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SPRINGFIELD

June 23, 1972

FILE NO. NP-465

**COUNTIES:**

**Compatibility of County Board Member  
and Member of Merit Commission**

Honorable Robert J. Bier  
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Dear Mr. Bier:

I have your recent letter wherein you state:

"In Chapter 102, Section 1 of Illinois Revised Statutes, 1971, it is stated:

'1. County board. #1. No member of a county board, during the term of office for which he is elected, may be appointed to, accept or hold any office other than chairman of the county board or member of the regional planning commission by appointment or election of the board of which he is a member.'

Chapter 34, Illinois Revised Statutes, 1971,  
Section 859.1 provides that:

'\*\*\*Such ordinance shall provide for the appointment of a merit commission consisting of three or five members appointed by the county sheriff and approved by the county board.\*\*\*'

My question is whether a member of the county board may be appointed by the sheriff to serve as a member of the Merit Commission or whether such appointment violates Chapter 102, Section 1.

I note your opinion No. 343 applied to the County Zoning Commission and did not apply to the Merit Commission. I also note that the Merit Commission is appointed by the sheriff and approved by the county board whereas the Zoning Commission is appointed by the chairman of the county board."

Section 1 of "An Act to prevent fraudulent and corrupt practices in the making or accepting of official appointments and contracts by public officers," (Ill. Rev. Stats., 1971, ch. 102, par. 1) provides as follows:

"No member of a county board, during the term of office for which he is elected, may be appointed to, accept or hold any office other than chairman of the county board or member of the regional planning commission by appointment or election of the board of which he is a member. Any such prohibited appointment or election is void. This Section shall not preclude a member of the county board from being selected or from serving as a

member of the County Personnel Advisory Board as provided in Section 12-17.2 of 'The Illinois Public Aid Code', approved April 11, 1967, as amended, or as a member of a County Extension Board as provided in Section 7 of the 'County Cooperative Extension Law', approved August 2, 1963, as amended."

Section 58.1 of "An Act to revise the law in relation to counties," (Ill. Rev. Stats., 1971, ch. 34, par. 859.1) provides:

"The county board in any county having a population of less than 1,000,000 may, by ordinance, provide for all deputies other than special deputies, employed on a full time basis in the office of Sheriff to be appointed, promoted, disciplined and discharged pursuant to recognized merit principles of public employment and for such employees to be compensated according to a standard pay plan approved by the board.\*\*\*

The County Board may establish per diem compensation for members of the Merit Commission and may allow reimbursement for reasonable and necessary expenses.\*\*\*\*"

You have asked my opinion as to whether a member of the county board may be appointed by the sheriff to serve as a member of the merit commission.

From the general rule laid down in People v. Haas, 145 Ill. App. 283, it appears that incompatibility between

offices arises where the constitution or a statute specifically prohibits the occupants of either one of the offices from holding the other or where because of the duties of either office a conflict in interest may arise or where 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.

The statute, as you have pointed out, provides that the members of the merit commission are appointed by the sheriff and approved by the county board. In seeking to give effect to the intention of the General Assembly, the courts are not controlled by the literal meaning of the language used, but they must consider the spirit of the enactment and, if possible, construe the statute in accordance therewith, (People ex rel Jackson A. Morris v. Smuczynski, 345 Ill. App. 63; Hoyle v. Danisch, 264 Ill. 467). A situation or thing which is within the spirit, object and meaning of a statute, although it is not within the letter thereof, is regarded as within the statute, (Lincoln National Life Insurance Co. v. McCarthy, 10 Ill. 2d 489). Approval by the county board is required by the statute in order to complete the appointment of a member of the merit commission.

It would appear to be within the spirit and object of the statute to hold that a member of the county board is precluded from being appointed to the merit commission. The approval of the county board is essential to validate the appointment.

Furthermore, Section 1 of "An Act to prevent fraudulent and corrupt practices.....," (Ill. Rev. Stats., 1971, ch. 102, par. 1) permits a county board member to serve as chairman of the county board, member of the regional planning commission, member of the county personnel advisory board and member of a county extension board. Since the statute refers to four capacities in which county board members may serve, they are impliedly forbidden to serve in other capacities under the rule "expressio unius exclusio alterius". The enumeration of one or more certain things in a statute excludes all other things not mentioned in the statute.

It should also be noted that the county board sets the salary and expenses of the members of the merit commission. A member of the county board who is also a member of the merit commission, would, therefore, be fixing his own compensation and

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expenses. A person would be more than human if he could give his fair and impartial consideration to the duties of both offices as he could where he had no personal interest.

In view of the foregoing, it is my opinion that the offices of member of the county board and member of the merit commission for deputy sheriffs are incompatible.

Very truly yours,

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