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November 3, 1972

COPY

FILE NO. NP-529

OFFICERS:
Compatibility
Regional Planning Commission

Honorable Robert S. Calkins
State's Attorney
Peoria County
Peoria County Court House
Peoria, Illinois 61602

Dear Mr. Calkins:

I have your recent letter wherein you state in part:

"Considering the facts set forth below and your Opinion S-419 of March 13, 1972, to the Hon. William J. Cowlin, State's Attorney of McHenry County, your opinion is requested on the following questions:

1. May each or any of the following office holders serve on a regional planning commission: township supervisor, county board member under board reorganization, city manager, mayor or village president, city councilman, city commissioner, village trustee?

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2. May those members of the County Board (of Supervisors) appointed to a regional planning commission before the April, 1972 election, who were not elected to the new County Board, continue to serve as commission members? * * * "

You first ask whether various office holders may serve on a regional planning commission. I enclose a copy of my Opinion No. S-500, issued July 24, 1972. In that Opinion, I held that a county board member, a mayor or village president, and a member of a city council or village board could simultaneously serve as a member of a regional planning commission. While I did not specifically discuss a township supervisor, a city manager or a city commissioner, the reasoning in that Opinion is equally applicable to these offices.

You also ask whether members of the County Board of Supervisors appointed to the Tri-County Regional Planning Commission before the April, 1972 election may continue to serve on the Commission if they were not elected to the new County Board. You note that the appointments were made to the individuals without reference to their elective offices at the time of the appointment.

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Section 3(a)2(1) of the resolution creating the Commission provides that elected officials who are appointed to the Commission shall serve on the Commission until the end of their term of office, but not more than three years. If this section is to have any effect, then those individuals who were not reelected to the County Board should not be serving on the Commission after the end of their term on the County Board. It is necessary that statutes be so construed as to give effect to each word, clause and sentence in order that no such word, clause or sentence may be deemed superfluous or void. (Consumers Co. v. Industrial Commission, 364 Ill. 145. Haberer and Co. v. Smerling, 307 Ill. 191.) Therefore, effect should be given to this section and those not reelected to the County Board, should no longer serve on the Commission.

Furthermore, with regard to statutory construction, the court in Petterson v. City of Naperville, 9 Ill. 2d 233, has stated:

" * * * But the primary object of statutory construction is to ascertain and give effect to

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legislative intent. In ascertaining legislative intent, the courts should consider the reason or necessity for the enactment and the meaning of the words, enlarged or restricted, according to their real intent. Likewise the court will always have regard to existing circumstances, contemporaneous conditions, and the object sought to be obtained by the statute. * * * "

From the facts you state in your letter, it is apparent that the amendment to the resolution creating the Tri-County Regional Planning Commission was intended to make it possible for the Commission to qualify for federal grants. The federal requirements that you quote provide that at least 2/3 of the Commission shall be comprised of elected officials. These circumstances substantiate the contention that these individuals were appointed in their official capacity, even though the appointment was made without specific reference to their elective offices. Therefore, in my opinion, your second question must be answered in the negative.

Very truly yours,

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



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

March 2, 1999

Jim Ryan

ATTORNEY GENERAL

I - 99-014

COMPATIBILITY OF OFFICES:
Regional Planning Commission
Member and County Zoning
Board of Appeals Member

The Honorable Gary W. Pack
State's Attorney, McHenry County
2200 North Seminary Avenue
Woodstock, Illinois 60098

Dear Mr. Pack:

I have your letter wherein you inquire whether the offices of member of a county regional planning commission and alternate member of the county zoning board of appeals are incompatible. 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 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 is 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

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are such that the holder of one cannot fully and faithfully discharge all of the duties of the other.

Division 5-12 of the Counties Code (55 ILCS 5/5-12001 et seq. (West 1996)) governs county zoning regulations generally. Section 5-12010 of the Counties Code (55 ILCS 5/5-12010 (West 1996)) provides that when a zoning ordinance or resolution has been adopted:

"* * * 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 and may appoint 2 alternate members * * *. Alternate members, if appointed, shall serve as members of the board only in the absence of regular members, with the alternate member who has the greatest amount of time remaining in his or her term to have priority over the other alternate member in determining which alternate member shall serve in the absence of a regular member. 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.
* * * The members of the board of appeals shall be compensated on a per diem basis with a mileage allowance for travel, the amounts to be determined by the county board.
* * *."

Section 5-12009 of the Counties Code (55 ILCS 5/5-12009 (West 1996)) provides:

"* * * The regulations by this Division authorized may provide that a board of appeals may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein contained in cases where there are practical difficulties or particular hardship in the way of carrying out the strict letter of any of such regulations relating to the use, construction or

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alteration of buildings or structures or the
use of land; * * *

* * *

"

Further, section 5-12001 of the Code (55 ILCS 5/5-12011 (West 1996)) provides:

"* * * The board of appeals shall also hear and decide appeals from and review any order, requirement, decision or determination made by an administrative official charged with the enforcement of any ordinance or resolution adopted pursuant to this Division.

It shall also hear and decide all matters referred to it or upon which it is required to pass under any such ordinance or resolution or under the terms of this Division. * * *

* * *

"

Pursuant to section 5-12009 of the Code (55 ILCS 5/5-12009 (West 1996)), the county board of zoning appeals votes on any proposal submitted to the county board which creates a variation to the zoning regulations. If any proposed variation fails to receive the approval of the board of appeals, a three-fourths vote of all the members of the county board is required to pass the resolution, except in counties in which the county board consists of three members, where only a two-thirds vote is required. (55 ILCS 5/5-12009 (West 1996).) Further, under section 5-12014 of the Code (55 ILCS 5/5-12014 (West 1996)), a hearing must be held before the county board of zoning appeals before the county board may amend zoning regulations.

With respect to regional planning commissions, section 5-14001 of the Counties Code (55 ILCS 5/5-14001 (West 1996)) provides:

"Regional plan. Whenever in the judgment of the county board of any county, a portion or all of said county as a region, should have a plan made for the general purpose of guiding and accomplishing a co-

ordinated, adjusted and harmonious development of said region, and of public improvements and utilities therein, and which plans will in the judgment of the county board, in accordance with the present and future needs of the region and of the State, best promote health, safety, morals, order, convenience, prosperity, efficiency and economy in the process of development and the general welfare of said region, the county board is hereby empowered by resolution of record to define the boundaries of such region and to create a regional planning commission for the making of a regional plan for such region so defined. The number of members of such commission, their method of appointment, and their power and authority in the making of such plan, shall be such as the county board may deem proper and not in conflict with law. Said Commission shall be a fact finding body and shall make such investigations and gather such statistics as it shall deem necessary for the planning and development of said region, and shall make a plan of said region to include all matter which it may deem necessary for the development of the region as provided above."

The county regional planning commission serves as an advisory board to the county board. The commissioners receive no salary for their service but may be compensated on a per diem basis with a mileage allowance for travel (55 ILCS 5/5-14004 (West 1996)). In general, plans of the region made by the commission are advisory only. (55 ILCS 5/5-14004 (West 1996).) There are, however, limited exceptions to this rule when a city or county is authorized to adopt a plan or parts of a plan by official action. (See 55 ILCS 5/5-14004 and 5-14006 (West 1996).)

Based upon this review of the respective duties of county regional planning commission members and county zoning board of appeal members, there is no apparent conflict in duties which would prohibit a member of either body from properly and faithfully performing all of the duties of a member of the other. It appears, therefore, that the office of member of a county

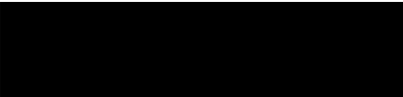
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regional planning commission is not incompatible with the office of member of a county zoning board of appeals, including alternate members, and that one person may hold both offices simultaneously.

This conclusion is consistent with previous Attorney Generals' opinions discussing the compatibility of the office of regional planning commissioner and other county zoning officials. For example, in opinion No. S-96, issued December 4, 1969 (1969 Ill. Att'y Gen. Op. 150), Attorney General Scott determined that the offices of regional planning commission member and county zoning commission member were not incompatible. Similarly, in opinion No. UP-1524, issued February 10, 1966, Attorney General Clark advised that the office of regional planning commission member was not incompatible with the office of county zoning administrator. Copies of these opinions are enclosed for your review.

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

Enclosures