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62706

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I - 88-047

GOVERNMENTAL ETHICS AND  
CONFLICT OF INTEREST:  
Coroner and Hospital Employee

Honorable Don Sheafor  
State's Attorney, Fayette County  
Fayette County Courthouse  
221 South Seventh Street  
Vandalia, Illinois 62471

Dear Mr. Sheafor:

I have your letter wherein you inquire whether there would be a conflict of interest if a county hospital employee were to serve simultaneously as coroner of that county. Because of the nature of your question, I do not believe that the issuance of an official opinion will be necessary. I will, however, comment informally upon the question you have raised.

According to the information you have provided, the Fayette County Hospital is organized under and governed by the Hospital District Law (Ill. Rev. Stat. 1987, ch. 23, par. 1251 et seq.). Two salaried employees of the hospital, one a pharmacist, and the other the head of the respiratory therapy department, are presently candidates for the office of Fayette County coroner. It is anticipated that if one of them is, in fact, elected coroner, he or she will elect to continue in the employ of the hospital. You ask whether, because of the nature

of the positions in question or the fact that one individual would be receiving compensation from the county for both positions, a conflict of interest would be created.

Conflicts of interest, as that term is used in the public sector, arise when offices held simultaneously are incompatible, or when an official has a personal pecuniary interest in a contract he may be called upon to act upon in his official capacity. In general, in the absence of a statutory prohibition, the common law doctrine of compatibility of offices applies when one person holds two public offices, and the duties of one office may interfere with the full and faithful performance of the duties of the other. (People ex rel. Myers v. Haas (1908), 145 Ill. App. 283; 1982 Ill. Att'y Gen. Op. 53; 1977 Ill. Att'y Gen. Op. 24; 1975 Ill. Att'y Gen. Op. 278; 1961 Ill. Att'y Gen. Op. 230.) Public officers, as distinguished from public employees, are authorized to exercise some portion of the sovereign power. (People v. Brady et al. (1922), 302 Ill. 576; Olson v. Scully et al. (1921), 296 Ill. 418; 1975 Ill. Att'y Gen. Op. 350; 1975 Ill. Att'y Gen. Op. 278.) Because neither of the positions of employment described by you appears to constitute a public office, no incompatibility of offices would arise if one employee is elected coroner.

With respect to pecuniary interests, section 3 of "AN ACT to prevent fraudulent and corrupt practices in the making or accepting of official appointments and contracts by public officers" [the Corrupt Practices Act] (Ill. Rev. Stat. 1987, ch. 102, par. 3) provides, 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. No such officer may represent, either as agent or otherwise, any person, association, trust or corporation, with respect to any application or bid for any contract or work in regard to which such officer may be called upon to vote. \* \* \*

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A violation of section 3 of the Corrupt Practices Act occurs when a public officer has some personal pecuniary interest in a contract entered into by the officer or his office. In this situation, a violation might occur if the coroner, who has the statutory power to control the internal operations of his office (Ill. Rev. Stat. 1987, ch. 31, par. 1.2), were to enter into a contract with the hospital district that would benefit him monetarily, either directly or indirectly. Because of the nature of the two occupations at issue (pharmacist and head of a respiratory therapy department) and the nature of the duties of a coroner, however, it does not appear likely that any direct benefit in such a contract would arise.

It must also be determined whether the coroner, as an employee of the hospital district, might indirectly benefit from a contract that benefits his employer, the hospital district. A similar question was addressed by Attorney General Scott in opinion No. S-1031, issued January 8, 1976 (1976 Ill. Att'y Gen. Op. 56), which concerned possible conflicts of interest between officers and employees of a city and a school district. Attorney General Scott distinguished contracts between two public bodies from contracts between a public body and a private entity, reasoning that:

" \* \* \*

First, the pecuniary interest is not as certain. The interest that a public official has in a contract with an entity of which he is an employee is that his salary or wage will continue or increase as the corporation continues to exist and grow. This same interest is not necessarily present to as great a degree when a person works for a public body. In the particular situation presented by your request, both the city and the school district are fulfilling public purposes which by statute are required to be continued. Furthermore, salary or wage increases are not as readily or conveniently granted in the public sector.

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(1976 Ill. Att'y Gen. Op. 56, 59.)

He concluded, in essence, that an officer or employee of a governmental body would not have an indirect pecuniary interest, within the purview of section 3 of the Corrupt

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Practices Act, in a contract between that body and another governmental body, stating that:

" \* \* \*

\* \* \* [A] contract between two public bodies is not void wherever there is a mere possibility that an officer of one has an interest in that contract. There must be an actual interest. This you will have to determine from the particular facts in the situation." (1976 Ill. Att'y Gen. Op. 56, 59.)

Under Attorney General Scott's reasoning, the court's decision in a subsequent case, Robertson et al. v. Binno et al. (1978), 56 Ill. App. 3d 390, is easily distinguishable, because the contract at issue in that case was between a township and a private corporation. In Robertson, a township road commissioner was a tenant farmer on land owned by a private corporation. When the commissioner granted the corporation's request to close a road, the court found that although the road closing was not directly associated with the farming tenancy, the denial of the request to close the road could have impaired the tenancy and resulted in an income loss to the tenant/commissioner, thereby creating an indirect financial interest in the contract to close the road. The reasoning of the Robertson decision could be applied in these circumstances, but for the fact that the contracts in question, if entered into, will be between public entities, and not a governmental body and a private entity.

Therefore, for the reasons stated above, it appears that no conflict of interest would be created in this situation.

Very truly yours,

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