



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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I - 03-012

COUNTIES:

Appointment of County Board
Member to Port District Board

The Honorable George Shadid
Senate Majority Caucus Whip
127 State Capitol Building
Springfield, Illinois 62706

Dear Senator Shadid:

I have your letter wherein you inquire whether it is permissible for the chairman of a county board to appoint a member of that board to serve as a member of the Heart of Illinois Regional Port District Board. Because of your need for an expedited response, I will comment informally upon the question you have raised.

The Heart of Illinois Regional Port District was created by Public Act 93-262, effective July 22, 2003 (to be codified at 70 ILCS 1807/1 et seq.). Section 100 of the Act (to be codified at 70 ILCS 1807/100) provides, in pertinent part:

Heart of Illinois Regional Port District Board; compensation. The governing and administrative body of the district shall be a board consisting of 9 members, to be known as the Heart of Illinois Regional Port District Board. Members of the Board shall be residents of a county whose territory, in whole or in part, is embraced by the district and persons of recognized business ability.

Section 105 of the Act (to be codified at 70 ILCS 1807/105) provides, in part:

Board; appointments; terms of office; certification and oath. The Governor, by and with the advice and consent of the Senate, shall appoint 3 members of the Board. Of the 3 members appointed by the Governor, at least one must be a member of a labor organization, as defined in Section 3 of the Workplace Literacy Act. If the Senate is in recess when the appointment is made, the Governor shall make a temporary appointment until the next meeting of the Senate. The county board chairmen of Tazewell, Woodford, Peoria, Marshall, Mason, and Fulton Counties shall each appoint one member of the Board with the advice and consent of their respective county boards. (Emphasis added.)

With respect to appointments made by the county board, section 1 of the Public Officer Prohibited Activities Act (50 ILCS 105/1 (West 2002)) provides:

No member of a county board, during the term of office for which he or she is elected, may be appointed to, accept, or hold any office other than (i) chairman of the county board or member of the regional planning commission by appointment or election of the board of which he or she is a member * * * unless he or she first resigns from the office of county board member or unless the holding of another office is authorized by law. Any such prohibited appointment or election is void.

In opinion No. 80-030, issued September 22, 1980, Attorney General Fahner addressed the analogous issue of whether it was permissible for a member of an appointing authority to be appointed to the governing board of the Jackson-Union Counties Regional Port District. Citing section 1 of "AN ACT to prevent fraudulent and corrupt practices, etc." (now section 1 of the Public Officer Prohibited Activities Act), Attorney General Fahner concluded, inter alia, that a county board member was

prohibited from being appointed by the county board to serve in that capacity. Although there have been several amendments to section 1 of the Public Officer Prohibited Activities Act since opinion No. 80-030 was issued, the prohibition against the appointment of county board members to other offices remains essentially unchanged. Consequently, it appears that a member of a county board cannot be appointed by the county board chairman, with the advice and consent of the county board, to membership on the Port District Board.

You have further inquired whether the chairman of a county board would be prohibited from appointing himself or herself to the Port District Board. County board chairmen may be selected from the membership of the board, or may be elected by the voters of the county. When the county board chairman is selected from the membership of the board (55 ILCS 5/2-1003 (West 2002)), the only additional power accruing to that position is the right to preside over the meetings of the county board. (See Bouton v. Board of Supervisors of McDonough County (1877), 84 Ill. 384, 394.) In those instances, a county board chairman, being a member of the board, would also be prohibited by section 1 of the Public Officer Prohibited Activities Act from appointing himself or herself, with the consent of the county board, to the Port District Board.

With respect to a county board chairman who is elected by the voters of the county, in counties of less than 450,000 population, a popularly elected county board chairman "may either be elected as a county board member or elected as the chairman without having first been elected to the board." (55 ILCS 5/2-3007 (West 2002).) Where election to the county board is a requirement for election as chairman, there is no question but that the chairman would be prohibited by section 1 of the Public Officer Prohibited Activities Act from appointing himself or herself to the Port District Board. Moreover, it appears that a popularly elected chairman who is not required first to be elected to the board would be precluded under common law principles from appointing himself or herself to the Port District Board, regardless of whether the provisions of section 1 of the Public Officer Prohibited Activities Act would be strictly applicable.

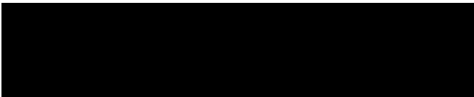
Under the common law, two offices are considered to be incompatible where one has the power to appoint the incumbent of the other. (See Ehlinger v. Clark (Tex. 1928), 8 S.W.2d 666,

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674: "[i]t 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 declared to be disqualified for appointment to the offices to which they may appoint"; see also 1917-1918 Ill. Att'y Gen. Op. 781; State v. Thompson (Tenn. 1952), 246 S.W.2d 59, 61-2.) The common law is the law of this State until repealed or modified by statute. (City of Chicago v. Nielsen (1976), 38 Ill. App. 3d 941.) Section 1 of the Public Officer Prohibited Activities Act merely codifies, but does not repeal or modify, the common law principle enunciated above. Therefore, being the appointing authority, it is clear that a popularly elected county board chairman who is not required to be elected as a county board member is nonetheless disqualified from appointing himself or herself to the Port District Board.

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

Very truly yours,


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