



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

Lisa Madigan  
ATTORNEY GENERAL

January 31, 2005

I - 05-003

COMPATIBILITY OF OFFICES:  
City Council Member and  
Library District Trustee

The Honorable Timothy J. McCann  
State's Attorney, Kendall County  
807 West John Street  
Yorkville, Illinois 60560

Dear Mr. McCann:

I have your letter wherein you inquire whether the offices of city council member and library district trustee are incompatible. Because of the nature of your inquiry, I do not believe that the issuance of an official opinion is necessary. I will, therefore, comment informally upon the question you have raised.

The doctrine of incompatibility of offices precludes simultaneous tenure in office where the constitution or a statute specifically prohibits the occupant of one office from holding another, or where the duties of the two offices are such that the holder of one cannot, in every instance, fully and faithfully discharge the duties of the other. *People ex rel. Fitzsimmons v. Swailes*, 101 Ill. 2d 458, 465 (1984); *People ex rel. Myers v. Haas*, 145 Ill. App. 283, 286 (1908). There are no constitutional or statutory provisions which expressly prohibit one person from simultaneously holding the offices of library district trustee and city council member. It is necessary, therefore, to examine the duties, functions and powers of the two offices to determine whether a conflict of duties could arise.

In opinion No. 91-023, issued June 6, 1991, Attorney General Burriss addressed the analogous question of whether the offices of county board member and library district trustee are incompatible. *See* 1991 Ill. Att'y Gen. Op. 51. In reaching his conclusion that one person

may not simultaneously hold both offices, Attorney General Burriss reviewed the potential conflicts of duties which arise when one governmental unit contracts with another. Under similar reasoning, in informal opinion No. I-96-052, issued December 10, 1996, the offices of township trustee and library district trustee were found to be incompatible.

Section 30-55.40 of the Public Library District Act of 1991 (75 ILCS 16/30-55.40 (West 2002)) grants to library district trustees the power to:

Contract[ ] for library services and other matters. The board may contract with any public or private corporation or entity for the purpose of providing or receiving library service or of performing other acts necessary and proper to carry out the responsibilities, the intent, and the provisions of this Act. This contractual power includes, but is not limited to, (i) participating in interstate library compacts and library systems, (ii) contracting to supply library services, and (iii) spending any federal or State funds made available to any county, municipality, or township or to the State of Illinois for library purposes.

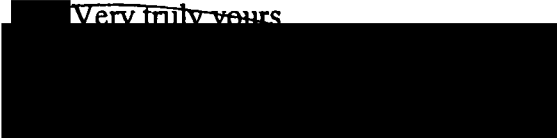
So too, municipalities may establish and maintain a public library (*see* 75 ILCS 5/1-2, 2-1 (West 2002)) and are expressly authorized to contract with any public corporation for the provision or receipt of library services. 75 ILCS 5/4-7(8) (West 2002). A library district trustee, in implementing the powers granted to the board by the provisions of the Public Library District Act of 1991 (75 ILCS 16/1-1 *et seq.* (West 2002)), is under a duty to protect and represent the best interests of the library district. 75 ILCS 16/30-5 *et seq.* (West 2002). Similarly, a city council member is also under a duty to represent and protect the interests of the municipality which he or she serves. 65 ILCS 5/3.1-10-25 (West 2002); Ill. Const. 1970, art. XIII, §3. It has previously been stated 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; 1976 Ill. Att'y Gen. Op. 116; 1975 Ill. Att'y Gen. Op. 37.

Because of the potential conflicts of duties which arise when one governmental unit contracts with another, a person who serves simultaneously as both a library district trustee and a city council member would not be able to represent the interests of both entities adequately, fully and faithfully. Therefore, the two offices are incompatible and one person cannot simultaneously hold both.

The Honorable Timothy J. McCann - 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, Opinions Bureau

LP:an



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

December 10, 1996

**Jim Ryan**  
ATTORNEY GENERAL

I - 96-052

COMPATIBILITY OF OFFICES:  
Library District Trustee/  
Township Trustee

Honorable Jack O'Connor  
State Representative - 35th District  
2123-0 Stratton Building  
Springfield, Illinois 62706

Dear Representative O'Connor:

I have your letter wherein you inquire whether an elected library district trustee may simultaneously serve as a township trustee. 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 doctrine of incompatibility of offices is applicable where the constitution or a statute specifically prohibits the occupant of one office from holding another, or where the duties of the two offices are such 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.) There are no constitutional or statutory provisions which expressly prohibit one person from holding the two offices in question simultaneously. Therefore, it is necessary to examine the duties, functions and powers of the two offices to determine whether a conflict of duties could arise.

Section 30-55.40 of the Illinois Public Library District Act of 1991 (75 ILCS 16/30-55.40 (West 1994)) provides, in pertinent part:

"The [library] board may contract with any public or private corporation or entity for the purpose of providing or receiving library service or of performing other acts necessary and proper to carry out the responsibilities, the intent, and the provisions of this Act. this contractual power includes, but is not limited to, (i) participating in interstate library compacts and library systems, (ii) contracting to supply library services, and (iii) spending any federal or State funds made available to any county, municipality, or township or to the State of Illinois for library purposes.  
\* \* \*"

Similarly, townships may expend funds to operate and maintain libraries for the residents of the township, and are expressly authorized to contract with other governmental entities to provide library services. (60 ILCS 1/85-13(a)(1)(F)(West 1994)).

The likelihood of a library district and a township contracting for the provision or receipt of library services is not remote. A library district trustee, in implementing the powers granted to the board under the Illinois Public Library District Act of 1991 (75 ILCS 16/1-1 et seq. (West 1994)), is under a duty to protect and represent the best interests of the library district. (75 ILCS 16/30-55 et seq. (West 1994).) A township trustee is also under a duty to represent and protect the interests of the township which he or she serves. It has previously been stated 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; Ill. Att'y Gen. Op. No. 85-019; 1976 Ill. Att'y Gen Op. 116; 1975 Ill. Att'y Gen. Op. 37.) Because of the potential conflicts of duties which arise when one governmental unit contracts with another, an individual who served simultaneously as both a library district trustee and township trustee would not be able to represent the interests of both entities adequately, fully and faithfully. Therefore, it appears that the two offices are incompatible, and one person may not hold both offices simultaneously.

Honorable Jack O'Connor - 3.

This is not an official opinion of the Attorney General. If we can be of further assistance in this matter, please advise.

Sincerely,



Michael J. Luke  
Senior Assistant Attorney General  
Bureau Chief, Opinions

MJL:SZ:dn