



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.

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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

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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.

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

Sincerely,

A solid black rectangular redaction box covering the signature of Michael J. Luke.

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

MJL:KJS:cj