



**OFFICE OF THE ATTORNEY GENERAL**  
STATE OF ILLINOIS  
April 16, 1997

**Jim Ryan**  
ATTORNEY GENERAL

I - 97-010

COMPATIBILITY OF OFFICES:  
Assistant State's Attorney and  
Park District Commissioner

Honorable David R. Akemann  
State's Attorney, Kane County  
37W777 Route 38, Suite 300  
St. Charles, Illinois 60175-7535

Dear Mr. Akemann:

I have Assistant State's Attorney Pat Lord's letter wherein she inquires, on your behalf, whether an Assistant State's Attorney may serve simultaneously in the office of park district commissioner. Because you have requested informal advice, I will respond accordingly.

The common law doctrine of incompatibility of offices precludes simultaneous tenure in two 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 so that the holder of one cannot, in every instance, properly and faithfully perform all of the duties of the other. (People ex rel. Fitzsimmons v. Swailes (1984), 101 Ill. 2d 458, 465; Rogers v. Village of Tinley Park (1983), 116 Ill. App. 3d 437, 440-41; People ex rel. Myers v. Haas (1908), 145 Ill. App. 283, 286.) There are no constitutional or statutory provisions which expressly prohibit simultaneous tenure in the offices of Assistant State's Attorney and park district commissioner. Therefore, the issue is whether a conflict in duties could arise if one person were to occupy both offices simultaneously.

The office of park district commissioner is created by, and the duties thereof are set forth in, the Park District Code (70 ILCS 1205/1-1 et seq. (West 1994)). In reviewing the provisions of the Code, it appears that park districts are expressly authorized to enter into lease agreements with other units of local government for the provision of swimming pools and ice skating rinks (70 ILCS 1205/9-1d (West 1994)), golf course facilities (70 ILCS 1205/9.1-5 (West 1994)), tennis, handball, racquetball or squash courts (70 ILCS 1205/9.2-5 (West 1994) and zoo facilities (70 ILCS 1205/9.2-5 (West 1994)). Although the term "unit of local government" is not defined in the Park District Code, under article VII, section 1 of the Illinois Constitution of 1970 the phrase includes, inter alia, counties.

In addition to the provisions of the Park District Code, section 6 of the Joint Airports Act (620 ILCS 20/6 (West 1994)) authorizes park districts and counties to enter into agreements for the joint establishment and operation of airports and airport facilities.

The office of Assistant State's Attorney is provided for in section 4-2003 of the Counties Code (55 ILCS 5/4-2003 (West 1994)). Although the powers and duties of an Assistant State's Attorney are not prescribed by statute, the supreme court has stated that "Assistant State's Attorneys are in essence surrogates for the State's Attorney \* \* \*" and "'\* \* \* possess the power [of the State's Attorney] in the same manner and to the same effect as the State's Attorney.'" (Cook County State's Attorney v. Illinois Local Labor Relations Board (1995), 166 Ill. 2d 296, 303.) Section 3-9005 of the Counties Code (55 ILCS 5/3-9005 (West 1995 Supp.)) sets forth the powers and duties of the State's Attorney, providing, in pertinent part:

"(a) The duty of each State's attorney shall be:

(1) To commence and prosecute all actions, suits, indictments and prosecutions, civil and criminal, in the circuit court for his county, in which the people of the State or county may be concerned.

\* \* \*

(3) To commence and prosecute all actions and proceedings brought by any county officer in his official capacity.

(4) To defend all actions and proceedings brought against his county, or against any county or State officer, in his official capacity, within his county.

\* \* \*

(7) To give his opinion, without fee or reward, to any county officer in his county, upon any question or law relating to any criminal or other matter, in which the people or the county may be concerned.

\* \* \*

Under the provisions of the Park District Code and the Joint Airports Act, it is foreseeable that counties and park districts may enter into agreements regarding certain park and airport functions. The county board, however, not the State's Attorney, is responsible for entering into intergovernmental agreements in relation to the property and concerns of the county. (55 ILCS 5/5-1005 (West 1994).) Therefore, the State's Attorney would not be a party to any contract which may be entered into between the county and a park district.

Although the State's Attorney would not be a party to a contract between the county and the park district, he or she may nonetheless influence that contract. As noted above, the State's Attorney is the legal advisor of and attorney for county officers. Therefore, as part of his or her official duties, a State's Attorney may be called upon to render advice or an opinion on, or to assist in the negotiation of, the terms of an agreement between a county and a park district. In that case, the duty of the State's Attorney to advise the county board might conflict with the duty of a park district commissioner to act in the best interests of the park district. That a State's Attorney would have a conflict of duties in the circumstances which are the focus of this inquiry, however, does not necessarily mean that an Assistant State's Attorney must be deemed to have the same conflict.

In opinion No. S-1411, issued March 9, 1979 (1979 Ill. Att'y Gen. Op. 21), Attorney General Scott was asked to determine whether an Assistant State's Attorney could simultaneously serve as a city commissioner. In reaching his conclusion that the offices were incompatible, Attorney General Scott noted that a State's Attorney might be called upon for advice and assistance with reference to a contract which the county may wish to enter into with the city, and that an Assistant State's Attorney may

perform any of the general duties of a State's Attorney. He further stated that a "\* \* \* proposed limitation of [the Assistant State's Attorney's] duties cannot change the inherent power of an Assistant State's Attorney to exercise the general powers of the State's Attorney. \* \* \*" (1979 Ill. Att'y Gen. Op. 21, 23.) Attorney General Scott based his statements on the decision in United States v. Smyth (N.D. Cal. 1952), 104 F. Supp. 283, a case in which an Assistant United State's Attorney acted contrary to the interests of the government and directly contrary to the instructions of the United States Attorney to bind the United States in open court.

Subsequent to the issuance of that opinion, however, administratively-imposed limitations upon the duties of Assistant State's Attorneys and other prosecutors have been recognized. For example, in People v. Fife (1979), 76 Ill. 2d 418, the Illinois Supreme Court was presented with the issue of whether a criminal defendant's court appointed defense counsel, who also served as a Special Assistant Attorney General; had a conflict of interest. In reaching its conclusion that a conflict of interest exists where defense counsel is also a Special Assistant Attorney General, the court nonetheless accepted that the Attorney General could limit the duties of an Assistant Attorney General to a specifically defined scope (People v. Fife (1979), 76 Ill. 2d at 424-25), and that such limitations could be considered in determining whether potential conflicts warrant disqualification. Similarly, several opinions of the Illinois State Bar Association's Committee on Professional Conduct have acknowledged and given effect to a State's Attorney's authority to limit the scope of the duties of an Assistant State's Attorney. See, e.g., ISBA Opinion No. 407, issued February 13, 1974; No. 86-2, issued July 7, 1986; and No. 90-29, issued March 9, 1991.

Based upon the foregoing, it now appears to be accepted generally that a State's Attorney may limit the scope of the duties of any of his or her Assistant State's Attorneys, and that such limitations will be recognized in accordance with their terms. Therefore, if you, as State's Attorney, elect to authorize the Assistant State's Attorney in question to handle only criminal matters involving non-park district defendants and crimes, for example, or if you determine that the Assistant will be given no authority to advise the county board or to perform any other civil functions with regard to the park district, then it does not appear that a conflict in duties or divided loyalties would necessarily arise. In those circumstances, an Assistant State's Attorney could simultaneously serve as a park board commissioner. In the absence of such a limitation of authority, however, it appears that the potential conflict in duties would

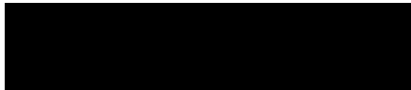
Honorable David R. Akemann -5.

preclude an Assistant State's Attorney from simultaneously serving as a park board commissioner.

I would further suggest that in order to avoid appearances of impropriety and any potential violation of the Illinois Rules of Professional Conduct, specific institutional mechanisms should be implemented in the State's Attorney's office to screen the Assistant State's Attorney from any matters involving the park district. Specifically, I would recommend that you consider policies: that prohibit the Assistant from consulting with or discussing issues involving the park district with other Assistant State's Attorneys; that prohibit discussions regarding the park district in the Assistant's presence; that deny the Assistant access to files and documents relating to the park district; and that insure that the Assistant does not have access to matters involving the park district or use any knowledge gained in the course of carrying out his or her official duties as such to benefit the park district. Similarly, in his capacity as park board commissioner, the Assistant State's Attorney should refrain from voting on or participating in any matters involving the county.

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:LP:cj



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

January 27, 2000

**Jim Ryan**

ATTORNEY GENERAL

I - 00-002

COMPATIBILITY OF OFFICES:  
County Clerk and Recorder  
and Park District Commissioner

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 a county clerk and recorder may simultaneously serve as a commissioner of a park district which is located within the county. 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 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 may conflict so that the holder of one cannot, in every instance, properly and faithfully perform all of the duties of the other. (People ex rel. Fitzsimmons v. Swailes (1984), 101 Ill. 2d 458, 465; People ex rel. Myers v. Haas (1908), 145 Ill. App. 283, 286.) There appears to be no constitutional or statutory provision which prohibits a person from holding both of the offices in question. The issue, therefore, is whether the duties of either office are such that the holder of one cannot fully and faithfully discharge all of the duties of the other.

The office of park district commissioner is created by, and the duties thereof are set forth in, the Park District Code (70 ILCS 1205/1-1 et seq. (West 1998)). In reviewing the provisions of the Code, it appears that park districts are expressly authorized to enter into lease agreements with other units of local government for the provision of swimming pools and ice skating rinks (70 ILCS 1205/9-1d (West 1998)), golf course facilities (70 ILCS 1205/9.1-5 (West 1998)), tennis, handball, racquetball or squash courts (70 ILCS 1205/9.2-5 (West 1998)) and zoo facilities (70 ILCS 1205/9.2-5 (West 1998)). Section 8-10b of the Code (70 ILCS 1205/8-10b (West 1998)) additionally authorizes a park district and another unit of local government to take any action jointly relating to recreational programs for the handicapped that could be taken individually. Although the term "unit of local government" is not defined in the Park District Code, under article VII, section 1 of the Illinois Constitution of 1970, the phrase includes, inter alia, counties. In addition to the provisions of the Park District Code, section 6 of the Airports Act (620 ILCS 20/6 (West 1998)) expressly authorizes park districts and counties to enter into agreements for the joint establishment and operation of airports and airport facilities.

The board of commissioners of a park district constitutes the corporate authority of the district (70 ILCS 1205/4-1 (West 1998)). Therefore, the commissioners have the discretion and authority collectively to exercise the powers noted above.

The office of county clerk is created by article VII, section 4(c) of the Illinois Constitution of 1970. Section 3-2013 of the Counties Code (55 ILCS 5/3-2013 (West 1998)) sets out the general duties of the county clerk, which include, inter alia, the duty:

"

\* \* \*

1st. To act as clerk of the county board of his county and to keep an accurate record of the proceedings of said board, file and preserve all bills of account acted upon by the board, and when any account is allowed or disallowed, he shall note that fact thereon, and when a part of any account is

allowed he shall note particularly the items allowed.

\* \* \*

The duties of a county clerk are essentially ministerial in nature. As a general principle, ministerial duties have not been deemed to conflict with discretionary duties in determining whether two offices are incompatible. See, e.g., Ill. Att'y Gen. Op. No. 98-002, issued January 15, 1998; Ill. Att'y Gen. Op. No. 82-039, issued November 10, 1982; informal opinion No. I-96-018, issued February 28, 1996; informal opinion No. I-95-026, issued August 23, 1995; informal opinion No. I-93-043, issued August 31, 1993.

Under the provisions of the Park District Code and the Joint Airports Act, it is foreseeable that counties and park districts may enter into agreements regarding certain park and airport functions. Such agreements would require the exercise of discretion by the boards of the respective units of local government. The county clerk's duty to act as secretary of the county board, however is clearly ministerial. The county board, not the county clerk, is responsible for entering into intergovernmental agreements in relation to the property and concerns of the county. (55 ILCS 5/5-1005 (West 1998).) The county clerk is not considered to be a county board member by virtue of his or her duty to act as a secretary of the county board. Thus, the county clerk would not be in a position to act or vote upon a contract entered into with the park district.

Additionally, it does not appear that the duty of the county clerk to extend taxes for the various taxing districts in the county, including the park district he or she would represent as park district commissioner, would create a conflict of duties. Section 18-45 of the Property Tax Code (35 ILCS 200/18-45 (West 1998)) provides, in pertinent part:

"\* \* \* Except as provided below, each county clerk shall estimate and determine the rate per cent upon the equalized assessed valuation for the levy year of the property in the county's taxing districts and special service areas, as established under Article VII of the Illinois Constitution, so that the rate will produce, within the proper



divisions of that county, not less than the net amount that will be required by the county board or certified to the county clerk according to law. Prior to extension, the county clerk shall determine the maximum amount of tax authorized to be levied by any statute. If the amount of any tax certified to the county clerk for extension exceeds the maximum, the clerk shall extend only the maximum allowable levy.

\* \* \*

In People ex rel. Carr v. Pittsburgh, Cincinnati, Chicago and St. Louis Ry. Co. (1925), 316 Ill. 410, 414, the court discussed the nature of the duties performed by the county clerk in the extension of taxes:

" \* \* \*

\* \* \* After a tax is once levied or imposed,--i.e., ordered to be laid,--further proceedings, such as extending, assessing and collecting the tax, are administrative. The county clerk extends taxes where the levy is complete. He has no power to levy taxes nor to determine whether taxes have been legally assessed. The duties which he is required to perform in the extension of taxes are prescribed by law, and are neither legislative nor judicial but purely ministerial in character. \* \* \*

\* \* \*

(Emphasis added.)

The duty of the county clerk to set the rate percent at which taxes will be extended against the assessed valuation of property is a ministerial act and, as such, does not involve the exercise of discretionary judgment. No conflict, therefore, would appear to exist between the duty of the county clerk to extend taxes and the duty of a park district commissioner to provide for the levy and collection of taxes for corporate purposes of the park district. (70 ILCS 1205/5-1 et seq. (West 1998).)

Similarly, other tax-related duties of the county clerk, such as verifying that a projected tax rate does not exceed the maximum rate allowed by law or that a taxing district is in compliance with the Truth in Taxation Law (see 35 ILCS 200/18-105 (West 1998)), are also ministerial in nature, as is the duty to abate taxes, since the decision to abate is made solely by the respective taxing district. (See 35 ILCS 200/18-45, 200/18-165 et seq. (West 1998).) Based upon these statutes, there appears to be no conflict between the various tax-related duties of a county clerk and the discretionary duties of a park district commissioner.

With respect to the duties of recorder, section 3-5001 of the Counties Code (55 ILCS 5/3-5001 (West 1998)) provides that in counties having a population of less than 60,000 inhabitants, including Kendall County, the county clerk shall also serve as the recorder of his or her county. Article 3-5 of the Counties Code (55 ILCS 5/3-5001 et seq. (West 1998)) sets forth the duties of the county recorder. It is the recorder's duty to record "\* \* \* bills of sale of personal property, chattel mortgages and releases, extensions and assignments, thereof \* \* \* certificates of discharge of discharged members of the military, aviation and naval forces of the United States \* \* \*" (55 ILCS 5/3-5012 (West 1998)), deeds, assignments of mortgages, leases or liens and maps and plats of subdivisions (55 ILCS 5/3-5018 (West 1998)).

The duties referred to above are generally ministerial in nature. (See Interstate Bond Co. v. Baran (1950), 406 Ill. 161, 164; 1978 Ill. Att'y Gen. Op. 97.) As previously noted, ministerial duties are not generally considered to conflict with discretionary duties in determining whether two offices are incompatible.

Consequently, it appears that the duties of a county clerk and recorder and a park district commissioner would not conflict. Therefore, it appears that the offices of county clerk and park district commissioner are not incompatible, and one person may hold both such offices simultaneously.

The Honorable Timothy J. McCann - 6.

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:LAS:cj



TYRONE C. FAHNER  
ATTORNEY GENERAL  
STATE OF ILLINOIS  
SPRINGFIELD

November 10, 1982

FILE NO. 82-039(NP)

COMPATIBILITY OF OFFICES:  
County Treasurer and Park  
District Commissioner

Honorable Edward F. Petka  
State's Attorney  
Will County  
Courthouse  
Joliet, Illinois 60431

Dear Mr. Petka:

I have your letter wherein you inquire whether the office of park district commissioner is compatible with that of county treasurer. For the reasons hereinafter stated, it is my opinion that the offices in question are compatible.

Incompatibility arises where the written law prohibits the occupant of one office from holding the other or where the duties of either office are such that the holder of the office cannot in every instance, fully and faithfully perform all the duties of the other. (People ex rel. Myers v. Haas (1908), 145

Ill. App. 283, 286.) There is no constitutional or statutory provision prohibiting one person from holding the offices of county treasurer and park district commissioner simultaneously. Therefore, the question which arises is whether 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.

Park district commissioners, as members of the governing board of a park district, constitute the corporate authority for such district. They have the general responsibility of managing the property, controlling the officers and conducting the business of the district. (Ill. Rev. Stat. 1981, ch. 105, par. 4-1.) Pursuant to section 8-1 of The Park District Code (Ill. Rev. Stat. 1981, ch. 105, par. 8-1), which sets forth the principal duties and corporate powers of the park district, the board is empowered:

" \* \* \*

(d) To pass all necessary ordinances, rules and regulations for the proper management and conduct of the business of the board and district and to establish by ordinance all needful rules and regulations for the government and protection of parks, boulevards and driveways and other property under its jurisdiction, and to effect the objects for which such districts are formed.

\* \* \*

(f) To manage and control all officers and property of such districts \* \* \* .

\* \* \*

"

Honorable Edward F. Petka - 3.

The principal duties of the county treasurer are set forth in section 4 of "AN ACT to revise the law in relation to county treasurer" (Ill. Rev. Stat. 1981, ch. 36, par. 4) which provides in pertinent part:

"\* \* \* He shall receive and safely keep the revenues and other public moneys of the county, and all money and funds authorized by law to be paid to him, and disburse the same pursuant to law. \* \* \*"

The duties of a county treasurer are not judicial or discretionary, but ministerial. Mitchell v. Short (1929), 251 Ill. App. 357, 359.

There is no relationship between the duties of the county treasurer and the duties of a park district commissioner which would render the offices incompatible. Although the county treasurer does have a duty to pay over a share of real property taxes to a park district (Ill. Rev. Stat. 1981, ch. 120, par. 761), the duty is ministerial and would not involve any exercise of discretion resulting in a conflict of duties or interests.

Therefore, it is my opinion that the office of county treasurer is compatible with that of park district commissioner. The character of the offices of county treasurer and park district commissioner is such that the holder of either office could, in every instance, fully and faithfully perform all the duties of the other.

Very truly yours,

  
ATTORNEY GENERAL



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS  
April 16, 1997

**Jim Ryan**  
ATTORNEY GENERAL

I - 97-010

COMPATIBILITY OF OFFICES:  
Assistant State's Attorney and  
Park District Commissioner

Honorable David R. Akemann  
State's Attorney, Kane County  
37W777 Route 38, Suite 300  
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Although the State's Attorney would not be a party to a contract between the county and the park district, he or she may nonetheless influence that contract. As noted above, the State's Attorney is the legal advisor of and attorney for county officers. Therefore, as part of his or her official duties, a State's Attorney may be called upon to render advice or an opinion on, or to assist in the negotiation of, the terms of an agreement between a county and a park district. In that case, the duty of the State's Attorney to advise the county board might conflict with the duty of a park district commissioner to act in the best interests of the park district. That a State's Attorney would have a conflict of duties in the circumstances which are the focus of this inquiry, however, does not necessarily mean that an Assistant State's Attorney must be deemed to have the same conflict.

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Based upon the foregoing, it now appears to be accepted generally that a State's Attorney may limit the scope of the duties of any of his or her Assistant State's Attorneys, and that such limitations will be recognized in accordance with their terms. Therefore, if you, as State's Attorney, elect to authorize the Assistant State's Attorney in question to handle only criminal matters involving non-park district defendants and crimes, for example, or if you determine that the Assistant will be given no authority to advise the county board or to perform any other civil functions with regard to the park district, then it does not appear that a conflict in duties or divided loyalties would necessarily arise. In those circumstances, an Assistant State's Attorney could simultaneously serve as a park board commissioner. In the absence of such a limitation of authority, however, it appears that the potential conflict in duties would

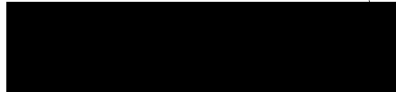
Honorable David R. Akemann -5.

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Sincerely,



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

MJL:LP:cj