



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

March 13, 2006

I - 06-021

COMPATIBILITY OF OFFICES:
Mayor and Police Chief

The Honorable Julie Kozuszek
State's Attorney, Washington County
101 East St. Louis Street
Nashville, Illinois 62263

Dear Ms. Kozuszek:

I have your predecessor's letter inquiring whether the mayor of a municipality may simultaneously serve as the police chief of the same municipality. For the reasons set forth below, the offices of mayor and police chief are incompatible, and one person may not hold both offices simultaneously.

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 such that the holder of one cannot, in every instance, properly and faithfully perform all 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).

While there are no constitutional or statutory provisions that expressly prohibit a mayor from simultaneously serving as police chief, section 3.1-15-15 of the Illinois Municipal Code (the Code) (65 ILCS 5/3.1-15-15 (West 2004)) generally prohibits a mayor from holding another municipal office:

Holding other offices. A mayor, president, alderman, trustee, clerk, or treasurer *shall not hold any other office under the municipal government during the term of that office*, except when the officer is granted a leave of absence from that office or except as otherwise provided in Sections 3.1-10-50 [65 ILCS 5/3.1-10-50 (West 2004)] and 3.1-35-135 [65 ILCS 5/3.1-35-135 (West 2004)]. Moreover, an officer may serve as a volunteer fireman and receive compensation for that service. (Emphasis added.)

Under the plain language of section 3.1-15-15 of the Code, a mayor is prohibited from holding "any other office under the municipal government," unless one of the enumerated exceptions apply. See Ill. Att'y Gen. Op. No. 98-002, issued January 15, 1998. None of the exceptions referred to in section 3.1-15-15 of the Code are applicable to the question raised. The sole inquiry, therefore, is whether the position of police chief qualifies as an "office under the municipal government" within section 3.1-15-15, so that a mayor would be prohibited from simultaneously serving as police chief.

The term "office" in section 3.1-15-15 of the Code refers to a position held by an "officer" of a municipality by virtue of his election or appointment to that position, the incumbent of which is assigned the continuous performance of certain permanent public duties. It does not include mere municipal employees. See *Daniels v. City of Venice*, 162 Ill. App. 3d 788, 790 (1987); *Village of Round Lake Beach v. Brenner*, 107 Ill. App. 3d 1, 4 (1982); *Rudd v. Sarallo*, 111 Ill. App. 2d 153, 159 (1969). In *Midwest Television, Inc. v. Champaign-Urbana Communications, Inc.*, 37 Ill. App. 3d 926, 931 (1976), the appellate court specifically delineated the criteria to be used in determining whether a position constitutes a public office, stating:

The characteristics of a public office are generally agreed upon, although the distinction between an office and employment may be vague in particular fact situations. The characteristics of a public office include: (1) creation by statute or constitution; (2) exercise of some portion of the sovereign power; (3) a continuing position not occasional or contractual; (4) fixed tenure; (5) an oath is required; (6) liability for misfeasance or nonfeasance; and (7) the official has an independence beyond that of employees.

See also *Wargo v. Industrial Comm'n*, 58 Ill. 2d 234, 237 (1974); *People ex rel. Brundage v. Brady*, 302 Ill. 576, 582 (1922); Ill. Att'y Gen. Inf. Op. No. I-05-007, issued September 23, 2005. The court further indicated that "[n]ot all [of] these factors are required in order to determine that a position is an office." *Midwest Television, Inc.*, 37 Ill. App. 3d at 932. The most important of the factors, however, is the exercise of some portion of the sovereignty of the State. *Hall v. Cook County*, 359 Ill. 528, 539-40 (1935); *Brady*, 302 Ill. at 582.

Several factors support the conclusion that the police chief of the City of Ashley is a public officer. Significantly, the police chief is required to give a bond in the amount required by the city council and must take an oath of office prior to performing the duties of police chief. See Ashley City Ordinance 96-003 (eff. Aug. 19, 1996); Ashley City Code §30-2-19(C); 65 ILCS 5/3.1-10-25, 3.1-10-30 (West 2004). Although the position of police officer is created by statute (65 ILCS 5/11-1-2 (West 2004)), the position of police chief is created by ordinance. However, under the ordinance, the position is created as a continuous one. Ashley City Ordinance 96-003 (eff. Aug. 19, 1996); see also 65 ILCS 5/3.1-30-5, 5/11-1-1 (West 2004). Further, the police chief has an independence beyond that of an employee; the chief holds final policymaking authority with respect to law enforcement. Ashley City Code §§30-2-3, 30-2-16. The police chief bears the responsibility and direction for all functions and personnel of the municipal police department. *Fabiano v. City of Palos Hills*, 336 Ill. App. 3d 635, 657 (2002), *appeal denied*, 204 Ill. 2d 658 (2003). The police chief is responsible for the protection of the public, and inherent in this is the responsibility to maintain an efficient and effective police force. See *Buege v. Lee*, 56 Ill. App. 3d 793, 796 (1978); Ashley City Ordinance 96-003 (eff. Aug. 19, 1996). Thus, the police chief exercises a portion of the sovereign power.

Based on the foregoing, the position of police chief as created by the Ashley City Council is a public office. See *Brenner*, 107 Ill. App. 3d at 4 (chief of police is public office); Ill. Att'y Gen. Inf. Op. No. I-94-030, issued June 8, 1994 (fire chief may be either an officer or an employee); Ill. Att'y Gen. Inf. Op. No. I-01-025, issued May 23, 2001 (fire chief is a public office); 65 ILCS 5/10-2.1-1 (West 2004) (a full-time member of a police department in a municipality that has appointed a board of fire and police commissions is considered a "city officer").¹ As a result, section 3.1-15-15 of the Code, which generally prohibits a mayor from holding another municipal office, prevents a mayor from simultaneously serving as police chief of the same municipality.

Further, offices are also found to be incompatible if one of the offices is subordinate to the other. *Fitzsimmons*, 101 Ill. 2d at 467-69; *Tinley Park*, 116 Ill. App. 3d at 440-44. In these circumstances, the office of police chief is clearly subordinate to the office of mayor. The mayor appoints the police chief and may remove him or her from office. The mayor may be required to approve or disapprove of the compensation set for members of the police department, including the police chief, and the expenditures of the police department. Because a

¹ In *Rogers v. Village of Tinley Park*, 116 Ill. App. 3d 437 (1983), the appellate court considered whether the doctrine of incompatibility of offices precluded a village police officer from simultaneously serving as a village trustee. Without specifically discussing whether the position of police officer is an office, the court held that the doctrine of incompatibility of offices precludes a village police officer from simultaneously serving as a village trustee because of a conflict of duties between the two offices. *Tinley Park*, 116 Ill. App. 3d at 445. Because the common law doctrine of incompatibility of offices traditionally has been applied only to offices, and not to positions of employment (1975 Ill. Att'y Gen. Op. 278, 280), it must be assumed that the court concluded that the position of police officer was, in fact, a public office. If the position of village police officer is a public office, it then follows that the position of village police chief must similarly be considered a public office.

mayor may be called on to remove a police chief and approve or disapprove the compensation and expenditures of the police department, a mayor simultaneously serving as police chief would experience competing interests and divided loyalties which could hamper a mayor in the full and faithful performance of his duties. Under these circumstances, the duties of the two offices are divergent and would conflict. Thus, the offices of police chief and mayor are incompatible, and one person may not hold both offices simultaneously.

Moreover, the common law doctrine of incompatibility would preclude the simultaneous holding of the offices of mayor and police chief because of a conflict in duties between the two offices. As noted above, offices are incompatible where the duties of either office are such that the holder of one office cannot, in every instance, properly and faithfully perform all the duties of the other office. In the *Tinley Park* case, the court concluded that the offices of village trustee and police officer for the same municipality were incompatible because of a conflict of duties stating:

The board of trustees of the village of Tinley Park must determine the salaries and fringe benefits of all village employees, including police officers. It must annually establish an operating budget for the village's police department and for all village departments and must annually levy taxes for various police purposes. It must authorize expenditures for various equipment and supply purchases for the police department and approve of officers attending seminars, conventions and supplemental training.

The civil service commission of the village is responsible for the hiring and firing of police officers, but the board of trustees has extensive and wide-ranging responsibilities in the field of police department labor relations and personnel decisions.

The board has the duty and responsibility of increasing or decreasing the numerical strength of the police department. Recently it voted to reduce the number of officers in the department. The village president and board of trustees, not the civil service commission, has the authority to appoint and remove the chief of police, the head of the department of police to which Rogers belongs. The board also has the authority, by ordinance, to appoint and remove the civil service commissioners or change the composition of the commission.

The Ashley City Code provides that the mayor shall appoint the city's police chief for a term of one year with the advice and consent of the city council. If the mayor does not appoint a police chief, the Ashley City Code states that the mayor shall "act[] in that capacity."

Ashley City Code §30-2-2. The mayor also has the power to remove the police chief from office whenever the mayor determines that the interests of the municipality demand removal. Ashley City Code §1-2-46. The Ashley City Council must determine the compensation of the members of the police department, including the police chief. Ashley City Code §30-2-5. Further, the city council establishes an operating budget for the police department and authorizes its expenditures. Although the powers of a mayor vary depending on the particular organization of the municipality, in every case the mayor has sufficient power to influence city actions so that a conflict of interest could arise. Ill. Att'y Gen. Inf. Op. No. I-92-060, issued December 8, 1992; Ill. Att'y Gen. Op. No. I-91-015, issued March 14, 1991. Based on the foregoing, the duties of the offices of mayor and police chief are such that the holder of one cannot, in every instance, fully and faithfully discharge the duties of the other.

Finally, an ordinance cannot add to, subtract from, or affect a statute's provisions. *JLR Investments, Inc. v. Village of Barrington Hills*, 355 Ill. App. 3d 661, 666 (2005), *appeal denied*, 215 Ill. 2d 598 (2005). Where there is a conflict between a statute and an ordinance, the ordinance is invalid. *Hawthorne v. Village of Olympia Fields*, 204 Ill. 2d 243, 259 (2003). The Ashley City Code provides that if the mayor does not appoint a police chief, then the mayor shall "act[] in that capacity." Ashley City Code §30-2-2. Section 3.1-15-15 of the Code (65 ILCS 5/3.1-15-15 (West 2004)), however, prohibits a mayor from holding another municipal office. As previously discussed, the position of municipal police chief is a public office. As a result, section 3.1-15-15 of the Code prohibits a mayor from simultaneously serving as police chief of the same municipality. Because the Ashley City Code authorizes the mayor to act as police chief, the Ashley City Code conflicts with section 3.1-15-15 of the Code and is therefore invalid.

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

LEP:CIE:an



ROLAND W. BURRIS

ATTORNEY GENERAL
STATE OF ILLINOIS



December 8, 1992

I-92-060

COMPATIBILITY OF OFFICES:
Community College Board
Trustee and Mayor

Honorable Timothy V. Johnson
State Representative, 104th District
108 East Anthony
Urbana, Illinois 61801

Dear Representative Johnson:

I have your letter wherein you inquire whether one person may simultaneously hold the offices of community college board trustee and mayor of a city which is located within the territory of the community college district. Because of your need for an expedited response, I will comment informally upon the question 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 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; see generally People ex rel. Teros v. Verbeck (1987), 155 Ill. App. 3d 81.) There are 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 community college board trustee and mayor to determine whether a conflict of duties could arise if one person were to occupy both offices.

The provisions of the Public Community College Act (Ill. Rev. Stat. 1991, ch. 122, par. 101-1 et seq.) govern the operations of the State's several community colleges. As provided in the Act, the powers of the community college district are exercised by its board of trustees. (Ill. Rev. Stat. 1991, ch. 122, par. 103-30). Section 3-38.2 of the Public Community College Act (Ill. Rev. Stat. 1991, ch. 122, par. 103-38.2) grants the board of any community college district the power:

"To enter into contracts with any municipality * * * in which any community college buildings are located for the purpose of reimbursing such * * * 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 * * *."

Similarly, section 11-6-4 of the Illinois Municipal Code (Ill. Rev. Stat. 1991, ch. 24, par. 11-6-4) provides:

"The corporate authorities of any municipality may contract with the board of any public community college district to reimburse the municipality for any additional costs for fire protection service, including equipment, apparatus, or firemen occasioned by the presence of any public community college building within the municipality."

Further, section 3-42.2 of the Act (Ill. Rev. Stat. 1991, ch. 122, par. 103-42.2) grants the board the power:

"To establish parking regulations, to regulate, and control the speed of, travel on all paths, driveways and roadways which are owned and maintained by, and within the property of, the community college district, to prohibit the use of such paths, driveways and roadways for racing or speeding purposes, to exclude therefrom traffic and vehicles, and to prescribe such fines and penalties for the violation of such traffic regulations as cities and villages are allowed to prescribe for the violation of their traffic ordinances.

* * *

The local community college board may enforce the provisions of this Section by use of members of the Security Department of the

community college or by agreeing in writing with a municipality, county or the State for its law enforcement officers to provide such enforcement." (Emphasis added.)

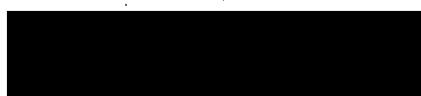
Under sections 3-38.2 of the Public Community College Act and 11-6-4 of the Illinois Municipal Code, it is foreseeable that a community college board and a municipality could enter into a contract whereby the municipality would be reimbursed for making its fire fighting equipment and personnel available to service the community college district. Moreover, section 3-42.2 of the Act specifically authorizes a municipality and a community college district to enter into an agreement for the provision of municipal law enforcement services to the college.

While the powers of a mayor may vary depending upon the particular organization of the municipality, in every case the mayor has sufficient power to influence municipal actions. (Ill. Att'y Gen. Op. 91-015, issued March 14, 1991.) Under the Illinois Municipal Code (Ill. Rev. Stat. 1991, ch. 24, par. 1-1-1), a mayor is required to perform all duties required by law and to execute his or her duties faithfully. (Ill. Rev. Stat. 1991, ch. 24, par. 3-11-6.) A community college board trustee is under a similar duty to represent and protect the interests of the district which he or she serves. 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. 91-021 issued July 26, 1991; Ill. Att'y Gen. Op. No. 91-015, issued March 14, 1991; 1976 Ill. Att'y Gen. Op. 116.

Because of the potential conflicts of duties which are present when one governmental unit is authorized to contract with another, it appears that a person who served as both a city mayor and a community college board trustee would be unable to represent the interests of both entities adequately, fully and faithfully. Consequently, it appears that the doctrine of incompatibility would prohibit one person from simultaneously holding the offices of community college board trustee and mayor of a city located within the territory of the community college district.

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



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Jim Ryan
ATTORNEY GENERAL

March 14, 2001

I - 01-011

COMPATIBILITY OF OFFICES:

Mayor and Director of
Fox Waterway Agency

The Honorable Gary W. Pack
State's Attorney, McHenry County
McHenry County Government Center
2200 North Seminary Avenue
Woodstock, Illinois 60098

Dear Mr. Pack:

I have your letter wherein you inquire whether one person may serve simultaneously as a director of the Fox Waterway Agency and as the mayor of a city located within the territory of the Agency. 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.

You have stated that one of the directors of the Fox Waterway Agency is considering seeking election to the office of mayor of the city of McHenry, a municipality that is contiguous to the Fox River and contains territory included within the boundaries of the Agency. She wishes to retain her position as a director of the Agency if she is elected mayor. You have noted that the city government is organized pursuant to article 6 of the Municipal Code (65 ILCS 5/6-1-1 et seq. (West 1998)), the strong mayor form of government.

Public offices are deemed to be incompatible where the constitution or a statute specifically prohibits the occupant of

either one of the offices from holding the other, or where, because of the nature of the duties of either office, a conflict of duties may arise or the duties of either office are such that the holder of one cannot, in every instance, fully and faithfully perform all of the duties of the other. (People ex rel. Myers v. Haas (1908), 145 Ill. App. 283, 286; People ex rel. Fitzsimmons v. Swailes (1984), 101 Ill. 2d 458, 465.) There is no statutory or constitutional provision that prohibits one person from serving as both the mayor of a city and a director of the Agency simultaneously. Therefore, it must be determined whether the duties of the two offices are such that the holder of one cannot fully and faithfully perform all of the duties of the other.

The Fox Waterway Agency is organized pursuant to the Fox Waterway Agency Act (615 ILCS 90/1 et seq. (West 1998)), and is governed by an elected board of directors comprised of six directors and a chairman (615 ILCS 90/5 (West 1998)). Its powers and duties are set out in sections 7.1 through 7.12 of the Act (615 ILCS 90/7.1 - 7.12 (West 1998)). In general, the Agency is charged with improving and maintaining the Fox River/Chain of Lakes waterway for recreational uses, preventing or controlling flooding, preventing pollution and otherwise improving the quality of the waterway, promoting tourism and creating and administering a procedure for establishing restricted areas. (615 ILCS 90/7.1 (West 1998).) The drafters of the legislation apparently anticipated the possibility that conflicts might arise between the interests of the agency and those of units of local government within its territory. Thus, section 7.1 of the Act provides, in part:

"* * * In the case of a local ordinance relating to the establishment of restricted areas, speed limits, or other boating restrictions that is adopted by another unit of local government and conflicts with an Agency ordinance or rule, the Agency ordinance or rule shall control even if the conflicting ordinance is more restrictive, except that municipalities with corporate boundaries that are both adjacent to and at the southern terminus of the Agency's jurisdiction over the Fox River shall retain the right to establish reasonable no-wake zones within their corporate boundaries. The Agency may develop programs and build

projects to minimize pollution in the watershed from otherwise entering the waterway. Prior to establishing any restricted area, the Agency shall provide 21 days notice to any municipality in which the proposed area borders upon or is located. Notice shall be filed with the Clerk of the municipality. If such a municipality, by resolution of the corporate authority of the municipality, files an objection to the establishing of the proposed restricted area, then that restricted area shall not be approved except by a favorable vote of two-thirds of the Chairman and Board of Directors. All Agency programs, ordinances and rules shall be in conformance with the Rivers, Lakes, and Streams Act. The Agency shall coordinate efforts of State, federal and local governments to improve and maintain the waterway."

The mayor of a municipality organized pursuant to article 6 of the Municipal Code is the head of the city government and has been delegated the power to veto ordinances adopted by the city council. (65 ILCS 5/6-4-1 (West 1998).) Moreover, the mayor is responsible for enforcing municipal ordinances, for appointing and removing a variety of city officers, boards and commissions, for exercising control over the departments and divisions of the city, for attending and participating in council meetings and for recommending measures for adoption by the council. (65 ILCS 5/6-4-7 (West 1998).) Clearly, the mayor exercises significant authority with respect to the actions of the city council.


It appears that a person who served as both a director of the Fox Waterway Agency and as mayor of a municipality along the waterway could not, in every instance, fully and faithfully perform all of the duties of each office. Those duties potentially could conflict whenever the city acts with respect to regulation or development along the waterway and whenever the Agency proposes to initiate a project or to make a regulation affecting that part of the waterway contiguous to the municipality. The mayor has a duty to enforce the ordinances of the municipality, but the Agency can adopt rules which supersede municipal ordinances. Further, the Agency can adopt proposed

The Honorable Gary W. Pack - 4.

restrictions over the objection of municipal authorities, which could place a person who served on the governing authority of each entity in the position of representing conflicting governmental interests. Therefore, because the duties of the offices of director of the Fox Waterway Agency and mayor of the city of McHenry may conflict, it appears that the offices are incompatible and that one person may not serve simultaneously in both offices.

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:KJS:ab



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

February 25, 1998

Jim Ryan
ATTORNEY GENERAL

I - 98-003

COMPATIBILITY OF OFFICES:
Mayor and Municipal Budget Officer

The Honorable Ted J. Hamer
State's Attorney, Henry County
100 South Main Street
Cambridge, Illinois 61238

Dear Mr. Hamer:

I have your letter wherein you inquire whether a mayor of a city may simultaneously serve as the city's budget officer, and be compensated for such service. 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.

Offices are deemed to be incompatible where 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 duties of either office are such that the holder of one cannot, in every instance, properly and faithfully perform all the duties of the other. (People ex rel. Myers v. Haas (1908), 145 Ill. App. 283, 286; People ex rel. Fitzsimmons v. Swailes (1984), 101 Ill. 2d 458, 465.) In these circumstances, there are two statutory provisions that may affect simultaneous tenure in the offices of mayor and city budget officer.

The Honorable Ted J. Hamer - 2.

Section 3.1-15-15 of the Municipal Code (65 ILCS 5/3.1-15-15 (West 1996)) provides:

"Holding other offices. A mayor, president, alderman, trustee, clerk, or treasurer shall not hold any other office under the municipal government during the term of that office, except when the officer is granted a leave of absence from that office or except as otherwise provided in Sections 3.1-10-50 and 3.1-35-135. Moreover, an officer may serve as a volunteer fireman and receive compensation for that service."

The other provisions of the Code referred to in section 3.1-15-15 are not applicable here.

Section 8-2-9.1 of the Municipal Code (65 ILCS 5/8-2-9.1 (West 1996)) provides, in part:

"Budget officer. Every municipality with a population of less than 500,000 * * * that has adopted this Section 8-2-9.1 and Sections 8-2-9.2 through 8-2-9.10 by a two-thirds majority vote of those members of the corporate authorities then holding office shall have a budget officer who shall be designated by the mayor or president, with the approval of the corporate authorities. * * * The budget officer shall take an oath and post a bond as provided in Section 3.1-10-25. The budget officer may hold another municipal office, either elected or appointed, and may receive compensation for both offices. Article 10 of this Code shall not apply to an individual serving as the budget officer. The budget officer shall serve at the pleasure of the mayor or municipal manager, as the case may be." (Emphasis added.)

Section 3.1-15-15 of the Municipal Code prohibits the mayor from holding other offices in the city government, except

as a volunteer fireman. Section 8-2-9.1 of the Code, however, generally permits the budget officer to hold, and be compensated for holding, another municipal office, but makes no specific reference to the office of mayor.

Under the common law, it has long been accepted that two offices are incompatible where one of the offices has the power to appoint the incumbent of the other office. (See, Ehlinger v. Clark (Tex. 1928), 8 S.W.2d 666, 674: ("It is because of the obvious incompatibility of being both a member of a body making the appointment and an appointee of that body that the courts have with great unanimity throughout the country declared that all officers who have the appointing power are disqualified for appointment to the offices to which they may appoint."); State v. Thompson (Tenn. 1952), 246 S.W.2d, 59, 61-2; 1917-1918 Ill. Att'y Gen. Op. 781.) With respect to the budget officer, the mayor has the power to appoint and the power to remove; thus, the offices are clearly incompatible at common law. The remaining issue is whether the General Assembly has superseded the common law rule legislatively. In other words, does the language of section 8-2-9.1 of the Municipal Code constitute an implied exception to the common law rule and the provisions of section 3.1-15-15 of the Code?

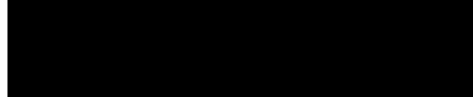
It is a fundamental principle of statutory construction that different sections of the same statute should be construed as being consistent, rather than inconsistent, and should be interpreted as being in pari materia. (Mann v. Board of Education (1950), 406 Ill. 224, 230.) Further, where two Acts or parts of the same Act are seemingly repugnant, they should be construed, if possible, so that both the provisions may stand. Anderson v. City of Park Ridge (1947), 396 Ill. 235, 245.

The statutes in question may be construed consistently. Although the budget officer is permitted, in general, to hold another municipal office, under section 3.1-15-15 of the Code (and the common law) the mayor cannot validly appoint himself to another municipal office (except that of volunteer fireman). Therefore, construing these provisions together, it appears that a mayor cannot appoint himself to the office of budget officer. Thus, section 8-2-9.1 does not constitute an implied exception to section 3.1-15-15 of the Municipal Code. A budget officer may, however, simultaneously hold a municipal office other than mayor if there is no statutory or common-law bar thereto.

The Honorable Ted J. Hamer - 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:KJS:cj



ROLAND W. BURRIS

ATTORNEY GENERAL
STATE OF ILLINOIS



April 1, 1993

I - 93-017

**GOVERNMENTAL ETHICS AND
CONFLICT OF INTEREST:**

**Police Officer in One City Seeking
Election as Mayor of Contiguous City**

Honorable H. Wesley Wilkins
State's Attorney, Union County
309 West Market
Post Office Box 75
Jonesboro, Illinois 62952

Dear Mr. Wilkins:

I have your letter wherein you inquire whether a full-time police officer of one municipality (Anna, Illinois) may simultaneously serve as the mayor of a contiguous municipality (Jonesboro, Illinois), when the two municipalities are parties to a police mutual aid agreement, as well as other inter-governmental agreements. Because of your need for an expedited response, I will comment informally upon the question you have raised.

Initially, it does not appear that a police officer of one municipality who also served as the mayor of another municipality would thereby be placed in violation of section 3-14-4 of the Municipal Code (Ill. Rev. Stat. 1991, ch. 24, par. 3-14-4; 65 ILCS 5/3-14-4 (West 1992)) or section 3 of the Public Officer Prohibited Activities Act (Ill. Rev. Stat. 1991, ch. 102, par. 3; 50 ILCS 105/3 (West 1992)). Each of these provisions prohibits a municipal officer from having a financial interest in a contract upon which he may be called upon to act or vote. The nature of the interest prohibited by these

provisions was discussed in opinion No. 92-026, issued October 27, 1992, and opinion No. S-1031, issued January 8, 1976 (1976 Ill. Att'y Gen. Op. 56), copies of which I have enclosed. Since the two municipalities are distinct political entities, and it does not appear that one contributes to the salaries of the officers or employees of the other, it appears that one person could serve in both capacities without being placed in a position of voting or acting upon a contract in which he or she would be pecuniarily interested.

Further, it does not appear that simultaneous service in the two positions would be precluded by the doctrine of incompatibility of offices. In Illinois, the doctrine of incompatibility has been applied only to offices and not to positions of employment. (1975 Ill. Att'y Gen. Op. 278.) Police officers are generally considered to be employees, rather than officers, of a municipality. (But see, Ill. Rev. Stat. 1991, ch. 24, par. 10-2.1-4; 65 ILCS 5/10-2.1-4 (West 1992).) Therefore, it appears that the doctrine would not be applicable in this case. Even assuming, arguendo, that the doctrine is applicable, it would not appear to bar simultaneous service in the position of mayor of one city, and police officer of another.

Incompatibility between offices arises (1) when the written law of the State specifically prohibits the occupant of either one of the offices in question from holding the other, or (2) where the duties of either office are such that the holder of the office cannot in every instance, properly and fully, faithfully perform all of the duties of the other office. (People ex rel. Myers v. Haas (1908), 145 Ill. App. 3d 283.) There is no statute which prohibits a police officer of one municipality from holding an elected office of another municipality. (I note, however, that section 3-14-1 of the Municipal Code (Ill. Rev. Stat. 1991, ch. 24, par. 3-14-1; 65 ILCS 5/314-1 (West 1992)) requires that municipal officers be residents of the municipalities which they serve, but provides that policemen and firemen may be excepted from the requirement. Assuming that Anna has adopted an appropriate ordinance and the police officer in question is a resident of Jonesboro, this section would not affect his qualifications to run for election as mayor.)

Moreover, it does not appear that the duties of the two positions would conflict. Although the two municipalities have entered into several joint agreements, a police officer is not typically in a position to influence such agreements, and such agreements are not likely to influence his work, with the exception of a police mutual aid agreement. You have suggested that a conflict of duties could arise, for example, if the officer was called upon to render assistance under the mutual aid

agreement in a bar fight, and then, as mayor and liquor commissioner, would be empowered to take action with respect to the event. Because of the nature of the mayor's powers and duties, however, no such conflict will arise.

Under both section 3-9-4 of the Municipal Code (Ill. Rev. Stat. 1991, ch. 24, par. 3-9-5; 65 ILCS 5/3-9-4 (West 1992)) and section 4-2 et seq. of the Dram Shop Act (Ill. Rev. Stat. 1991, ch. 43, par. 111; 235 ILCS 5/4-2 et seq. (West 1992)) the powers of a mayor and liquor commissioner are similar to, rather than in conflict with, those of a police officer. Under section 3-9-4, a mayor is a conservator of the peace with power to arrest and question offenders. Section 4-4 of the Dram Shop Act (Ill. Rev. Stat. 1991, ch. 43, par. 112; 235 ILCS 5/4-4 (West 1992)) authorizes a local liquor commissioner to enter and examine the premises of a liquor licensee. Under either statute, the officer in question, in his capacity as mayor, could assist or direct a police officer in the situation you describe to the same or a greater extent than he could pursuant to the mutual aid agreement. In the event that his doing so required his testimony with respect to a liquor license hearing, no additional conflict will be created by the fact he is a police officer from another jurisdiction. The Dram Shop Act permits a local liquor commissioner to appoint assistants in the exercise of his powers and duties, including an agency or a committee. (Ill. Rev. Stat. 1991, ch. 43, pars. 111, 114; 235 ILCS 5/4-2, 4-6 (West 1992).) These provisions could be employed to resolve any perceived conflict in the duties of the mayor which might arise from his position as police officer.

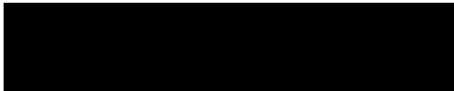
The doctrine of incompatibility is rooted in the fiduciary duty that an officer owes to those whom he serves. It does not appear that this individual's duty to perform his policing duties faithfully for the city of Anna would be compromised by simultaneous service as mayor of Jonesboro, or that his duty to serve Jonesboro as its mayor would be compromised by his position as a police officer in Anna. Therefore, even assuming that the doctrine of incompatibility would be applicable, it does not appear that one person would thereby be precluded from holding both positions simultaneously.

Our review has not disclosed any other basis for concluding that simultaneous tenure would be prohibited in these circumstances. Therefore, it appears that a police officer of one municipality may also hold the office of mayor of another municipality, even where a mutual aid agreement between the officers is in place.

Honorable H. Wesley Wilkins - 4.

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

Very truly yours,

A solid black rectangular box used to redact the signature of Michael J. Luke.

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

MJL:KJS:cj

Enclosures



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November 3, 1972

FILE NO. NP-529

OFFICERS:

Compatibility
Regional Planning Commission

Honorable Robert S. Calkins
State's Attorney
Peoria County
Peoria County Court House
Peoria, Illinois 61602

Dear Mr. Calkins:

I have your recent letter wherein you state in part:

"Considering the facts set forth below and your Opinion S-419 of March 13, 1972, to the Hon. William J. Cowlin, State's Attorney of McHenry County, your opinion is requested on the following questions:

1. May each or any of the following office holders serve on a regional planning commission: township supervisor, county board member under board reorganization, city manager, mayor or village president, city councilman, city commissioner, village trustee?

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2. May those members of the County Board (of Supervisors) appointed to a regional planning commission before the April, 1972 election, who were not elected to the new County Board, continue to serve as commission members? * * * "

You first ask whether various office holders may serve on a regional planning commission. I enclose a copy of my Opinion No. S-500, issued July 24, 1972. In that Opinion, I held that a county board member, a mayor or village president, and a member of a city council or village board could simultaneously serve as a member of a regional planning commission. While I did not specifically discuss a township supervisor, a city manager or a city commissioner, the reasoning in that Opinion is equally applicable to these offices.

You also ask whether members of the County Board of Supervisors appointed to the Tri-County Regional Planning Commission before the April, 1972 election may continue to serve on the Commission if they were not elected to the new County Board. You note that the appointments were made to the individuals without reference to their elective offices at the time of the appointment.

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Section 3(a)2(1) of the resolution creating the Commission provides that elected officials who are appointed to the Commission shall serve on the Commission until the end of their term of office, but not more than three years. If this section is to have any effect, then those individuals who were not reelected to the County Board should not be serving on the Commission after the end of their term on the County Board. It is necessary that statutes be so construed as to give effect to each word, clause and sentence in order that no such word, clause or sentence may be deemed superfluous or void. (Consumers Co. v. Industrial Commission, 364 Ill. 145. Haberer and Co. v. Smerling, 307 Ill. 131.) Therefore, effect should be given to this section and those not reelected to the County Board, should no longer serve on the Commission.

Furthermore, with regard to statutory construction, the court in Petterson v. City of Naperville, 9 Ill. 2d 233, has stated:

" * * * But the primary object of statutory construction is to ascertain and give effect to

Honorable Robert S. Calkins -4

legislative intent. In ascertaining legislative intent, the courts should consider the reason or necessity for the enactment and the meaning of the words, enlarged or restricted, according to their real intent. Likewise the court will always have regard to existing circumstances, contemporaneous conditions, and the object sought to be obtained by the statute. * * *

From the facts you state in your letter, it is apparent that the amendment to the resolution creating the Tri-County Regional Planning Commission was intended to make it possible for the Commission to qualify for federal grants. The federal requirements that you quote provide that at least 2/3 of the Commission shall be comprised of elected officials. These circumstances substantiate the contention that these individuals were appointed in their official capacity, even though the appointment was made without specific reference to their elective offices. Therefore, in my opinion, your second question must be answered in the negative.

Very truly yours,

A T T O R N E Y G E N E R A L