



**ROLAND W. BURRIS**

ATTORNEY GENERAL  
STATE OF ILLINOIS



August 24, 1994

I - 94 - 044

COMPATIBILITY OF OFFICES:  
County Board of Health Member  
and Forest Preserve District  
Commissioner

Honorable Clark E. Erickson  
State's Attorney, Kankakee County  
189 East Court Street  
Kankakee, Illinois 60901-3992

Attn: Brenda Gorski, Assistant  
State's Attorney

Dear Mr. Erickson:

I have Assistant State's Attorney Brenda L. Gorski's letter wherein she inquired, on your behalf, whether the offices of county board of health member and forest preserve district commissioner may be held by the same person simultaneously. Because of the nature of this inquiry, I do not believe that the issuance of an official opinion will be necessary. I will, however, comment informally upon the question which has 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; Stephens v. Education Officers Electoral Board (1992), 236 Ill. App. 3d 159, 162-63; see generally People ex rel. Teros v. Verbeck (1987), 155 Ill. App. 3d 81.) There appear to be no constitutional or statutory provisions which expressly prohibit one person from simultaneously holding the two offices in

question. It is, therefore, necessary to examine the duties, functions and powers of the offices of forest preserve district commissioner and county board of health member to determine whether a conflict of duties could arise if one person were to occupy both offices.

The provisions of the Downstate Forest Preserve District Act (70 ILCS 805/0.001 et seq. (West 1992)) govern the operations of forest preserve districts in counties having a population of less than 3,000,000. (70 ILCS 805/.01 (West 1992).) As provided in the Act, the powers of the forest preserve district are exercised by its board of commissioners. (70 ILCS 805/3a (West 1993 Supp.)) The duties of the forest preserve district board include, inter alia, acquiring and holding lands for the use of the forest preserve district (70 ILCS 805/5 (West 1992)); contracting with local governmental entities to pay for the costs of improving or maintaining public roadways which provide access to the lands and facilities of the district (70 ILCS 805/5 (West 1992)); controlling and policing navigable bodies of water located adjacent to a district (70 ILCS 805/5c (West 1992)); passing and enforcing necessary ordinances, rules and regulations for management of the district's property and for conducting the business of the district (70 ILCS 805/8 (West 1992)); appointing and maintaining a police force for the enforcement and observance of ordinances and laws (70 ILCS 805/8a (West 1992)); levying taxes for the operation of the district (70 ILCS 805/13.1 (West 1993 Supp.)); appropriating monies required to defray necessary expenses and liabilities of the district (70 ILCS 805/13.3 (West 1992)); and maintaining and operating recreational and cultural facilities, including, but not limited to, natatoriums, swimming pools, ice skating rinks and botanical gardens (70 ILCS 805/18.1 (West 1992)).

The functions of the county board of health, on the other hand, relate to the management of the county's health department. (55 ILCS 5/5-25012 (West 1992).) In this regard, the county board of health is required, inter alia, to provide offices, facilities and appliances for the health department; investigate the existence of any contagious or infectious disease; make all necessary sanitary and health investigations; submit an annual budget to the county board; and appoint officers and employees, as necessary. (55 ILCS 5/5-25013(A) (West 1993 Supp.)) Moreover, a county board of health is authorized, inter alia, to initiate and carry out programs which promote and protect the public health; recommend to the county board the adoption of ordinances to promote and protect public health; and enter into contracts with the State, municipalities, other political subdivisions and non-official agencies for the purchase, sale or exchange of health services. (55 ILCS 5/5-

25013(B) (West 1993 Supp.)

A review of the duties of the two specified offices has failed to disclose any potential conflicts which would prevent one person from faithfully discharging the duties of the two offices simultaneously. As is apparent from the summaries of duties listed above, a forest preserve district and a county board of health perform very different functions which do not overlap. 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 bounds. Consequently, in the absence of potentially conflicting duties, it appears that one person may serve as county board of health member and forest preserve district commissioner simultaneously.

- This is not an official opinion of the Attorney General. Please note that it is the Attorney General's policy that all requests for opinions originating in a State's Attorney's office be addressed to the Attorney General, and be signed or endorsed by, the State's Attorney. See 1991 Ill. Att'y Gen. Op. v, vi.

Very truly yours,



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

MJL:LP:dn



**WILLIAM J. SCOTT**

ATTORNEY GENERAL  
STATE OF ILLINOIS  
500 SOUTH SECOND STREET  
SPRINGFIELD

May 28, 1976

NY 1079

FILE NO. NP-1099

COMPATIBILITY OF OFFICES:  
Township Supervisor and  
Commissioner of County  
Forest Preserve District.

Honorable Jack Hoogasian  
State's Attorney  
Lake County  
Waukegan, Illinois 60085

Dear Mr. Hoogasian:

I have your letter wherein you ask whether a township supervisor may serve as a commissioner of the county forest preserve district. This inquiry is occasioned by the concern that a township supervisor serving as a commissioner of the county forest preserve district would be in a position to vote as commissioner for the purchase of land which is located within his township and refuse to vote for the purchase of land in other townships.

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The enactment of Public Act 79-457 created "An Act in relation to the simultaneous tenure of certain public offices". (Ill. Rev. Stat. 1975, ch. 102, pars. 4.10 et seq.) This Act provides that the offices of county board member and township supervisor are compatible but adds that simultaneously holding both offices is lawful only for a county board member who may be elected to the office of township supervisor in or before 1977. Such a person may hold the two offices simultaneously until the expiration of his term as county board member; thereafter the simultaneous holding of both offices is unlawful. Section 2 of the Act (Ill. Rev. Stat. 1975, ch. 102, par. 4.11) reads as follows:

"§ 2. It is lawful for any county board member who may be elected in 1977 or before 1977 to the office of township supervisor to hold the office of county board member and township supervisor simultaneously until the expiration of his term of office as county board member; thereafter it is unlawful for the same individual to hold both such offices simultaneously."

In Opinion No. S-1016, issued December 11, 1975, I explained that a person who is elected to the county board in November of 1976 may lawfully hold that position simultaneously with the office of township supervisor should he be elected to the latter office in 1977.

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In counties such as Lake County where the boundaries of the forest preserve district are coextensive with the boundaries of the county, the county board members serve as ex officio forest preserve district commissioners. (Ill. Rev. Stat. 1975, ch. 57 1/2, par. 3a.) It must be presumed that the General Assembly enacts legislation with an awareness of existing statutes. (Theodosis v. Keeshin Motor Express Co., 341 Ill. App. 8.) It must, therefore, be presumed that when the General Assembly enacted Public Act 79-457, it was aware of the fact that some county board members are ex officio commissioners of the county forest preserve district. Public Act 79-457 applies to all county board members; the county board members who are ex officio forest preserve commissioners are not excluded from the Act's provisions. It is my opinion that Public Act 79-457 answers your inquiry. Since a township supervisor may lawfully serve as a county board member, the supervisor may also serve as ex officio commissioner of the county forest preserve district. However, the same time limitations that Public Act 79-457 imposes upon simultaneously holding the offices of county board member and township super-

Honorable Jack Hoogasian - 4.

visor necessarily apply to the holding of the offices of county forest preserve district commissioner and township supervisor.

Incompatibility between offices arises when the duties of the offices are such that the holder of one cannot in every instance properly and faithfully perform all the duties of the other. (People v. Haas, 145 Ill. App. 283.)

As you point out in your letter, it can be argued that a township supervisor cannot simultaneously serve as a county forest preserve district commissioner since the supervisor would be in a position to favor his township in purchasing land for the forest preserve district. It is within the power of the legislature to provide that two offices may be held by the same individual even though such offices might be held to be incompatible at common law. (Athe v. Weaver, 39 N.J. 418; 189 A. 2d 27; 3 McQuillon Mun. Corp. 3rd Ed. Rev., sec. 12.67, p. 296.) Public Act 79-457 has settled the question of the compatibility between the offices of township supervisor and commissioner of the county forest preserve district. A person may simultaneously perform the duties of both offices in accordance with the Act's provisions.

Very truly yours,

A T T O R N E Y   G E N E R A L