



**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.

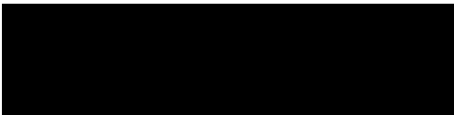
The doctrine of incompatibility is rooted in the fiduciary duty that an officer owes to those whom he serves. It does not appear that this individual's duty to perform his policing duties faithfully for the city of Anna would be compromised by simultaneous service as mayor of Jonesboro, or that his duty 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,



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

MJL:KJS:cj

Enclosures