



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 26, 2006

I - 06-011

COMPATIBILITY OF OFFICES:
Community College District Trustee
and Regional Board of School Trustee

The Honorable Julia R. Rietz
State's Attorney, Champaign County
Courthouse
101 East Main Street
P.O. Box 785
Urbana, Illinois 61801

Dear Ms. Rietz:

I have your letter inquiring whether one person may simultaneously hold the offices of community college district trustee and member of a regional board of school trustees. In accordance with your request, I will comment informally on your question.

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 conflict so that the holder of one cannot, in every instance, properly and faithfully perform all of the duties of the other office. *People ex rel. Fitzsimmons v. Swailes*, 101 Ill. 2d 458, 465 (1984); *People ex rel. Smith v. Brown*, 356 Ill. App. 3d 1096, 1098 (2005); *People ex rel. Myers v. Haas*, 145 Ill. App. 283, 286 (1908). There is no constitutional or statutory provision which prohibits one person from serving simultaneously as both a community college district trustee and a member of a regional board of school trustees. The issue, therefore, is whether the duties of either office are such that the holder of one cannot, in every instance, fully and faithfully discharge the duties of the other.

Illinois is currently divided into 40 community college districts. 110 ILCS 805/3-1 (West 2004). The powers of each district are exercised by a seven-member board of trustees. 110 ILCS 805/3-6, 3-7 (West 2004). Article 3 of the Public Community College Act (the Act) (110 ILCS 805/3-1 *et seq.* (West 2004)) sets forth the powers and duties of a community college board. *See* 110 ILCS 805/3-21 through 3-43 (West 2004). As set out in section 3-40 of the Act, among the board's enumerated powers is the authority "[t]o enter into contracts with any * * * educational institution, or governmental agency for providing or securing educational services." 110 ILCS 805/3-40 (West 2004).

Regional boards of school trustees are established pursuant to the provisions of article 6 of the School Code (105 ILCS 5/6-1 *et seq.* (West 2004)). The regional boards are comprised of seven members elected from an educational service region (that is, a portion of a county, a county, or a multi-county area, if consolidation has occurred (105 ILCS 5/3A-1 *et seq.* (West 2004)). 105 ILCS 5/6-2 (West 2004). The board's primary duty is to hear and decide petitions for changes in school district boundaries by detachment, annexation, division, or dissolution. 105 ILCS 5/7-1, 7-2, 7-6 (West 2004). The regional board is also authorized to hear petitions by school districts seeking to withdraw from joint educational agreements. 105 ILCS 5/10-22.31a (West 2004). Specifically, section 10-22.31a of the School Code (105 ILCS 5/10-22.31a (West 2004)) authorizes the regional board of school trustees to hear and act upon petitions to withdraw from joint educational agreements entered into by school boards operating under the authority of the School Code (105 ILCS 5/1-1 *et seq.* (West 2004)) and public institutions of higher education. Section 10-22.31a provides, in pertinent part:

Joint educational programs. To enter into joint agreements with other school boards or public institutions of higher education to establish any type of educational program which any district may establish individually, to provide the needed educational facilities and to employ a director and other professional workers for such program. * * * *Such agreement shall be executed on forms provided by the State Board of Education and shall * * * provide for the withdrawal of districts from the joint agreement by petition to the regional board of school trustees. Such petitions for withdrawal shall be made to the regional board of school trustees of the region having supervision and control over the administrative district and shall be acted upon in the manner provided in Article 7 for the detachment of territory from a school district.* (Emphasis added.)

Although the School Code contains no general definition of "public institutions of higher education," this phrase is uniformly defined in various statutes to include community college districts established or authorized by the General Assembly. *See, e.g.*, 105 ILCS 5/30-15.25 (West 2004) ("Public institution of higher education' includes: * * * the public community colleges of the State"); 110 ILCS 205/1 (West 2004) ("Public institutions of higher education': * * * the public community colleges of the State"); 110 ILCS 979/10 (West 2004) ("Public institution of higher education' means an Illinois public university or Illinois community college"). It is apparent, therefore, that section 10-22.31a of the School Code and section 3-40 of the Act together authorize agreements for joint educational programs between local school boards and community college districts. These agreements, by express statutory provision, must provide for the withdrawal of a participating school district by petition submitted to the regional board of school trustees having supervision and control over the designated administrative district. A regional board of school trustees receiving such a petition must act upon it in the manner provided in article 7 of the School Code (105 ILCS 5/7-01 *et seq.* (West 2004)) for detachment of territory from a school district. Under section 7-6 of the School Code (105 ILCS 5/7-6 (West 2004)), this procedure includes the filing of a petition for withdrawal, notice, and a public hearing. *See also* 105 ILCS 5/7-2 (West 2004). Following the public hearing, the regional board of school trustees must "determine whether it is to the best interests of the schools of the area and the educational welfare of the pupils that such [withdrawal] * * * be granted[.]" 105 ILCS 5/7-6(i) (West 2004).

A member of a regional board of school trustees has a duty to impartially render a decision in a proceeding subject to section 7-6 of the School Code. A community college district trustee has a concomitant duty to represent and protect the interests of the community college district that he or she serves. Ill. Att'y Gen. Op. No. 94-021, issued October 25, 1994. The duties of the offices of community college district trustee and member of a regional board of school trustees will conflict whenever the regional board of school trustees is asked to determine whether a school district may withdraw from a joint educational agreement with the community college district whose interests the community college district trustee represents.

It is the existence of the potential for a conflict in duties, whether that conflict ever arises, that renders two offices incompatible. *See Brown*, 356 Ill. App. 3d at 1100 (2005); 1976 Ill. Att'y Gen. Op. 232. Therefore, the offices of community college district trustee and member of a regional board of school trustees are incompatible, and one person cannot hold both offices simultaneously.

The Honorable Julia R. Rietz - 4

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

Very truly yours,



LYNN E. PATTON
Senior Assistant Attorney General
Chief, Opinions Bureau

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OFFICE OF THE ATTORNEY GENERAL

STATE OF ILLINOIS

April 7, 1995

Jim Ryan

ATTORNEY GENERAL

I - 95 - 011

GOVERNMENTAL ETHICS AND
CONFLICT OF INTEREST:
County Board Member and Member
of Regional Board of School Trustees

Honorable Rod Irvin
State's Attorney, Fayette County
Fayette County Courthouse
221 South Seventh Street
Vandalia, Illinois 62471

Dear Mr. Irvin:

I have your letter wherein you inquire whether a member of the Regional Board of School Trustees for Bond, Fayette and Effingham Counties may continue to hold that office after having been elected to the county board of Fayette County. Because your inquiry can be answered by reference to a statute, I do not believe that the issuance of an official opinion of the Attorney General is required. I will, therefore, comment informally upon the issue you have raised.

At common law, two public offices are incompatible:

" * * *

* * * when the written law of a state specifically prohibits the occupant of either one of the offices in question from holding the other and, also, where the duties of either office are such that the holder of the office cannot in every instance, properly and fully, faithfully perform all the duties of the other office. This incompatibility may

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arise from multiplicity of business in the office or the other, considerations of public policy or otherwise.

* * *

(People ex rel. Myers v. Haas (1908), 145 Ill. App. 283, 286.)

The common law of England, including the doctrine of incompatibility, continues in force in this State, except to the extent that it has been superseded by statute. (5 ILCS 50/1 (West 1992); People v. Swanson (1930), 340 Ill. 188, 194.) Section 1.2 of the Public Officer Prohibited Activities Act (50 ILCS 105/1.2 (West 1993 Supp.)), which was added by Public Act 88-471, effective September 1, 1993, provides that "[a] member of a county board in a county having fewer than 40,000 inhabitants, during the term for which he or she is elected, may also hold the office of member of the * * * regional board of school trustees * * *."

It is my understanding that the population of Fayette County was, according to 1990 census data, 20,893 inhabitants. (George H. Ryan, Secretary of State, Illinois Blue Book 1993-1994 415 (1993).) It appears, therefore, that under section 1.2 of the Public Officer Prohibited Activities Act, a member of the county board of Fayette County may simultaneously hold the office of member of the regional board of school trustees for the region including Fayette County. To the extent that the doctrine of incompatibility of offices might otherwise be applicable to those offices, the action of the General Assembly has superseded the common law.

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
Acting Chief, Opinions Bureau

MJL:SJR:dn



NEIL F. HARTIGAN
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD
62706

January 19, 1989

I - 89-007

COMPATIBILITY OF OFFICES:
Regional Board of School
Trustee and Member of County
Zoning Board of Appeals

Honorable Dennis Schumacher
State's Attorney, Ogle County
County Court House
Oregon, Illinois 61061 - 0395

ATTENTION: Douglas Floski
Assistant State's Attorney

Dear Mr. Schumacher:

I have your letter wherein you inquire whether one person can simultaneously serve as a member of a regional board of school trustees and as a member of a county zoning board of appeals. Due to the nature of your question, I do not believe that an official opinion of the Attorney General is necessary. I will, however, comment informally upon the question that you pose.

Incompatibility arises where the constitution or a statute specifically prohibits the occupant of one office from holding another, or where the duties of the two offices are such that the holder of one cannot, in every instance, fully and faithfully discharge the duties of the other. Rogers v. Village of Tinley Park et al. (1983), 116 Ill. App. 3d 437, 440-41; People ex rel. Myers v. Haas (1908), 145 Ill. App. 283, 286.

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Section 6-3 of The School Code (Ill. Rev. Stat. 1987, ch. 122, par. 6-3) provides:

"Eligibility for trustee's office. No person shall be eligible to the office of member of the regional board of school trustees who is not a voter of the educational service region and qualified to vote in the election for members of the regional board of school trustees, or who is a member of a school board, or who is a school board employee, or who holds any county office." (Emphasis added.)

You ask whether a member of a county zoning board of appeals holds a "county office" within the meaning of section 6-3, thereby making him ineligible to hold the office of regional board of school trustee.

The term "county office" is not defined in The School Code. (Ill. Rev. Stat. 1987, ch. 122, par. 1-1 et seq.) In the absence of a contrary statutory definition, however, words used in a statute are to be given their popularly understood meaning, or their commonly accepted dictionary interpretation. (Beck v. Board of Education of Harlem Consolidated School District No. 122 (1976), 63 Ill. 2d 10, 13-14; Bowes et al. v. City of Chicago et al. (1954), 3 Ill. 2d 175, 200-201.) Webster's Third New International Dictionary defines an "office" as follows:

"* * * a special duty, charge, or position conferred by an exercise of governmental authority and for a public purpose : a position of authority to exercise a public function and to receive whatever emoluments may belong to it * * *" (Webster's Third New International Dictionary 1567 (1981 ed.).)

In its most general sense, the term "county officer" applies to an officer whose territorial jurisdiction is co-extensive with the county for which he is elected or appointed. Ramsay v. VanMeter (1921), 300 Ill. 193, 200; People of the State of Illinois v. Evans (1910), 247 Ill. 547, 555.

A board of appeals, consisting of members serving fixed terms, is created by section 3.2 of "AN ACT in relation to county zoning" (Ill. Rev. Stat. 1987, ch. 34, par. 3155), which provides in part:

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"The presiding officer of the county board with the advice and consent of the county board shall appoint a board of appeals consisting of 5 members to serve respectively for the following terms: One for one year, one for 2 years, one for 3 years, one for 4 years and one for 5 years, the successor to each member so appointed to serve for a term of 5 years. In counties of less than 1,000,000 population the presiding officer of the county board with the advice and consent of the county board may appoint an additional 2 members to serve for a term of 5 years. At the end of the term of the 2 additional members, the county board may provide for the appointment of successors in the same manner or may allow the board of appeals to revert to a membership of 5.
* * * The appointing authority shall have the power to remove any member of the board for cause, after public hearing. Vacancies shall be filled by the appointing authority for the unexpired term of any member whose place has become vacant. * * *"

In opinion No. 273; issued April 11, 1962, Attorney General Clark advised that members of the board of appeals are officers, stating as follows:

" * * *

It would thus seem that the members of the board of appeals have been delegated some of the functions of government to be exercised by such members for the benefit of the public. The members hold permanent positions for fixed terms with continuous duties.

I conclude that members of the board of appeals are officers. * * *

* * *

(1962 Ill. Att'y Gen. Op. 308, 310.)

Moreover, it appears that members of the board of appeals are county officers within the generally recognized meaning of that term. They are appointed by the presiding officer of the county board with the advice and consent of the county board. Their power and duties are co-extensive with the county. They serve for fixed terms and exercise governmental

Honorable Dennis Schumacher - 4.

authority for a county in hearing and deciding various county zoning matters. Since members of the board of appeals are county officers, it appears that, pursuant to section 6-3 of The School Code, they are ineligible to serve as members of the regional board of school trustees.

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