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FILE NO. NP-866

COUNTIES:

County Board - Compatibility of
Member of County Board and Public
Building Commission

Honorable Howard L. Hood
State's Attorney, Jackson County
Courthouse
Murphysboro, Illinois 62966

Dear Mr. Hood:

I have your letter in which you state:

"The question has been raised by the Jackson County Board as to whether a member of the County Board may serve as a member of the County Building Commission created by the County Board.

I have reviewed your Opinion No. NP-165 dated April 27, 1970 on this issue. In light of recent conflict of interest opinions and ethics legislation, I am requesting your opinion as to the continued validity of the conclusion reached in the 1970 Opinion on the above question. Thank you for your cooperation in this regard."

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In relation to your specific question, it is my opinion that recent ethics legislation and conflict of interest opinions are not directly relevant to a determination of whether a member of a county board may serve as a member of a county building commission created by that county board. The Illinois Governmental Ethics Act (Ill. Rev. Stat. 1973, ch. 127, par. 601-101 et seq.) requires disclosure of economic interests by government officers in seeking to protect independence of judgment. Recent conflict of interest opinions concern prohibitions leveled against types of employment or privately held economic interests adjudged by the legislature and courts to have prevented public officials from giving the public that impartial and faithful service which they are duty-bound to render and which the public has every right to demand. (People v. Adduci, 412 Ill. 621; Panozzo v. City of Rockford, 306 Ill. App. 443.) In contrast, my opinion No. NP-165 was concerned with the compatibility of two public offices, county board member and member of the public building commission. Incompatibility as measured by the common law test of People v. Haas, 145 Ill. App. 283, does not require a finding of pecuniary conflict of interest.

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Incompatibility will be found where the Constitution or a statute specifically prohibits the occupants of either of two 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. In short, the compatibility doctrine involves a determination of public policy which prohibits the concurrent holding of two public offices by the same person.

In relation to compatibility of the offices of county board member and member of the county building commission, it is not necessary to reach the common law of incompatibility as the General Assembly has specifically provided that the two offices in question may be held concurrently. This argument draws support from section 6 of the Public Building Commission Act (Ill. Rev. Stat. 1973, ch. 85, par. 1036) which specifically provides:

"§ 6. Each person appointed as a member of the Board of Commissioners shall qualify by taking and subscribing to an oath to uphold the Constitution of the United States and of the State of Illinois and to well and faithfully discharge his duties, which oath shall be filed with the Secretary of the Commission.

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Commissioners shall be persons experienced in real estate management, building construction or finance. The fact that a person is an officer or employee of any municipal corporation, including the county seat or county board or any municipality with 3,000 or more inhabitants which adopted the original resolution or any other municipal corporation which joined in the organization of the Commission, shall not disqualify that person from being a Commissioner of a Public Building Commission. No person who is appointed as a Commissioner of a Public Building Commission shall have a financial interest in the creation of or in the continued existence of the Public Building Commission. No Commissioner shall acquire any interest, direct or indirect in any contract or proposed contract of the Public Building Commission, or in any land, building or buildings or other property or facilities in which the Public Building Commission has an interest. If any Commissioner at any time holds or controls an interest, direct or indirect in any property which the Public Building Commission is about to acquire, he shall disclose the same in writing to the Commission and such disclosure shall be entered upon the minutes of the Board of Commissioners. As amended by act approved Aug. 20, 1965." (Emphasis added.)

As you have noted there is an apparent discrepancy between the language of the above cited section and that of 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. Stat. 1973, ch. 102, par. 1), which provides:

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"§ 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. 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."

It is my opinion, however, that this apparent discrepancy may be resolved by reference to the ordinary rules of statutory construction. Section 6 of the Public Building Commission Act (Ill. Rev. Stat. 1973, ch. 85, par. 1036) states that where a person is a member of a county board, such membership shall not disqualify that person from membership on the Public Building Commission. Section 1 of the Corrupt Practices Act (Ill. Rev. Stat. 1973, ch. 102, par. 1), however, precludes a county board member from holding another office by appointment of the county board during the term to which he is elected, subject to certain exceptions specified within the paragraph itself.

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It is the rule in Illinois that where an inconsistency exists between two statutes, one general and one specific, the specific statute will prevail in relation to the inconsistency. (East Maine Tp. Community Ass'n. v. Pioneer Trust & Sav. Bank, 15 Ill. App. 250; People v. Hale, 55 Ill. App. 2d 260; Jansen v. Illinois Municipal Retirement Fund, 58 Ill. 2d 97.) This is especially true where the special Act is enacted at a later date. (Bowes v. City of Chicago, 3 Ill. 2d 175; In Re Gubalas Estate, 81 Ill. App. 2d 378.) Consequently, as I noted in my opinion No. NP-165, the provisions of section 6 of the Public Building Commission Act (Ill. Rev. Stat. 1973, ch. 85, par. 1036) being specific and enacted later in point of time, prevail over those of section 1 of the Corrupt Practices Act (Ill. Rev. Stat. 1973, ch. 102, par. 1) to the extent of any inconsistency. I, therefore, am of the opinion that the General Assembly intended by promulgation of section 6 of the Public Building Commission Act (Ill. Rev. Stat. 1973, ch. 85, par. 1036) to permit county board members to serve as members of the Public Building Commission.

It is a cardinal rule in the construction of Illinois statutes that they should be construed to give effect to the

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intent of the General Assembly as expressed in the statute. (Tan v. Tan, 3 Ill. App. 3d 671; Hardway v. Board of Education of Lawrenceville Twp. High School Dist. No. 7, 1 Ill. App. 3d 298; Lincoln National Life Ins. Co. v. McCarthy, 10 Ill. 2d 459.) Consequently, the statutory provisions in question must be construed to permit the contemporaneous and concurrent holding of the offices of county board member and member of the public building commission. It is not necessary, in the present case, to apply the common law rule in reference to compatibility.

Very truly yours,

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