ROLAND W. BURRIS
ATTORNEY GENERAL
STATE OF ILLINOIS

August 31, 1993

I - 93-043

COMPATIBILITY OF OFFICES:
County Clerk and Hospital District Director

Honorable H. Wesley Wilkins
State's Attorney, Union County
309 West Market
Jonesboro, Illinois 62952

Dear Mr. Wilkins:

I have your letter wherein you inquire whether the offices of county clerk and hospital district director are incompatible. 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. (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 prohibits one person from simultaneously serving as a county clerk and as a hospital district director. Therefore, the issue is whether the duties of either office are such that the holder of one cannot fully and faithfully discharge all of the duties of the other.

Initially, you have asked whether the duties of these offices would conflict because the hospital is an independent taxing authority, and the county clerk is required to extend

taxes for the various taxing districts in the county. Section 162 of the Revenue Act of 1939 (Ill. Rev. Stat. 1991, ch. 120, par. 643; 35 ILCS 205/162 (West 1992)) provides, in pertinent part:

> "Except as provided below, each county clerk shall estimate and determine the rate per cent upon the equalized assessed valuation for the levy year * * * of the property in the respective taxing districts * * * in his county that will produce, within the proper divisions of such county, not less than the net amount of the several sums that will be required by the county board or certified to him according to law; * * *
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> Each county clerk shall determine the maximum rate authorized for each county, taxing district or school district other than a home rule unit prior to the extending taxes. * * * If the amount of any tax certified to the county clerk for extension shall exceed the maximum allowed by law, determined as above provided, such excess shall be disregarded, and the residue only treated as the amount certified for extension.
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> * * * "

In People ex rel. Carr v. Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company (1925), 316 Ill. 410, 414, the court discussed the administrative or ministerial nature of the duties performed by the county clerk in the extension of taxes:

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> After a tax is once levied or imposed, --i.e., ordered to be laid,--further proceedings, such as extending, assessing and collecting the tax, are administrative. The county clerk extends taxes where the levy is complete. He has no power to levy taxes nor to determine whether taxes have been legally assessed. The duties which he is required to perform in the extension of taxes are pre-

> scribed by law, and are neither legislative nor judicial but purely ministerial in character. * * *
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> * * * "

In general, purely ministerial duties have not been deemed to conflict with discretionary duties in determining whether two offices are incompatible. See opinion No. 82-039 (NP), issued November 10, 1982.

The duty of the county clerk to set the rate percent at which taxes will be extended against the assessed valuation of property is a ministerial act and, as such, does not involve any exercise of discretionary judgment. No conflict, therefore, would appear to exist between the duty of the county clerk to extend taxes and the duty of a hospital district director to authorize the amount of revenue to be levied for the hospital district. (Ill. Rev. Stat. 1991, ch. 23, par. 1270; 70 ILCS 910/20 (West 1992).)

Similarly, other tax-related responsibilities of the county clerk, such as verifying that a projected tax rate does not exceed the maximum rate allowed by law and that a taxing district is in compliance with the Truth in Taxation Act (see Ill. Rev. Stat. 1991, ch. 120, par. 643; 35 ILCS 205/162 (West 1992)), are also ministerial in character since they do not require discretionary judgments on the part of the clerk. Abatement of taxes on certain property is another ministerial tax-related duty of the county clerk as the decisions to abate are made solely by the respective taxing districts. (See Ill. Rev. Stat. 1991, ch. 120, pars. 643, 643e, 643f, 643h; 35 ILCS 205/162, 162e, 162f, 162h (West 1992).)

Accordingly, because there appears to be no conflict between the various tax-related duties of a county clerk and the discretionary duties of a hospital district director, the offices would not be rendered incompatible on this basis.

You have also asked whether the county clerk's duty to act as secretary to the county board, which appoints the hospital district directors, would bar the county clerk from being appointed a hospital district director. The county clerk's secretarial duties to the county board (Ill. Rev. Stat. 1991, ch. 34, par. 3-2013; 55 ILCS 5/3-2013 (West 1992)) are clearly ministerial. A hospital district is an independent municipal corporation, separate and apart from the county. (Ill. Rev. Stat. 1991, ch. 23, par. 1265; 70 ILCS 910/15 (West 1992).) There is nothing in the nature of the county board's role as

appointing authority for the hospital district board (Ill. Rev. Stat. 1991, ch. 23, par. 1261; 70 ILCS 910/11 (West 1992)) which would appear to render the county clerk ineligible for appointment to the hospital district board. I note, parenthetically, that section 1 of the Public Officer Prohibited Activities Act (Ill. Rev. Stat. 1991, ch. 102, par. 1; 50 ILCS 105/1 (West 1992)), which prohibits county board members from being appointed by the county board to other offices, is not applicable since the county clerk is not considered to be a county board member even when acting in his or her capacity as secretary to the county board.

I would also point out that no conflict appears to exist between the other ministerial duties of a county clerk and the duties of a hospital district director who, as a member of the governing board of a hospital district, exercises the corporate powers of the hospital district. (See Ill. Rev. Stat. 1991, ch. 23, par. 1265; 70 ILCS 910/15 (West 1992).) Other duties of a county clerk include the care and custody of various county records and papers (Ill. Rev. Stat. 1991, ch. 34, par. 3-2012; 55 ILCS 5/3-2012 (West 1992)); the recording of county ordinances (Ill. Rev. Stat. 1991, ch. 34, par. 5-29005; 55 ILCS 5/5-29005 (West 1992)); the maintenance of certain special funds (Ill. Rev. Stat. 1991, ch. 34, par. 3-2003.4; 55 ILCS 5/3-2003.4 (West 1992)); and various election duties, such as voter registration and the printing of ballots (Ill. Rev. Stat. 1991, ch. 46, pars. 16-5, 17-8; 10 ILCS 5/16-5, 17-8 (West 1992)). As is apparent, there is no relationship between these non-discretionary duties of the county clerk and the corporate duties of a hospital district director which would conflict and render the offices incompatible.

Accordingly, it appears that the offices of county clerk and hospital district director are not incompatible, and, therefore, one person may 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,

[redacted]

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

MJL:JM:cj

ROLAND W. BURRIS
ATTORNEY GENERAL
STATE OF ILLINOIS

January 21, 1992

I-92-002

COMPATIBILITY OF OFFICES:
Hospital District Director
and State's Attorney; City
Attorney and State's Attorney

Honorable Stephen G. Sawyer
State's Attorney, Wabash County
Wabash County Courthouse
401 Market Streets
Mt. Carmel, Illinois 62863

Dear Mr. Sawyer:

I have your letters wherein you inquire, firstly, whether the offices of hospital district director and State's Attorney are incompatible, and, secondly, whether the offices of city attorney and State's Attorney are incompatible. Because of your need for an expedited response, I will comment informally upon the questions you have 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 of hospital district director and State's Attorney. Therefore, the issue is whether a conflict of duties could arise if one person were to occupy both offices.

Section 5-1005 of the Counties Code (Ill. Rev. Stat. 1989, ch. 34, par. 5-1005) authorizes a county, inter alia:

> "6. To cause to be erected, or otherwise provided, suitable buildings for, and maintain a county hospital and necessary branch hospitals and/or a county sheltered care home * * * for the care of such sick, chronically ill or infirm persons as may by law be proper charges upon the county, or upon other governmental units, and to provide for the management of the same. * * *
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> * * * "

While a county is granted the authority to maintain a county hospital, this authority is limited by the language of section 23 of the Hospital District Law (Ill. Rev. Stat. 1989, ch. 23, par. 1273), which provides, in pertinent part:

> "In case any Hospital District organized hereunder shall be coterminous with or shall include within its corporate limits in whole or in part any pre-existing public agency authorized to own, operate and maintain a public hospital and to levy taxes for any such purpose, then such public agency shall cease to exercise any power in respect to hospitals within such Hospital District from and after the date that it receives written notice from the Director of Public Health to cease operation of its hospital, * * * such public agency shall not thereafter own, operate, maintain, manage, control or have an interest in any public hospital within the corporate limits of said Hospital District. * * * Where in any case any pre-existing public agency is in fact owning, operating and maintaining a public hospital located within the corporate limits of a Hospital District organized under this Act, such public agency shall be paid and reimbursed, upon such terms as may be agreed upon by its corporate authorities and the Board of Directors of such Hospital District, its actual expenditures theretofore made in acquiring the land for any such hospital and in acquiring, constructing, improving or developing any existing hospital facilities, not including funds advanced for that purpose or otherwise paid or expended either directly or indirectly by State or Federal governments. The terms of payment shall provide for reimbursement in full within not less than twenty years from the date of such agreement.

> In case the amount and terms of reimbursement cannot be determined or agreed upon between the corporate authorities of any existing public agency and the Board of Directors of the Hospital District, the Board of Directors of such Hospital District shall cause a description of the existing hospital facilities to be made, together with an estimate of all actual expenditures made by the public agency therefor and shall tender payment of the total amount so estimated in writing to the corporate authorities of such public agency. * * * In case such a tender is not accepted in writing by the corporate authorities of such public agency within thirty days after the same is made, the Hospital District by its Board of Directors shall file a petition in the Circuit Court of the county in which the Hospital District and such public agency or the major portions thereof are situated, making such public agency a party defendant thereto, setting forth a description of the hospital facilities, the estimated amount of expenditures made by the defendants thereon, the fact that a tender had been made for the payment of the actual expenditures in accordance with the estimate, and praying that it be determined by the Circuit Court the true amount of such expenditures by said public agency.
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> (Emphasis added.)

For purposes of the Hospital District Law, the term "public agency" is defined as follows:

> " * * *
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> (g) 'Public Agency' means any municipality, county, township, tuberculosis sanitarium district, or political subdivision that maintains a public hospital."
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> (Emphasis added.)
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> (Ill. Rev. Stat. 1989, ch. 23, par. 1252(g).)

Under the statutes quoted above, it is foreseeable that a hospital district and a county could enter into a contract whereby the hospital district would reimburse the county for its actual expenditures in acquiring, constructing and maintaining hospital facilities. Moreover, in the event that the amount and terms of reimbursement cannot be agreed upon between a hospital district and a county which is operating a hospital, the Board of Directors of the Hospital District is authorized to file a petition in the appropriate circuit court naming the county as party defendant.

A State's Attorney is the legal advisor and attorney for county officers. (Ill. Rev. Stat. 1989, ch. 34, par. 3-9005.) Therefore, as part of his or her official duties, a State's Attorney may be called upon to render advice or an opinion on, or to assist in the negotiation of, the terms of a reimbursement contract between a county and a hospital district. Similarly, it appears that a hospital district director, in implementing the powers granted to the board under the Hospital District Law, would be called upon to vote on the terms of a reimbursement contract entered into between the board and a county. It is well established that one person cannot adequately represent the interest of two governmental units when those units contract with one another. (Ill. Att'y. Gen. Op. No. 91-031, issued July 26, 1991; Ill. Att'y. Gen. Op. No. 91-923, issued June 6, 1991; Ill. Att'y. Gen. Op. No. 91-015, issued March 14, 1991). Therefore, it appears that one person would have a conflict of duties if he or she were to serve in both offices simultaneously.

I would also note that a hospital district is authorized to file a petition naming a county which operates a hospital facility within its district as a party defendant, if a reimbursement agreement cannot be reached. Because the State's Attorney must defend all actions brought against his or her county (Ill. Rev. Stat. 1989, ch. 34, par. 3-9005), a hospital district director who is also a State's Attorney would find himself or herself in the position of having divided loyalty and a conflict of interests. Consequently, because of the potential conflict in the duties of the offices in question, it does not appear that the same person may hold the offices of hospital district director and State's Attorney simultaneously.

You further inquire whether, in addition to serving as State's Attorney, a person could also serve as city attorney for Mt. Carmel, a city wholly situated in Wabash County. As indicated above, offices are deemed to be incompatible where the holder of one office cannot, in every instance fully and

faithfully discharge the duties of the other. In reviewing the duties of both a State's Attorney and a city attorney, this office has long held that there are instances when the duties of the two offices conflict, thus preventing one person from holding both offices simultaneously. 1910 Ill. Att'y. Gen. Op. 484; 1925 Ill. Att'y. Gen. Op. 159; 1927 Ill. Att'y. Gen. Op. 150; 1933 Ill. Att'y. Gen. Op. 85; 1977 Ill. Att'y. Gen. Op. 81.

By way of illustration, provisions in the Counties Code (Ill. Rev. Stat. 1989, ch. 34, par. 1-1001 et seq.) specifically contemplate that a county and a municipality may enter into a contract for the collection and disposition of garbage (Ill. Rev. Stat. 1989, ch. 34, par. 5-1048) or for the provision of police protection (Ill. Rev. Stat. 1989, ch. 34, par. 5-1103.1). Because both the State's Attorney and the city attorney are the legal advisors for their respective governing authorities, it is foreseeable that during the negotiations over a contract's terms, the attorney for either or both of these units of government could be contacted for an opinion or advice on an issue. If the same individual were to serve in both positions simultaneously, he or she would be unable to represent the interests of both units of government fully and faithfully.

While the offices of State's Attorney and city attorney are incompatible, a State's Attorney may properly serve as legal consultant to a city. Attorney General Scott determined that the doctrine of incompatibility of offices does not apply to municipal legal consultants. Thus, in opinion S-1254 (1977 Ill. Att'y. Gen. Op. 81), he concluded that a State's Attorney could act as a village's legal consultant, because a consultant advises the village on only a case by case basis. Thus, a consultant can refrain from rendering advice on those matters which relate to his or her duties as State's Attorney.

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

Very truly yours,

[redacted]

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

MJL:LP:jp