire protection district trustee and fire chief of the fire protection district; and drainage district commissioner and road district commissioner. Because of the nature of this inquiry, I will comment informally upon the questions that have been 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.) The doctrine of incompatibility generally extends only to public offices, and not to employment relationships (1975 Ill. Att'y Gen. Op. 278). Indicia of public office include the creation of the position by law, the requirement of an oath or a bond, duties prescribed by law rather than by

The Honorable John C. Piland - 2.

contract or agreement and the continuous nature of the duties of the position without regard to the particular person who holds the position. Wargo v. Industrial Comm'n (1974), 58 Ill. 2d 234, 237; People v. Brady (1922), 302 Ill. 576, 582.

With respect to the first part of this inquiry, it is clear that a fire protection district trustee holds a public office. The determination of whether the fire chief of a fire protection district is a public officer, however, requires an examination of the statutory provisions relating to that position. Section 6 of the Fire Protection District Act (70 ILCS 705/6 (West 1998)) provides, in pertinent part:

"The trustees shall constitute a board of trustees for the district for which they are appointed, which board of trustees is declared to be the corporate authority of the fire protection district, and shall exercise all of the powers and control all the affairs and property of such district. The board of trustees at their initial meeting and at their first meeting following the commencement of the term of any trustee shall elect one of their number as president and one of their number as secretary and shall elect a treasurer for the district, who may be one of the trustees or may be any other citizen of the district and who shall hold office during the pleasure of the board and who shall give such bond as may be required by the board. Except as otherwise provided in Sections 16.01 through 16.18, the board may appoint a fire chief and such firemen as may be necessary for the district who shall hold office during the pleasure of the board and who shall give such bond as the board may require. The board may prescribe the duties and fix the compensation of all the officers and employees of the fire protection district. * * *" (Emphasis added.)

Section 16.04a of that Act (70 ILCS 705/16.04a (West 1998)) additionally provides, in relevant part:

"The board of fire commissioners shall appoint all officers and members of the fire departments of the district, except the Chief of the fire department. The Chief of the fire department shall be appointed by the trustees.

* * *

"

(Emphasis added.)

Sections 6 and 16.04a of the Fire Protection District Act authorize the board of trustees of the fire protection district to appoint a fire chief. Section 6 provides that the fire chief shall "hold office" during the pleasure of the board and shall give such bond as the board may require. The board of trustees is authorized to prescribe the duties and fix the compensation of all of the officers and employees of the fire protection district. (70 ILCS 705/6 (West 1998).) In addition to the duties which may be established by the board of trustees, section 16.13b of the Act (70 ILCS 705/16.13b (West 1998)) provides that the chief of the fire department has the burden of proving the guilt of an officer or member of the department at a hearing on removal or discharge, and that the chief also has the authority to suspend members of his department without pay for a period of up to five consecutive calendar days. (70 ILCS 705/16.13b (West 1998).) Pursuant to section 6 of the Fire Investigation Act, the fire chief is required to investigate the cause, origin and circumstances of every fire within the fire protection district or upon any area or property which is furnished fire protection by the fire protection district.

Several factors support the conclusion that a fire chief is a public officer. Significantly, a fire chief is required to give a bond in the amount required by the board of trustees and "hold[s] office" at the pleasure of the board. The position of fire chief is created by statute and is a continuous position. Although the majority of a fire chief's duties are not fixed by statute, but by the trustees of the fire protection district, it appears, on balance, that a fire chief is an officer of the Fire Protection District, and that the doctrine of incompatibility would therefore be applicable to the offices of trustee and fire chief. There is no constitutional or statutory provision which prohibits one person from simultaneously serving in these two capacities. The issue, therefore, is whether the duties of either office are such that the holder of one cannot,

in every instance, fully and faithfully discharge the duties of the other.

Incompatibility of offices on this basis may arise because one of the offices is subordinate to the other. (See People ex rel. Fitzsimmons v. Swailes (1984), 101 Ill. 2d 458; Rogers v. Tinley Park (1983), 116 Ill. App. 3d 437; People ex rel. Teros v. Verbeck (1987), 155 Ill. App. 3d 81.) In these circumstances, the office of fire chief of a fire protection district is clearly subordinate to the office of fire protection district trustee. The board of trustees of a fire protection district appoints the fire chief, prescribes the fire chief's duties and fixes the compensation of the fire chief. (70 ILCS 705/6, 16.04a (West 1998).) It appears, therefore, that the offices of trustee of a fire protection district and fire chief of a fire protection district are incompatible, and, therefore, one person may not simultaneously hold both offices.

I would further note that even if the fire chief were determined to be merely an employee of the fire protection district, simultaneous tenure as a member of the fire protection district board of trustees might well violate applicable statutory prohibitions against the possession of financial interests in district contracts. Section 3 of the Public Officer Prohibited Activities Act (50 ILCS 105/3 (West 1998)) provides, in pertinent part:

"

* * *

(a) No person holding any office, either by election or appointment under the laws or Constitution of this State, may be in any manner financially interested directly in his own name or indirectly in the name of any other person, association, trust, or corporation, in any contract or the performance of any work in the making or letting of which such officer may be called upon to act or vote. * * * Any contract made and procured in violation hereof is void. * * *

* * *

"

(Emphasis added.)

The Honorable John C. Piland - 5.

Section 4 of the Fire Protection District Act (70 ILCS 705/4 (West 1998)) further provides, in relevant part:

" * * *

* * * No trustee or employee of such district shall be directly or indirectly interested financially in any contract work or business or the sale of any article, the expense, price or consideration of which is paid by the district; nor in the purchase of any real estate or other property, belonging to the district, or which shall be sold for taxes or assessments or by virtue of legal process at the suit of the district. Nothing in this Section prohibits the appointment or selection of any person or trustee or employee whose only interest in the district is as an owner of real estate in such fire protection district or of contributing to the payment of taxes levied by the district.

* * *

* * *

"

(Emphasis added.)

Section 3 of the Public Officer Prohibited Activities Act and section 4 of the Fire Protection District Act do not, per se, prohibit one person from serving a local government in two capacities. Those provisions, however, would be violated if a fire protection district trustee possessed a personal pecuniary interest in an employment contract entered into with the fire protection district board that was not exempted by compliance with the de minimis interest exceptions contained therein. (See 50 ILCS 105/3(b)(2); 70 ILCS 705/4(C).) Whether a violation would occur, therefore, would necessarily depend upon the amount of the fire chief's compensation. If the fire chief's compensation exceeded the amounts permitted pursuant to statute, he or she would necessarily be precluded from serving as a fire protection district trustee simultaneously.

With regard to the offices of township highway commissioner and drainage district commissioner, there is no constitutional or statutory provision which prohibits one person from simultaneously serving in both offices. The issue, therefore, is

The Honorable John C. Piland - 6.

whether the duties of either office are such that the holder of one cannot, in every instance, fully and faithfully discharge the duties of the other.

Pursuant to section 73-5 of the Township Code (60 ILCS 1/73-5 (West 1998)), the highway commissioner of each road district comprised of a single township exercises the powers and duties provided for in article 6 of the Illinois Highway Code. (605 ILCS 5/6-101 et seq. (West 1998).) Pursuant thereto, the duties of the township highway commissioner include: having general charge of roads in his district (605 ILCS 5/6-201.8 (West 1998)); constructing, maintaining, and repairing roads within the district and letting contracts, employing labor and purchasing material and machinery therefor (605 ILCS 5/6-201.7 (West 1998)); determining the taxes necessary to be levied on property within his district for road purposes (605 ILCS 5/6-201.5 (West 1998)); placing, erecting and maintaining traffic-control devices and signs on township and road district roads, subject to the approval of the county superintendent of highways (605 ILCS 5/6-201.16 (West 1998)); making agreements with the highway commissioner of other road districts or with the corporate authorities of any municipality in the same or an adjoining county or with the county board of the same or an adjoining county for the lease or exchange of idle machinery, equipment or tools belonging to the district (605 ILCS 5/6-201.10 (West 1998)); and contracting with the highway commissioner of any other road district or with the corporate authorities of any municipality or county to furnish or obtain services and materials related to construction, maintenance or repair of roads. (605 ILCS 5/6-201.10-1 (West 1998).)

The duties of a drainage district commissioner are set out in the provisions of the Illinois Drainage Code. (70 ILCS 605/1-1 et seq. (West 1998).) Section 4-14 of the Code (70 ILCS 605/4-14 (West 1998)) provides, inter alia, that commissioners are empowered to:

"* * * (e) use any part of any public highway for the purposes of work to be done, provided such use will not permanently destroy or materially impair such public highway for public use; * * *"

In opinion No. 1854, issued March 19, 1929 (1929 Ill. Att'y Gen. Op. 123), Attorney General Carlstrom concluded that

the offices of drainage district commissioner and highway commissioner were incompatible based upon a statute which contained the language currently codified in subsection 4-14(e) of the Code. (See Ill. Rev. Stat. 1927, ch. 42, par. 123.) The statute in effect when opinion No. 1845 was issued, however, also contained additional language which authorized a drainage district commissioner to assess the public road to pay a portion of the benefits received if the public highway would be benefitted by the work performed by the drainage district commissioner. (See Ill. Rev. Stat. 1927, ch. 42, par. 123; 1929 Ill. Att'y Gen. Op. 123.) It appears that drainage district commissioners no longer have the authority to assess public highways, however. (See Public Act 83-726, effective September 23, 1983; 70 ILCS 605/4-14, 5-2, 5-3 (West 1998); In re East Lake Fork Special Drainage District v. Village of Ivesdale (1985), 137 Ill. App. 3d 473.) The authority of a drainage district commissioner to use any public highway for purposes of work to be done, standing alone, does not appear to create a conflict of duties with the office of highway commissioner. It appears, therefore, that the reasoning of opinion No. 1854 is no longer persuasive.

Section 6-4 of the Drainage Code (70 ILCS 605/6-4 (West 1998)), however, provides as follows:

"Contracts with Highway Authorities or Railroads for Construction, Maintenance and Use of Levees. The commissioners may contract with highway authorities or with any person, firm or corporation operating a railroad, to construct or maintain a levee or levees, or any portion thereof, upon such terms as may be for the best interests of the district, and may grant to such highway authorities or such person, firm or corporation operating a railroad the right to construct, operate and maintain a highway or railroad upon, along or across such levee or levees. The commissioners may also contract with highway authorities or with any person, firm or corporation operating a railroad to use any embankment, or any part thereof, constructed by such highway authority or by such person, firm or corporation as a district levee or as a part of the levee system of the district. Any such contract shall be subject

to approval by the court, after hearing,
either without notice or upon such notice as
the court may direct."

Pursuant to section 6-4 of the Code, drainage district commissioners may enter into contracts with highway authorities to construct or maintain levees, and may grant highway authorities the right to construct, operate or maintain a highway upon, along or across levees. The commissioners may also contract with highway authorities to use any embankment constructed by the highway authority as a district levee or as part of the levee system of the district. A township highway commissioner is the highway authority for a township or district road in a county unit road district. (605 ILCS 5/2-213 (West 1998).)

A drainage district commissioner, in exercising the powers granted to that office under the Illinois Drainage Code (70 ILCS 605/4-1 et seq. (West 1998)), has a duty to protect and represent the best interests of the drainage district. A township highway commissioner has a concomitant duty to represent and protect the interests of the road district. 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; 1976 Ill. Att'y Gen. Op. 116; 1975 Ill. Att'y Gen. Op. 37.) Because of the potential conflict in duties which are present, a person who served simultaneously as a drainage district commissioner and as a township highway commissioner would not be able to represent the interests of both entities adequately, fully and faithfully. It appears, therefore, that the offices of drainage district commissioner and township highway commissioner are incompatible and that one person cannot simultaneously hold both offices.

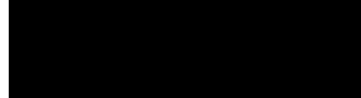
It has apparently been suggested that such incompatibility of offices may be avoided by having a drainage district commissioner recuse himself from acting or participating in matters in which a conflict of duties might arise. Illinois courts, however, have concluded that recusal does not avoid the application 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, 445-47.) Consequently, an agreement by a drainage district commissioner to recuse himself or herself from acting in any matter which might conflict with his or her duties as a township

The Honorable John C. Piland - 9.

highway commissioner would be ineffective to cure the underlying incompatibility.

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



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 1, 2007

I - 07-051

GOVERNMENTAL ETHICS AND
CONFLICT OF INTEREST:

Firefighter or Paramedic Serving as
Fire Protection District Trustee

The Honorable James W. Glasgow
State's Attorney, Will County
121 North Chicago Street
Joliet, Illinois 60432

Dear Mr. Glasgow:

I have your letter inquiring whether a full-time, paid firefighter or paramedic may simultaneously serve as a fire protection district trustee of the district that employs him without violating section 4 of the Fire Protection District Act (the FPD Act) (70 ILCS 705/4 (West 2006)). For the reasons set out below, pursuant to section 12 of the Local Governmental Employees Political Rights Act (the Political Rights Act) (50 ILCS 135/12 (West 2006), as amended by Public Act 95-142, effective August 13, 2007), it is permissible for a full-time, paid firefighter or paramedic to serve simultaneously as a fire protection district trustee. A trustee who is also a firefighter or paramedic, however, must abstain from voting on matters pertaining to his or her own compensation or benefits.

BACKGROUND

Fire Protection District Act

Section 4 of the FPD Act provides, in pertinent part:

*No trustee or employee of [a fire protection] district shall be directly or indirectly interested financially in any contract work or business or the sale of any article, the expense, price or consideration of which is paid by the district; * * **

* * *

(c) *[However], any trustee or employee may provide materials, merchandise, property, services or labor if:*

A. the award of the contract is approved by a majority vote of the board of trustees of the fire protection district *provided that any such interested member shall abstain from voting; and*

B. the amount of the contract does not exceed \$1000; and

C. the award of the contract would not cause the aggregate amount of all such contracts so awarded to the same person, firm, association, partnership, corporation, or cooperative association in the same fiscal year to exceed \$2000; and

D. *such interested member publicly discloses the nature and extent of his interest prior to or during deliberations concerning the proposed award of the contract; and*

E. *such interested member abstains from voting on the award of the contract, though he shall be considered present for the purposes of establishing a quorum. (Emphasis added.)*

Similarly, section 3 of the Public Officer Prohibited Activities Act (50 ILCS 105/3 (West 2006)) prohibits public officers in general from being financially interested "in any contract or the performance of any work in the making or letting of which such officer may be called upon to act or vote." Section 3 contains an analogous exception for small contracts to that contained in section 4 of the FPD Act. 50 ILCS 105/3(b)(2) (West 2006) (\$2,000 maximum contract amount and \$4,000 maximum aggregate annual contract amount).¹ For the sake of convenience, our discussion will be limited to the provisions of section 4 of the FPD Act, which specifically addresses officers of fire protection districts. Our conclusions, however, are equally applicable to section 3 of the Public Officer Prohibited Activities Act.

¹You have indicated that all full-time firefighters and paramedics that are the subject of your inquiry are compensated in excess of the applicable maximum contract limits.

Section 6 of the FPD Act (70 ILCS 705/6 (West 2006), as amended by Public Act 95-331, effective August 21, 2007) provides, in pertinent part:

(b) Except as otherwise provided in Sections 16.01 through 16.18,^[2] the board may appoint and enter into a multi-year contract not exceeding 3 years with a fire chief and may appoint any firemen that may be necessary for the district, who shall hold office during the pleasure of the board and who shall give any bond that the board may require. The board may prescribe the duties and fix the compensation of all the officers and employees of the fire protection district.

* * *

(e) The trustees have express power to provide for the benefit of its employees, volunteer firemen and paid firemen, group life, health, accident, hospital and medical insurance, or any combination thereof; and to pay for all or any portion of the premiums on such insurance.

Pursuant to section 6, the board of trustees of a fire protection district has the authority to fix the compensation of all of its officers and employees, and pay premiums on group life, health, accident, hospital, or medical insurance for the benefit of its employees and firefighters. Additionally, pursuant to section 22 of the FPD Act (70 ILCS 705/22 (West 2006)), the board of trustees has the authority to contract with a private person, hospital, corporation, or another governmental unit for the provision or operation of emergency ambulance services. To the extent that a fire protection district board compensates its firefighters and/or paramedics for their services, a contract exists between the parties, for purposes of section 4 of the FPD Act. *See Ill. Att'y Gen. Inf. Op. No. I-97-024, issued August 25, 1997.*

Section 4 of the FPD Act does not specifically prohibit a full-time employee of a fire protection district from simultaneously serving as a trustee of the district. A fire protection district trustee who possesses a personal, pecuniary interest in a contract (including contracts for

²All fire protection districts having fire departments with full-time, paid officers or members are subject to sections 16.01 through 16.18 of the FPD Act. 70 ILCS 705/16.01 through 16.18 (West 2006). In all such districts, the board of trustees *may* appoint a board of fire commissioners. If the board of trustees chooses not to do so, then it must perform the duties of the board of fire commissioners as outlined in sections 16.01 through 16.18. In districts where the board of trustees appoints a board of fire commissioners, the board of fire commissioners is responsible for appointing all officers and members of the fire departments in their respective districts except for the chief of the fire department. 70 ILCS 705/16.04a (West 2006). However, the board of fire commissioners does not have the power to fix the compensation of such officers or members or pay premiums on their insurance.

personal services, whether written or otherwise) entered into by the fire protection district which exceeds the *de minimis* interest provisions, however, would necessarily violate section 4. Section 4 of the FPD Act, therefore, effectively precludes simultaneous tenure as both a trustee and as a full-time employee of the district unless another provision of the law expressly permits such service. See Ill. Att'y Gen. Inf. Op. No. I-97-024, issued August 25, 1997 (firefighters serving as fire protection district trustees); Ill. Att'y Gen. Inf. Op. No. I-93-013, issued February 26, 1993 (volunteer firefighters serving as fire protection district trustees).

Political Rights Act

In this regard, section 12 of the Political Rights Act, which was added by Public Act 94-316, effective July 25, 2005, provides:

Elective and appointed office.

(a) A member of any fire department or fire protection district may:

(1) be a candidate for elective public office and serve in that public office if elected;

(2) be appointed to any public office and serve in that public office if appointed; and

(3) as long as the member is not in uniform and not on duty, solicit votes and campaign funds and challenge voters for the public office for which the member is a candidate. 50 ILCS 135/12 (West 2006), as amended by Public Act 95-142, effective August 13, 2007.

You have inquired whether section 12 of the Political Rights Act authorizes firefighters or paramedics who earn more than the maximum permitted contract amounts set forth in section 4 of the FPD Act to simultaneously serve as fire protection district trustees.

ANALYSIS

The cardinal rule of statutory construction is to ascertain and give effect to the intent of the General Assembly in enacting a law. *Moore v. Green*, 219 Ill. 2d 470, 479 (2006). The statutory language is the best indicator of legislative intent. When the plain language of one statute apparently conflicts with the plain language of another statute, they must be construed

together, if such an interpretation is reasonable. *Moore*, 219 Ill. 2d at 479. If the two statutes cannot be reconciled, then traditional rules of statutory construction must be applied to determine which statute controls. *Barragan v. Casco Design Corp.*, 216 Ill. 2d 435, 451-52 (2005). If a general statutory provision and a more specific statutory provision relate to the same subject, the particular provision generally prevails. *Hernon v. E.W. Corrigan Construction Co.*, 149 Ill. 2d 190, 195 (1992). Moreover, the more recent statute is generally deemed to take precedence over the earlier statute. *Jahn v. Troy Fire Protection District*, 163 Ill. 2d 275, 282 (1994).

Pursuant to section 12 of the Political Rights Act, a firefighter or a paramedic who is a member of a fire protection district or fire department is expressly authorized to serve in *any* elected or appointed public office. The office of fire protection district trustee of the employing district is neither expressly nor impliedly excepted from the category of offices in which a firefighter or paramedic may serve. As noted above, however, section 4 of the FPD Act prohibits trustees from having a personal, pecuniary interest in any contract entered into by the fire protection district board beyond the minimal contract amounts set forth therein, including employment agreements between a district and a firefighter or paramedic. Because the provisions of both of these Acts cannot be given effect in accordance with their terms, they must be construed together to determine whether the provisions can be reconciled.

The legislative debates concerning House Bill 1338, which as enacted became Public Act 94-316, provide guidance in ascertaining the intent of section 12 of the Political Rights Act. Representative Schmitz, the bill's sponsor, summarized the bill's purpose as follows:

Currently, firefighters in the State of Illinois can run for any office in the land except for which the town they ... they happen to work in, if they reside there. This Bill will simply allow them to run for city council. Remarks of Rep. Schmitz, March 9, 2005, House Debate on House Bill No. 1338, at 44.

Similarly, the Senate debates on House Bill 1338 focus almost exclusively on the inherent conflicts of interest arising out of an individual's simultaneous service, within the same municipality, as a firefighter and as a city council member. Remarks of Sen. Roskam, May 19, 2005, Senate Debate on House Bill No. 1338, at 242; Remarks of Sen. Lauzen, May 19, 2005, Senate Debate on House Bill No. 1338, at 243-44; Remarks of Sen. Viverito, May 19, 2005, Senate Debate on House Bill No. 1338, at 245-46. Specifically, Senators Roskam, Lauzen, and Viverito voiced their concern that city council members would be put in the position of voting on, and negotiating, their own compensation as firefighters. Senator Crotty, the bill's co-sponsor, responded that city council members are still required to comply with the same "local ethics ordinances" as other public officials, therefore they "can also recuse themselves from - - from any conflict." Remarks of Sen. Crotty, May 19, 2005, Senate Debate on House Bill No. 1338, at 241, 243.

There is no indication in the legislative debates that the provisions of section 4 of the FPD Act or the office of fire protection district trustee were considered in the drafting of House Bill 1338 or during action on the floor. However, the language of section 12 was drafted broadly and is not limited to firefighters and paramedics of municipal fire departments, although that may have been the primary concern of the sponsors. The debates do demonstrate that the General Assembly recognized the inherent conflicts that would inevitably arise from an employee serving in a public office that is responsible for determining his or her compensation as an employee, but apparently did not consider those potential conflicts to outweigh the benefits of the bill. It must be concluded, therefore, that it was the intention of the General Assembly to permit firefighters and paramedics employed by fire protection districts to serve as fire protection district trustees. To the extent that section 4 of the FPD Act impliedly prohibits such simultaneous tenure if a firefighter's or paramedic's compensation exceeds the statutory contract limitations, section 12 of the Political Rights Act must be construed as superseding its provisions.³

This conclusion does not mean that subsection 4(c) of the FPD Act has been superseded in its entirety. To the contrary, although the maximum monetary limitations in subsections 4(c)(B) and 4(c)(E) of the FPD Act may no longer be applicable to trustees with respect to contracts for their services as firefighters and paramedics, the remainder of the provisions of section 4 may still be given effect.

It is clear from the debates concerning the passage of Public Act 94-316 that it was anticipated that persons who were employed as paid firefighters or paramedics and who also served on the governing body would be required to "recuse themselves" in order to avoid possible conflicts of interest concerning fixing their own compensation. See Remarks of Sen. Crotty, May 19, 2005, Senate Debate on House Bill No. 1338, at 243. Therefore, requiring a trustee to abstain from acting upon contracts that affect a trustee's personal, pecuniary interests and otherwise comply with the requirements of subsections 4(c)(A), 4(c)(D), and 4(c)(E) of the FPD Act is entirely consistent with section 12 of the Political Rights Act. Accordingly, firefighters and paramedics who also serve as fire protection district trustees must comply with subsections 4(c)(A), 4(c)(D), and 4(c)(E) of the FPD Act by disclosing "the nature and extent of [their] interest prior to or during deliberations concerning" their compensation or benefits and must "abstain[] from voting" thereon. Further, fire protection district trustees continue to be bound by the *de minimis* limitations with respect to the award of any other contracts in which they are interested.

³Moreover, section 12 of the Political Rights Act was enacted more recently than section 4 of the FPD Act. Furthermore, due to the fact that section 12 focuses on members of the fire department or fire protection district and section 4 focuses on fire protection district trustees, neither provision is more specific than the other with respect to simultaneous service as a firefighter or paramedic and fire protection district trustee.

CONCLUSION

Pursuant to section 12 of the Local Governmental Employees Political Rights Act, a full-time, paid firefighter or paramedic may serve simultaneously as a fire protection district trustee if elected or appointed to that office. A trustee who is also a firefighter or paramedic, however, must abstain from voting on matters pertaining to his or her own compensation or benefits.

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:KMC:lk



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Jim Ryan
ATTORNEY GENERAL

January 3, 1996

I - 96-003

COMPATIBILITY OF OFFICES:
Fire Protection District Trustee
and School Board Member

Honorable Timothy J. Huyett
State's Attorney, Logan County
Logan County Courthouse, Room 31
Lincoln, Illinois 62656

Dear Mr. Huyett:

I have your letter wherein you inquire whether one person may serve simultaneously in the offices of fire protection district trustee and school board member, in circumstances in which the school district does not currently own any buildings located outside of the boundaries of a municipality or a fire protection district. Because of the nature of your inquiry, I do not believe that the issuance of an official opinion is necessary. I will, however, comment informally upon the question you have raised.

The common law doctrine of incompatibility of offices precludes simultaneous tenure in two offices where the constitution or a statute specifically prohibits the occupant of either office from holding the other, or where the duties of the two offices conflict so that the holder of one cannot, in every instance, properly and faithfully perform all of the duties of the other. (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. 283, 286.) There is no constitutional or statutory provision which expressly prohibits one person from simultaneously serving as a fire protection district trustee and as a school board member. Therefore, the issue is whether the duties of either office are such that the holder of one cannot, in every instance, fully and faithfully discharge the duties of the other.

The provisions of the Fire Protection District Act (70 ILCS 705/0.01 et seq. (West 1994)) govern the operations of fire protection districts. As provided in the Act, the powers of the fire protection district are exercised by its board of trustees. (70 ILCS 705/6 (West 1994).) The duties of a fire protection district board include, inter alia, acquiring and holding lands for the use of the fire protection district (70 ILCS 705/10 (West 1994)); contracting with other fire protection districts or municipalities for the joint ownership of fire fighting equipment, communication equipment and rescue and resuscitator equipment (70 ILCS 705/10b (West 1994)); contracting with corporations organized to furnish fire protection services (70 ILCS 705/11a (West 1994)); implementing and maintaining an address system (70 ILCS 705/11e (West 1994)); borrowing money for corporate purposes and issuing bonds therefor (70 ILCS 705/12 (West 1994)); and levying taxes for the operation of the district (70 ILCS 705/14 (West 1994)); and generally providing fire protection services for the persons and property located within the district. (70 ILCS 705/1 (West 1994).)

The functions of a school board, on the other hand, relate to the management of the school district. (105 ILCS 5/10-20 et seq. (West 1994).) In this regard, the school board is required, inter alia, to report to the county superintendent the names of all teachers employed by the district (105 ILCS 5/10-20.2 (West 1994)); provide revenue necessary to maintain the schools in their district (105 ILCS 5/10-20.3 (West 1994)); visit, inspect and maintain public schools under their jurisdiction (105 ILCS 5/10-20.6 (West 1994)); appoint all teachers and fix the amount of their salaries (105 ILCS 5/10-20.7 (West 1994)); furnish the county superintendent of schools with a list of all text material being used in the schools of the district (105 ILCS 5/10-20.9 (West 1994)); and assign pupils to the several schools in the district (105 ILCS 5/10-22.5 (West 1994)).

Based upon our understanding of the facts, a review of the duties of the two specified offices has failed to disclose any potential conflicts which would, in general, prevent one person from faithfully discharging the duties of the two offices simultaneously. As is apparent from the summaries of duties listed above, a fire protection district and a school board perform very different functions which generally do not overlap. Moreover, under the circumstances you have described, there is no express authorization for one entity to contract with the other, nor any obvious circumstances in which there would be interaction between the two governing boards. The fire protection district may be required to provide fire protection services for school district buildings located within the boundaries of the district, but that obligation is not contractual in nature. Consequently,

Honorable Timothy J. Huyett - 3.

based upon the facts presented, it appears that one person may serve as a fire protection district trustee and a school board member simultaneously.

I must caution, however, that there is one circumstance in which a conflict of duties between the offices of fire protection district trustee and school board member could occur. Section 16-10 of the School Code (105 ILCS 5/16-10 (West 1994)) provides:

"If the location of any public school building is not within any municipality or fire protection district, fire protection service for such building shall be provided by that municipality or fire protection district which maintains the facility for fire fighting equipment which lies closest to such building. The school district shall pay to the municipality or fire protection district, as the case may be, the reasonable cost of such service. If the respective corporate authorities of the school district and of the municipality or fire protection district are unable to agree on the cost of such service, the cost shall be determined by a civil action in the circuit court of the circuit in which the school building is located." (Emphasis added.)

Similarly, section 11c of the Fire Protection District Act (70 ILCS 705/11c (West 1994)) provides:

"The board of trustees of any fire protection district organized hereunder shall provide fire protection service for public school buildings situated outside the district in accordance with Section 16-10 of 'The School Code'."

Under the statutes quoted above, it is foreseeable, in these circumstances, that the school board and the fire protection district would enter into an agreement regarding the cost of providing fire protection services for school buildings located outside of the boundaries of the fire protection district. It is well 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. 51; 1991 Ill. Att'y Gen. Op. 188.) Because of the potential for conflicts in duties which arise when one governmental unit is authorized to contract

Honorable Timothy J. Huyett - 4.

with another, an individual serving as both fire protection district trustee and school board member under this set of circumstances would be unable to represent the interests of both entities adequately, fully and faithfully. Therefore, it appears that one person may not simultaneously hold the offices of fire protection district trustee and school board member if the school district owns buildings located outside of the boundaries of the fire protection district, and if the fire protection district is required to provide fire protection services to the school district under section 16-10 of the School Code.

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:LP:dn



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

Lisa Madigan
ATTORNEY GENERAL

July 1, 2011

I - 11-005

COMPATIBILITY OF OFFICES:
County Sheriff and Fire
Protection District Trustee

The Honorable Johnathan M. Bates
State's Attorney, Grundy County
111 East Washington Street
Morris, Illinois 60450

Dear Mr. Bates:

I have your letter inquiring whether the offices of county sheriff and fire protection district trustee are incompatible. For the reasons stated below, the office of county sheriff is not incompatible with the office of fire protection district trustee and, therefore, one person may hold both offices simultaneously.

BACKGROUND

Your letter states that the Grundy County sheriff was re-elected to a four-year term of office at the November 2010 general election. At that same election, a majority of the voters of the Gardner Fire Protection District approved a proposition to elect, rather than to appoint, the fire protection district's trustees. At the April 2011 consolidated election, the Grundy County sheriff ran for and was elected to the office of Gardner Fire Protection District trustee. Your letter states that there are no contractual agreements between the sheriff and the fire protection district. You have asked whether the offices of county sheriff and fire protection district trustee 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 office cannot, in every instance, fully and faithfully discharge 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 simultaneously serving as a county sheriff and as a fire protection district trustee. The issue, therefore, is whether the duties of either office are such that the holder of one office cannot, in every instance, fully and faithfully discharge all of the duties of the other office.

The duties of the county sheriff are set out in division 3-6 of the Counties Code (55 ILCS 5/3-6001 *et seq.* (West 2010)). As conservators of the peace (*see* 55 ILCS 5/3-6021 (West 2010)), county sheriffs are 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. Further, a sheriff's duties include taking custody of the courthouse and the jail (55 ILCS 5/3-6017 (West 2010)), serving and executing warrants, process, orders, and judgments legally directed to the sheriff's office (55 ILCS 5/3-6019 (West 2010)), and attending sessions of court and providing security in the courthouse (55 ILCS 5/3-6023 (West 2010)). As the supervisor of safety (55 ILCS 5/3-6035 (West 2010)), the sheriff is responsible for enforcing all laws and ordinances relating to the regulation of motor vehicle traffic and the promotion of safety on public highways. 55 ILCS 5/3-6036 (West 2010). The sheriff is also required to keep his or her office open and to attend to the duties thereof on a full-time basis. 55 ILCS 5/3-6019 (West 2010).

In addition to the foregoing, section 5-1085.5 of the Counties Code (55 ILCS 5/5-1085.5 (West 2010))¹ requires each non-home-rule county to establish written protocols to deal

¹Section 5-1085.5 of the Counties Code provides, in pertinent part:

Homicide and questionable death protocol. Each county, except home rule counties, must establish a written protocol to deal with homicides and questionable deaths. The protocol must be promulgated by the Coroner, Sheriff, State's Attorney, all fire departments and fire protection districts located in the county, and all police departments located in the county. The protocol must include at least the following:

- (a) the types of deaths that fall under the scope of the protocol;
- (b) the agencies concerned with the death;
- (c) the area of responsibility for each agency regarding the death; and
- (d) uniform procedures concerning homicides and questionable deaths.

with homicides and questionable deaths. Together with the county coroner, the State's Attorney, and all fire departments and fire protection districts located in a county, the county sheriff must promulgate the county's written protocol for dealing with homicides and questionable deaths.

The operations of fire protection districts are governed by the Fire Protection District Act. 70 ILCS 705/0.01 *et seq.* (West 2010). The powers of a fire protection district are exercised by its board of trustees. 70 ILCS 705/6 (West 2010). The duties of a fire protection district board include, among other things: acquiring and holding land for the use of the fire protection district (70 ILCS 705/10 (West 2010)); selling or leasing property owned by the district and no longer needed for fire protection purposes (70 ILCS 705/10a (West 2010)); contracting with other fire protection districts or municipalities for the joint ownership of fire fighting equipment, communication equipment, rescue and resuscitator equipment, and real and personal property necessary for the care and housing of such equipment (70 ILCS 705/10b (West 2010)); contracting with corporations organized to furnish fire protection services (70 ILCS 705/11a (West 2010)); implementing and maintaining an address system (70 ILCS 705/11e (West 2010)); borrowing money for corporate purposes and issuing bonds therefor (70 ILCS 705/12 (West 2010)); levying taxes for the operation of the district (70 ILCS 705/14 (West 2010)); and generally providing fire protection services for the persons and property located within the district (70 ILCS 705/1 (West 2010)). Further, pursuant to section 5-1085.5 of the Counties Code, and in conjunction with the county coroner, county sheriff, and State's Attorney, all fire departments and fire protection districts located in a non-home-rule county must promulgate or put into effect the county's written protocol for dealing with homicides and questionable deaths.

There may be incidents in which the county sheriff (or the county sheriff's personnel) and the personnel of a fire protection district will respond to the same situation or otherwise cooperate or interact in the course of performing their respective responsibilities. A review of the duties of the offices of county sheriff and fire protection district trustee, however, does not reveal any potential conflict of duties that would prevent one person from faithfully discharging the duties of both offices simultaneously. Further, nothing in the relevant statutory provisions contemplates the creation of specific contractual relationships between the county sheriff and a fire protection district, nor is a county sheriff required by statute to advise the county board regarding any agreements that the county may enter into with a fire protection district. Based on the foregoing, the offices of county sheriff and fire protection district trustee are not incompatible, and one person may hold both offices simultaneously.

The only remaining question is whether the county sheriff has sufficient time to faithfully and properly perform the duties of the offices of sheriff and fire protection district trustee simultaneously. This presents a factual question that cannot be resolved in a legal opinion of the Attorney General. See Statement of Policy of the Attorney General Relating to Furnishing Written Opinions, <http://www.illinoisattorneygeneral.gov/opinions/opinionpolicy.pdf>.

CONCLUSION

Based on the duties of the county sheriff and a fire protection district trustee, 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, assuming that the incumbent has adequate time to execute the duties of both offices, the office of county sheriff is not incompatible with the office of fire protection district trustee, and one person may hold both offices simultaneously.

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:LAS:lk



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

Lisa Madigan
ATTORNEY GENERAL

September 27, 2007

I - 07-049

COMPATIBILITY OF OFFICES:
Township Assessor and Fire
Protection District Trustee

The Honorable John B. Roe
State's Attorney, Ogle County
106 South 5th Street, Suite 110
Oregon, Illinois 61061

Dear Mr. Roe:

I have your letter wherein you inquire whether the offices of township assessor and fire protection district trustee are incompatible. In the circumstances set out below, the office of township assessor is incompatible with the office of fire protection district trustee, and, therefore, one person may not hold both offices simultaneously.

BACKGROUND

Your letter indicates that the Ogle County Board recently reappointed an individual to the office of fire protection district trustee. The person reappointed as trustee also serves as the township assessor of the township in which the fire protection district is located. Consequently, you have asked whether the offices of township assessor and fire protection district trustee are incompatible in this circumstance.

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 holding the offices of township assessor and fire protection district trustee. 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.

The operations of fire protection districts are governed by the Fire Protection District Act (70 ILCS 705/0.01 *et seq.* (West 2006)). The powers of a fire protection district are exercised by its board of trustees. 70 ILCS 705/6 (West 2006), as amended by Public Act 95-331, effective August 21, 2007. The duties of a fire protection board include, among other things, acquiring and holding land for the use of the fire protection district (70 ILCS 705/10 (West 2006)); and selling or leasing realty owned by the district and no longer needed for fire protection purposes. 70 ILCS 705/10a (West 2006).

The office of township assessor is created by the Township Code (60 ILCS 1/50-5, 77-5 (West 2006)), which provides for the election of an assessor or a multi-township assessor for a term of four years. The duties of the office are governed by the Property Tax Code (35 ILCS 200/1-1 *et seq.* (West 2006)) and generally include the assessment of all property not exempted from taxation. 35 ILCS 200/9-70 (West 2006).

Under sections 15-60 and 15-80 of the Property Tax Code (35 ILCS 200/15-60, 15-80 (West 2006)), the property of a taxing district,¹ such as a fire protection district, is

¹The term "taxing district" is defined in the Property Tax Code to refer to "[a]ny unit of local government, school district or community college district with the power to levy taxes." 35 ILCS 200/1-150 (West 2006). The term "unit of local government," however, is not defined in the Property Tax Code. In the absence of a specific definition applicable to the Property Tax Code, the term "unit of local government" should be ascribed the meaning established for it in the Illinois Constitution of 1970. 5 ILCS 70/1, 1.28 (West 2006); *see also Du Page Aviation Corporation, Flight Services, Inc. v. Du Page Airport Authority*, 229 Ill. App. 3d 793, 802 (1992), *appeal denied*, 146 Ill. 2d 625 (1992). Under the Illinois Constitution, "units of local government" include, among other things, special districts. Fire protection districts are special districts. Ill. Att'y Gen. Inf. Op. No. 1-96-010, issued January 3, 1996.

generally exempted from *ad valorem* property taxes. There are circumstances, however, in which such property may be subject to taxation. For example, sections 15-60 and 15-80 respectively provide:

All property belonging to any county or municipality used exclusively for the maintenance of the poor is exempt, *as is all property owned by a taxing district that is being held for future expansion or development, except if leased by the taxing district to lessees for use for other than public purposes.* (Emphasis added.)

Installment purchase of property by a governmental body. *All property that is being purchased by a governmental body under an installment contract pursuant to statutory authority and used exclusively for the public purposes of the governmental body is exempt, except such property as the governmental body has permitted or may permit to be taxed.* (Emphasis added.)

In opinion No. S-590, issued May 22, 1973, Attorney General Scott concluded that the offices of township assessor and school board member are incompatible because:

[t]he property of a school not exempted by this section would be subject to tax. If a tax assessor were also a member of a school board he could find himself assessing property of a school in his district. He could not in every instance properly and faithfully perform all the duties of each office. A dispute could also arise as to whether certain property of the schools is taxable. I am, therefore, of the opinion that the office of a member of a school board is incompatible with that of township tax assessor. 1973 Ill. Att'y Gen. Op. 83, 85.

Based on the same reasoning, Attorney General Burris concluded that the offices of village trustee and multi-township assessor are incompatible. See Ill. Att'y Gen. Op. No. 93-008, issued March 19, 1993.

Similarly, property owned by the fire protection district that is not exempted by the foregoing provisions would be subject to taxation. For example, a fire protection district may acquire title to real property by bequest or donation. In such circumstances, the property may be an unanticipated acquisition for which the fire protection district has no current fire protection purpose. The fire protection district, however, may choose to lease such property. To the extent that the leased property is income-producing and the purpose which the property serves is non-

governmental in nature, the property would be subject to taxation. If a township assessor also serves as a trustee of a fire protection district located within the township, he or she would be placed in the untenable position of determining whether the fire protection district's property is subject to taxation and, if so, assessing the taxable property that belongs to the fire protection district. A township assessor and a fire protection district trustee are both obligated to represent the interests of the entities they serve with undivided loyalty. In this circumstance, because the interests of the township and the fire protection district with respect to the taxability of district property may be divergent, one person could not, in every instance, fully and faithfully perform all of the duties of each office with the requisite undivided loyalty.

CONCLUSION

The office of township assessor is incompatible with that of fire protection district trustee if the district is located within the township. One person, therefore, may not 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
Senior Assistant Attorney General
Chief, Opinions Bureau

LEP:MKL:an



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Jim Ryan
ATTORNEY GENERAL

September 27, 2000

I - 00-039

COMPATIBILITY OF OFFICES:
Fire Protection District Trustee
and Township Highway Commissioner

The Honorable William G. Workman
State's Attorney, Logan County
Logan County Courthouse - Room 31
Lincoln, Illinois 62656

Dear Mr. Workman:

I have your letter wherein you inquire whether one person may simultaneously serve in the offices of fire protection district trustee and township highway commissioner. 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 one person from simultaneously serving as both a fire protection district trustee and a township highway

commissioner. The issue, therefore, is whether the duties of either office are such that the holder of one cannot, in every instance, fully and faithfully discharge the duties of the other.

The operations of fire protection districts are governed by the provisions of the Fire Protection District Act (70 ILCS 705/0.01 et seq. (West 1998)). The powers of a fire protection district are exercised by its board of trustees. (70 ILCS 705/6 (West 1998).) The duties of a fire protection district board include, inter alia: acquiring and holding lands for the use of the fire protection district (70 ILCS 705/10 (West 1998)); contracting with other fire protection districts or municipalities for the joint ownership of fire fighting equipment, communication equipment, rescue and resuscitator equipment and real and personal property necessary for the care and housing of such equipment (70 ILCS 705/10b (West 1998)); contracting with corporations organized to furnish fire protection services (70 ILCS 705/11a (West 1998)); implementing and maintaining an address system (70 ILCS 705/11e (West 1998)); borrowing money for corporate purposes and issuing bonds therefor (70 ILCS 705/12 (West 1998)); levying taxes for the operation of the district (70 ILCS 705/14 (West 1998)); and generally providing fire protection services for the persons and property located within the district. (70 ILCS 705/1 (West 1998).)

Pursuant to section 73-5 of the Township Code (60 ILCS 1/73-5 (West 1998)), the highway commissioner of each road district comprised of a single township exercises the powers and duties provided for in Article 6 of the Illinois Highway Code. (605 ILCS 5/6-101 et seq. (West 1998).) Pursuant thereto, the duties of the township highway commissioner include: having general charge of the roads of his district (605 ILCS 5/6-201.8 (West 1998)); constructing, maintaining and repairing roads within the district and letting contracts, employing labor and purchasing material and machinery therefor (605 ILCS 5/6-201.7 (West 1998)); determining the taxes necessary to be levied on property within his district for road purposes (605 ILCS 5/6-201.5 (West 1998)); erecting and maintaining guide and direction signs at intersections of public roads (605 ILCS 5/6-201.11 (West 1998)); placing, erecting and maintaining traffic-control devices and signs on township and road district roads, subject to the approval of the County Superintendent of Highways (605 ILCS 5/6-

201.16 (West 1998)); making agreements with the highway commissioner of other road districts or with the corporate authorities of any municipality in the same or an adjoining county or with the county board of the same or an adjoining county for the lease or exchange of idle machinery, equipment or tools belonging to the district (605 ILCS 5/6-201.10 (West 1998)); and contracting with the highway commissioner of any other road district or with the corporate authorities of any municipality or county to furnish or obtain services and materials related to construction, maintenance or repair of roads. (605 ILCS 5/6-201.10-1 (West 1998).)

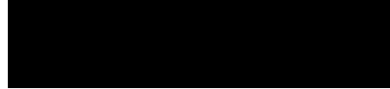
Based upon a review of the duties of these offices, it does not appear that any potential conflict of duties would prevent one person from faithfully discharging the duties of both offices simultaneously. The duties of a fire protection district trustee and of a township highway commissioner are significantly different. Further, there is no express authorization for one entity to contract with the other, nor any obvious circumstance in which there would be interaction between a fire protection district trustee and a township highway commissioner. It appears, therefore, that one person may simultaneously serve as a fire protection district trustee and a township highway commissioner.

In your letter, you state that concern has been expressed that the duties of the offices might conflict because both the fire protection district board of trustees and the township highway commissioner are required to determine the necessary taxes to be levied within their respective boundaries, and non-home-rule taxing districts within Logan County have been made subject to the Property Tax Extension Limitation Law (35 ILCS 200/18-185 et seq. (West 1998)). The mere fact that both the fire protection district board of trustees and the township highway commissioner are required to determine the necessary taxes to be levied within their respective districts within the limitations established pursuant to the Property Tax Extension Limitation Law does not appear to create a conflict of duties which would prevent one person from serving in both offices. A determination on the part of one entity to raise or lower a levy would, at most, have but an indirect effect upon the levy of the other.

The Honorable William G. Workman - 4.

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:ab



NEIL F. HARTIGAN
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD
62706

August 9, 1989

I - 89-043

COMPATIBILITY OF OFFICES:
Township Trustee and Fire
Protection District Trustee
or Village Trustee

Honorable Gordon Lustfeldt
State's Attorney, Iroquois County
Iroquois County Courthouse
Watseka, Illinois 60970

Dear Mr. Lustfeldt:

I have your letter wherein you inquire whether the offices of village trustee and township trustee, and the offices of fire protection district trustee and township trustee, are incompatible. Because of the nature of your inquiry, I do not believe that an official opinion of the Attorney General is required. I will, therefore, comment informally upon the question you have raised.

As laid down in the case of People ex rel. Myers v. Haas (1908), 145 Ill. App. 283, the common law rule is that two offices are incompatible where either the constitution or a statute specifically prohibits the occupant of either office from holding the other, or where, because of the duties of either office, a conflict of interest may arise or the holder

of one office cannot, in every instance, properly and faithfully perform all of the duties of the other. Applying this rule, Attorney General Scott advised in opinion No. NP-962, issued September 24, 1975, that the offices of township supervisor and township auditor (now township trustee) were incompatible with the office of city commissioner because of the conflict of duties that could arise from the exercise of the broad powers of the township board of trustees and the city council to contract with each other for the provision of a wide range of services to their residents. The dual officeholder would not be able to represent both units of government fully and fairly where, for example, a service is to be provided pursuant to a contract between the city and the township.

Like the city council in the commission form of government, the village board of trustees serves as the corporate authorities for the village (Ill. Rev. Stat. 1987, ch. 24, par. 1-1-2(2)). As such, the village board may contract with any township in the county within which the village is located to furnish police protection outside of the village. (Ill. Rev. Stat. 1987, ch. 24, par. 11-1-7.) The village and the township within which the village lies also have the power to contract with each other for the construction of such public improvements as bridges, subways, elevated ways, viaducts and roadway improvements. (Ill. Rev. Stat. 1987, ch. 24, par. 11-85-1.) In addition, the village board may authorize contracts to perform governmental services with townships (Ill. Rev. Stat. 1987, ch. 127, pars. 745, 742) and may exercise its powers jointly with townships and other units of local government (Ill. Rev. Stat. 1987, ch. 24, par. 1-1-5; ch. 127, pars. 743, 742). The board of town trustees is specifically authorized to enter into contracts with municipalities for the establishment or maintenance of youth service bureaus (Ill. Rev. Stat. 1987, ch. 139, par. 126.13) and to contract with any other governmental entity for the provision of a wide range of services, including public safety, environmental prosecution, public transportation, health, recreation, library and social services, to township residents (Ill. Rev. Stat. 1987, ch. 139, par. 126.10). The town board may also be authorized by the town electors to contract with municipalities or the county for the provision of police protection in areas of the township not located within the incorporated area of a municipality having a regular police department (Ill. Rev. Stat. 1987, ch. 139, par. 39.29) or in unincorporated areas of the township (Ill. Rev. Stat. 1987, ch. 139, par. 39.30). Townships are also authorized to construct or purchase and to operate waterworks and sewerage systems and may extend and improve such systems to serve a municipality which is located in the township and which does not own or operate its own waterworks or sewerage system. (Ill. Rev. Stat. 1987, ch. 139, pars. 160.32, 160.40.) A township that

chooses to operate a waterworks system may contract with municipalities for a supply of water for the township's system. (Ill. Rev. Stat. 1987, ch. 135, par. 160.41.)

It appears, therefore, that the reasoning of opinion No. NP-962 is also applicable to the offices of village trustee and township trustee, and that these offices are incompatible. I have enclosed a copy of opinion No. NP-962 for your reference.

In opinion No. UP-946, issued June 6, 1963, Attorney General Clark advised that the offices of fire protection district trustee and township auditor (township trustee) were not incompatible. He found no constitutional or statutory provision declaring the offices to be incompatible, and examination of pertinent statutory provisions revealed no conflict of interest between the duties of these offices. The reasoning of that opinion still appears to be valid. Consequently, it appears that one person would not be prohibited from simultaneously holding the offices of fire protection district trustee and township trustee.

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

Enclosure



NEIL F. HARTIGAN
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD
62706

February 21, 1989

I - 89-013.

COMPATIBILITY OF OFFICES:
Offices of Trustee of Fire Protection
District and Village Trustee

Honorable Barbara Adams
State's Attorney, Montgomery County
Montgomery County Courthouse
Hillsboro, Illinois 62049

Dear Ms. Adams:

I have your letter wherein you inquire whether the offices of village trustee and trustee of a fire protection district are incompatible, in circumstances in which the fire protection district is "wholly contained within" the village. Because of the nature of your inquiry, I do not believe that an official opinion of the Attorney General is necessary. I will, therefore, comment informally upon the question you have raised.

Your correspondence discusses opinion No. UP-852, issued February 14, 1963, wherein Attorney General Clark advised that, where a fire protection district and a village could jointly own fire fighting equipment and could contract with each other for fire protection in accordance with sections 10b and 11a of "AN ACT in relation to fire protection districts" (Ill. Rev. Stat. 1987, ch. 127 1/2, pars. 30b, 31a), the offices in question would be incompatible. For the reasons that follow, it appears that the reasoning underlying opinion No. UP-852 is still valid, and that the offices of village

trustee and trustee of a fire protection district are incompatible.

Applying the rule of People ex rel. Myers v. Haas (1908), 145 Ill. App. 283, Attorney General Clark based his opinion upon the principle that offices are incompatible where the duties of the offices are such that a conflict of interest may arise or that the holder of one cannot, in every instance, properly and faithfully perform all the duties of the other.

Section 10b of "AN ACT in relation to fire protection districts" provides:

"Any two or more fire districts or one or more fire protection districts and one or more cities, villages or incorporated towns may provide for joint ownership of fire fighting equipment, communication equipment, rescue and resuscitator equipment and real and personal property necessary for the care and housing of such equipment. In case of joint ownership the terms of the agreement shall be fair, just and equitable to all parties and shall be set forth in a written agreement entered into by the corporate authorities of each participating unit."

Section 11a of that Act provides:

"The Board of Trustees of any fire protection district organized hereunder may contract with any corporation organized to furnish fire protection service or with any association organized to furnish fire protection service or with any city, village, incorporated town, or organized fire protection district lying adjacent to such district for fire protection service to be furnished by such corporation or such association or such municipality or fire protection district for the property within such district or to be furnished by such district for the property within such municipality. The board of trustees may also contract for the installation, rental or use of fire hydrants within the fire protection district and for the furnishing of water to be used within such district for fire protection purposes, and for mutual aid from and to other fire protection districts, and for mutual aid from and to corporations and assoc-

iations organized to furnish fire protection service and for mutual aid from and to municipalities." (Emphasis added.)

Your correspondence suggests that, since the fire protection district in question is "wholly contained within" the village, sections 10b and 11a would not be applicable by virtue of section 11b of "AN ACT in relation to fire protection districts" (Ill. Rev. Stat. 1987, ch. 127 1/2, par. 31b), which provides in pertinent part:

"In case any fire protection district organized hereunder is coterminous with or includes within its corporate limits in whole or in part any city, village or incorporated town authorized to provide protection from fire and to regulate the prevention and control of fire within such city, village or incorporated town and to levy taxes for any such purposes, then such city, village or incorporated town shall not exercise any such powers as necessarily conflict with the powers to be exercised by such district in respect to such fire protection and regulation within the fire protection district from and after the date that it receives written notice from the State Fire Marshal to cease or refrain from the operation of any fire protection facilities and the exercise of such powers, which notice shall be given only after the State Fire Marshal has ascertained that the Fire Protection District has placed its fire protection facilities in operation. Such city, village or incorporated town shall not thereafter own, operate, maintain, manage, control or have an interest in any fire protection facilities located within the corporate limits of the fire protection district, except water mains and hydrants and except as otherwise provided in this Act. * * *" (Emphasis added.)

Since, in this particular case, the district is wholly contained within the village, the village and district must be coterminous or the district must include some part, but not all, of the village. If the latter is true, of course, then section 11b would work to bar the village from exercising its powers only with respect to those parts of its territory within the district; the village would still be able to exercise such powers outside the district, in which case sections 10b and 11a

would still be applicable, and the offices in question incompatible.

Where the district and village are coterminous, the village would not be able to own, operate, maintain, manage, control or have an interest in any fire protection facilities located therein "except water mains and hydrants and except as otherwise provided in this Act". Pursuant to section 11a of "AN ACT in relation to fire protection districts", the board of trustees of the fire district is authorized to contract for the installation, rental or use of fire hydrants within the district and for the furnishing of water to be used within such district for fire protection services. If the city is or could be involved in the provision of hydrants, water, or services under section 11a, then the offices would be incompatible even where the entities are coterminous. Furthermore, the boards of trustees of fire protection districts have, subsequent to the issuance of opinion No. UP-852, been granted the authority to provide emergency ambulance services, to combine or contract with other units of local government for the provision and operation of emergency ambulance services, and to subsidize such services. (Ill. Rev. Stat. 1987, ch. 127 1/2, par. 31, 38.5.) The corporate authorities of municipalities also possess the power to provide or contract for ambulance services as well as the power to license, regulate and establish standards for the operation of ambulances. (Ill. Rev. Stat. 1987, ch. 24, par. 11-5-7.) Therefore, it appears that one who holds the offices of trustee of a fire protection district and village trustee would be placed in a position in which the duties of each office could conflict, and that the offices are therefore incompatible even where the boundaries of the village and district are coterminous.

This is not an official opinion of the Attorney General. Please advise if we may be of further assistance.

Very truly yours,



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



ROLAND W. BURRIS

ATTORNEY GENERAL
STATE OF ILLINOIS



July 9, 1993

I - 93-037

COMPATIBILITY OF OFFICES:

Village Trustee and Fire Protection
District Trustee; Township Clerk
and School Board Member; Fire Protection
District Trustee and Community College Trustee

Honorable Jack O'Malley
State's Attorney, Cook County
500 Richard J. Daley Center
Chicago, Illinois 60602

Dear Mr. O'Malley:

I have Assistant State's Attorney Jeanette Sublett's letter wherein she inquired, on your behalf, regarding the potential incompatibility of several local offices. Because of the nature of these inquiries, 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 which have been raised.

Offices are deemed to be incompatible where the constitution or a statute specifically prohibits the occupant of one office from holding the other, or where the duties of the two offices conflict so that the holder of one cannot, in every instance, fully and faithfully discharge the duties of the other. (People ex rel. Myers v. Haas (1908), 145 Ill. App. 283, 286; see generally People ex rel. Teros v. Verbeck (1987), 155 Ill. App. 3d 81.) There are no constitutional or statutory provisions which prohibit simultaneous tenure in the offices which are the

Honorable Jack O'Malley - 2.

focus of this inquiry. Therefore, the issue is whether a conflict of duties could arise if one person were to occupy the particular offices in question.

Your first question concerns whether the offices of village trustee and fire protection district trustee are incompatible. Sections 10b and 11a of the Fire Protection District Act (Ill. Rev. Stat. 1991, ch. 127 1/2, pars. 30b, 31a; 70 ILCS 705/10b, 11a) respectively provide, in pertinent part:

"Any two or more fire districts or one or more fire protection districts and one or more cities, villages or incorporated towns may provide for joint ownership of fire fighting equipment, communication equipment, rescue and resuscitator equipment and real and personal property necessary for the care and housing of such equipment. In case of joint ownership the term of the agreement shall be fair, just and equitable to all parties and shall be set forth in a written agreement entered into by the corporate authorities of each participating unit.

* * *

"

"The Board of Trustees of any fire protection district organized hereunder may contract with any corporation organized to furnish fire protection service or with any association organized to furnish fire protection service or with any city, village, incorporated town, or organized fire protection district lying adjacent to such district for fire protection service to be furnished by such corporation or such association or such municipality or fire protection district for the property within such district or to be furnished by such district for the property within such municipality. The board of trustees may also contract for the installation, rental or use of fire hydrants within the fire protection district and for the furnishing of water to be used within such district for fire protection purposes, and for mutual aid from and to other fire protection districts, and for mutual aid from and

to corporations and associations organized to furnish fire protection service and for mutual aid from and to municipalities.

* * *

"

(Emphasis added.)

Similarly, section 11-6-1 of the Illinois Municipal Code (Ill. Rev. Stat. 1991, ch. 24, par. 11-6-1; 65 ILCS 5/11-6-1 (West 1992)) provides:

"The corporate authorities of each municipality may provide and operate fire stations, and all material and equipment that is needed for the prevention and extinguishment of fires, and may enter into contracts or agreements with other municipalities and fire protection districts for mutual aid consisting of furnishing equipment and man power from and to such other municipalities and fire protection districts." (Emphasis added.)

Under the statutes quoted above, it is foreseeable that a village and a fire protection district could enter into a contract for the provision of equipment and other materials necessary for the prevention and extinguishment of fires. Moreover, under section 11 of the Act, the board of trustees of a fire protection district is authorized to provide emergency ambulance service. (Ill. Rev. Stat. 1991, ch. 127 1/2, par. 31; 70 ILCS 705/11 (West 1992).) Municipalities possess the authority to provide or contract for ambulance services, as well as the power to license and to regulate the operation of ambulances. (Ill. Rev. Stat. 1991, ch. 24, par. 11-5-7; 65 ILCS 5/11-5-7 (West 1992).)

It is well established that one person cannot adequately represent the interests of two governmental units when those units contract with one another. (Ill. Att'y Gen. Op. No. 91-023, issued June 6, 1991; Ill. Att'y Gen. Op. No. 85-019, issued November 19, 1985.) Because of the potential for conflicts in duties to arise when one governmental unit is authorized to contract with another, an individual serving as both a village trustee and a fire protection district trustee would be unable to represent the units of both entities adequately, fully and faithfully. Therefore, it appears that one person may not simultaneously hold the offices of village trustee and fire protection district trustee.

Secondly, you inquire whether the offices of township clerk and board of education member are incompatible. Township clerks are custodians of all records, books and papers of the town (Ill. Rev. Stat. 1991, ch. 139, par. 111; 60 ILCS 5/12-1 (West 1992)) and are authorized to certify to the county clerks the amount of taxes required to be raised for town purposes (Ill. Rev. Stat. 1991, ch. 139, par. 114; 60 ILCS 5/12-4 (West 1992)). Board of education members are responsible for conducting the business affairs of a school district (Ill. Rev. Stat. 1991, ch. 122, pars. 10-22 through 10-23.12; 105 ILCS 5/10-22 - 10-23.12 (West 1992)). The clerk's duties are ministerial in nature and do not require the exercise of discretion. A review of the duties of the two specified offices has failed to disclose any potential conflicts which could prevent one person from faithfully discharging the duties of either office. Consequently, it appears that one person may serve as township clerk and school board member simultaneously.

Lastly, you have asked whether a person may serve as both a fire protection district trustee and a community college board trustee. Section 3-38.2 of the Public Community College Act (Ill. Rev. Stat. 1991, ch. 122, par. 103-38.2; 110 ILCS 805/3-38.2 (West 1992)) authorizes a community college board:

"To enter into contracts with any municipality or fire protection district in which any community college buildings are located for the purpose of reimbursing such fire protection district or municipality for the additional costs of providing fire fighting equipment, apparatus or additional paid personnel occasioned by the presence of community college buildings within the municipality or fire protection district." (Emphasis added.)

Under section 3-38.2 of the Public Community College Act, it appears that the General Assembly specifically contemplated that a fire protection district and a community college could enter into a contract to reimburse the fire protection district for costs associated with the provision of fire fighting services on the community college campus or to the community college's buildings. As noted earlier, one person cannot represent the interests of two governmental units when those units contract with one another. (1991 Ill. Att'y Gen. Op. No. 91-023; 1985 Ill. Att'y Gen. Op. No. 85-019.) Consequently, given the authorization for the two bodies to contract for services, it

Honorable Jack O'Malley - 5.

does not appear that one person may simultaneously hold the positions of fire protection district trustee and community college board trustee.

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

MJL:LP:cj



ROLAND W. BURRIS

ATTORNEY GENERAL
STATE OF ILLINOIS



February 26, 1993

I-93-013

GOVERNMENTAL ETHICS &
CONFLICT OF INTEREST:
Fire Protection District
Trustee Serving as a Volunteer
Firefighter

Honorable Larry S. Vandersnick
State's Attorney, Henry County
100 South Main Street
Cambridge, Illinois 61238

Dear Mr. Vandersnick:

I have your letter wherein you inquire whether a fire protection district trustee may serve simultaneously as an unpaid volunteer firefighter of the fire protection district of which he or she is an officer. Because of your need for an expedited response, I will comment informally upon the question you have raised.

Initially, I note that the common law doctrine of incompatibility of offices, which precludes one person from simultaneously holding two public offices in circumstances in which the duties of one office may interfere with the full and faithful performance of the duties of the other, is not applicable to positions which constitute mere employment. (People ex rel. Myers v. Haas (1908), 145 Ill. App. 283, 286; see generally People ex rel. Teros v. Verbeck (1987), 155 Ill. App. 3d 81.) The primary indicia of public office, as distinguished from public employment, is that the holder of an

office has been authorized to exercise some portion of the sovereign power. (Wargo v. Industrial Commission (1974), 58 Ill. 2d 234, 236-37.) In reviewing the duties and powers of volunteer firefighters, the Illinois courts have concluded that volunteer firefighters are employees, and not officers of the unit of government which they serve. (Village of Creve Coeur v. Industrial Commission (1965), 32 Ill. 2d 430, 433; Daniels v. City of Venice, (1987), 162 Ill. App. 3d 788, 790.) Consequently, because the position of volunteer firefighter does not constitute a public office, the doctrine of incompatibility of offices would not be applicable to preclude a person from simultaneously serving as a fire protection district trustee and a volunteer firefighter of the fire protection district.

With respect to potential prohibited pecuniary interests, section 3 of the Public Officer Prohibited Activities Act (Ill. Rev. Stat. 1991, ch. 102, par. 3, as amended by Public Acts 87-855, effective July 1, 1992, 87-1197, effective September 25, 1992; 50 ILCS 105/3 (West 1992)) and section 4 of the Fire Protection District Act (Ill. Rev. Stat. 1991, ch. 127 1/2, par. 24; 70 ILCS 705/4 (West 1992)) respectively provide, in pertinent part:

"§3. (a) No person holding any office, either by election or appointment under the laws or constitution of this state, may be in any manner interested, either directly or indirectly, in his own name or in the name of any other person, association, trust or corporation, in any contract or the performance of any work in the making or letting of which such officer may be called upon to act or vote. * * * Any contract made and procured in violation hereof is void.
* * *

* * *

"

(Emphasis added.)

"§4. * * *

* * *

* * * No trustee or employee of such district shall be directly or indirectly interested financially in any contract work or business or the sale of any article, the expense,

price or consideration of which is paid by the district; nor in the purchase of any real estate or other property, belonging to the district, or which shall be sold for taxes or assessments or by virtue of legal process at the suit of the district. Nothing in this Section prohibits the appointment or selection of any person or trustee or employee whose only interest in the district is an owner of real estate in such fire protection district or of contributing to the payment of taxes levied by the district. * * *

* * *

"

(Emphasis added.)

Section 3 of the Public Officer Prohibited Activities Act and section 4 of the Fire Protection District Act do not, per se, prohibit one person from serving a unit of local government in two capacities. However, those provisions would be violated if a fire protection district trustee possessed a personal pecuniary interest in a contract entered into by the fire protection district board, and was not exempted by compliance with the de minimus interest provisions thereof (see Ill. Rev. Stat. 1991, ch. 102, par. 3(c); ch. 127 1/2, par. 4(c).) In this situation, it appears that a violation of those provisions could occur if the fire protection district compensates its volunteer firefighters for their personal services, or if the fire protection district provides group life, health, accident, hospital or medical insurance for the benefit of its firefighters and pays the premiums for such insurance, since the trustee would, as a volunteer firefighter, be pecuniarily benefitted thereby while standing in a position, as a trustee, to vote or act upon the provision of the compensation or benefits. (Ill. Rev. Stat. 1991, ch. 127 1/2, par. 26; 70 ILCS 705/6 (West 1992)).

You have indicated in your letter that the fire protection district's volunteer firefighters receive no compensation for their services. If this is correct, then a trustee in these circumstances would not be called upon to fix the compensation for his or her own services as a volunteer firefighter, thereby avoiding a violation of either Act. Since we have not been furnished with information concerning the fire protection district's provision of insurance benefits to its volunteer firefighters, however, we cannot determine whether section 3 of the Public Officer Prohibited Activities Act and section 4 of the Fire Protection District Act may be violated in these circumstances. Assuming that no insurance benefits

Honorable Larry S. Vandersnick -4.


are provided to the district's volunteer firefighters at the expense of the district, or that the de minimis exceptions provided in subsection 3(c) of the Public Officer Prohibited Activities Act and subsection 4(c) of the Fire Protection District Act can be complied with, the mere fact that a fire protection district trustee serves as volunteer firefighter would not appear to result in a per se violation of either Act.

I would further note that although a fire protection district trustee may not be precluded from serving as a volunteer firefighters in the circumstances you have described, other interests which could interfere with his or her duty of fidelity as a public officer must be recognized. A trustee's duties may, for example, include participating in determining the terms and conditions of employment of the district's fire chief (Ill. Rev. Stat. 1991, ch. 127 1/2, par. 26; 70 ILCS 705/6 (West 1992)) and supervising the performance of the chief in carrying out his or her duties. The chief will, in turn, supervise volunteer firefighters, including a trustee who also serves as a volunteer firefighter. This relationship appears to create what is generally referred to as a common law conflict of interest.

It is well established that where a member of a governmental body has a personal interest in a matter coming before the body, he or she is disqualified from voting or otherwise acting thereon pursuant to common law conflict of interest principles. (In re Heirich (1956), 10 Ill. 2d 357, 384, appeal denied 355 U.S. 805; In re Betts (1985), 109 Ill. 2d 154, 168; see also Annotation 10 ALR 3d 694.) Thus, in opinion No. 92-026 (1992 Ill. Att'y Gen. Op. 92-026, issued October 27, 1992), Attorney General Burris advised that a board member should abstain from voting or acting upon matters from which he or she may be personally benefitted, including those matters which directly relate to persons who serve as their supervisors in their employment relationships. Consequently, in order to avoid a possible breach of the duty of fidelity, it appears that a fire protection district trustee who also serves as a volunteer firefighter should abstain from acting upon any matters which relate to the district's fire chief or other issues which could result in a personal advantage or disadvantage to the interested trustee.

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

MJL:LP:jp