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August 28, 1975

FILE NO. NP-956

OFFICERS:

Compatibility of Alderman
and Superintendent of
Educational Service Region

Honorable Elmer H. Flesner
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P. O. Box 97
Paxton, Illinois 60957

Dear Mr. Flesner:

This responds to your letter requesting my opinion
on the following question:

"Can the superintendent of an Educational Service
Region also hold office as an alderman for a muni-
cipality when that municipality is within the
Educational Service Region served by the superin-
tendent?"

In the absence of a statutory or constitutional
provision to the contrary, there is no necessary objection to

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the same person holding two positions. Under the common law doctrine of incompatibility, however, one person may be precluded from holding two public offices simultaneously.

In People ex rel. Myers v. Haas, 145 Ill. App. 283, the occurrence of incompatibility is described as follows:

"* * * Incompatibility, in this connection, is present 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 arise from multiplicity of business in the one office or the other, considerations of public policy or otherwise.
* * *"

Incompatibility exists where there is a conflict in the duties of the two offices; where one office is subordinate to the other or where the functions are inherently inconsistent and repugnant. Poynter v. Walling, 54 Del. 409, 177 A. 2d 641 (1962); Reilly v. Ozzard, 33 N.J. 529, 166 A. 2d 360 (1960); People ex rel. Ryan v. Green, 58 N.Y. 295 (1874); 67 C.J.S., Officers, §23 (1950).

Since the positions of alderman and superintendent of an educational service region are both public offices, it

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becomes necessary to test for the presence of the above-mentioned circumstances. The only statutory limitations on office holding by aldermen are section 3-4-15 of "AN ACT to revise and codify the laws relating to cities, villages, and incorporated towns, etc." (Ill. Rev. Stat. 1973, ch. 24, par. 3-4-15) and section 2 of "AN ACT to prevent fraudulent and corrupt practices in the making and accepting of official appointments and contracts by public officers". (Ill. Rev. Stat. 1973, ch. 102, par. 2.) Neither prohibition applies to the facts you have submitted.

Section 3-3 of "AN ACT in relation to the establishment, operation, and maintenance of public schools, etc." (Ill. Rev. Stat. 1973, ch. 122, par. 3-3) makes it unlawful for the superintendent of an educational service region "to practice or to hold himself out as practicing any other profession". The word "profession" is generally applied to professions of theology, law, and medicine, and persons engaged therein. (People v. Maggi, 310 Ill. App. 101.) Serving as alderman is not practicing a profession. In fact, for most aldermen, the

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job is part-time work. Therefore, since an alderman need not possess the special professional knowledge and skill connoted by the term "profession", section 3-3 does not prohibit the superintendent of an educational service region from holding the office of alderman.

You mention the possibility of a constitutional prohibition in the part of your letter that states:

"[T]here is awareness of the line of cases under the doctrine of separation of powers that say one person cannot at the same time be in the executive branch of government and hold another office either in the judicial or legislative branches. Are the cases in question applicable to this situation, or can distinction be made because the legislative office is of a municipality rather than of the state?"

Section 1 of article II of the Illinois Constitution of 1970 provides:

"SECTION 1. SEPARATION OF POWERS

The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another."

Numerous courts have held that similar constitutional provisions for the separation of powers relate solely to the State government and officers and their duties under one of

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the separate departments of State, not to municipal government and officers. Poynter v. Walling, 54 Del. 409, 177 A. 2d 641 (1962); Sarlls v. State, 201 Ind. 88, 166 N.E. 270 (1929); State v. City of Mankato, 117 Minn. 458, 136 N.W. 264 (1912); State v. Neble, 82 Neb. 267, 117 N.W. 723 (1908).

In People v. Capuzi, 20 Ill. 2d 486, the Illinois Supreme Court held a comparable provision of the Illinois Constitution of 1870 did not preclude several local officials, including a village president, deputy coroners, deputy bailiffs, and deputy clerks from being members of the General Assembly. The court said on page 493:

"Article III does not apply in this case since the defendants are not exercising governmental sovereignty in the performance of their duties under their local positions * * *"

The offices of alderman and superintendent of an educational service region are within different and distinct governmental spheres. The superintendent executes the laws of the State, whereas an alderman has only limited delegated powers to legislate for the city. There is good reason for the rule of separation of powers where the offices operate

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within the same government, but none where the offices perform duties under different governments. Therefore, the constitutional provision for separation of State powers would not prohibit dual office holding in this instance.

It is understood that the local school board of this municipality is chosen by popular election, not by appointments approved by the city council. Under these circumstances, I fail to find any conflict of duties; nor is there anything to indicate that the duties and functions are in any way inconsistent. Therefore, I am of the opinion that a superintendent of an educational service region can simultaneously hold office as alderman for a municipality within the educational service region served by the superintendent.

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

Lisa Madigan
ATTORNEY GENERAL

April 28, 2016

I - 16-003

COMPATIBILITY OF OFFICES:
Regional Superintendent of Schools and
Community College District Trustee

The Honorable Trish Joyce
State's Attorney, Whiteside County
200 East Knox Street
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Dear Ms. Joyce:

I have your letter inquiring whether one person may serve simultaneously as a regional superintendent of schools and a community college district trustee. For the reasons stated below, the offices of regional superintendent of schools and community college district trustee are incompatible. Consequently, one person may not hold both offices simultaneously.

BACKGROUND

Your inquiry concerns whether the regional superintendent of schools for Whiteside County (which has subsequently been consolidated into the Whiteside, Lee, and Ogle Counties Regional Office of Education¹) may serve simultaneously as a trustee of the Sauk Valley Community College District, which includes portions of Whiteside, Lee, and Ogle Counties within its territory.

¹On July 1, 2015, Whiteside, Lee, and Ogle Counties were consolidated into one educational service region. Illinois State Board of Education, Regional Offices of Education (ROE) Consolidation Website, available at <http://www.isbe.net/regionaloffices/html/consolidation.htm>; see also 105 ILCS 5/3A-4 (West 2014) (mandating the consolidation of educational service regions into 35 regions of populations greater than 61,000 inhabitants after July 1, 2015).

ANALYSIS

The common law doctrine of incompatibility of offices precludes simultaneous tenure in two public offices if the constitution or a statute specifically prohibits the occupant of either office from holding the other, or if the duties of the two offices conflict so that the holder of one cannot, *in every instance*, fully and faithfully discharge all of the duties of the other office. *People ex rel. Smith v. Brown*, 356 Ill. App. 3d 1096, 1098 (2005); *People ex rel. Fitzsimmons v. Swailes*, 101 Ill. 2d 458, 465 (1984); *People ex rel. Myers v. Haas*, 145 Ill. App. 283, 286 (1908). There is no constitutional or statutory provision that expressly prohibits one person from serving simultaneously as both a regional superintendent of schools and a community college district trustee.² The issue, therefore, is whether the duties of either office are such that the holder of one office cannot, in every instance, fully and faithfully discharge all of the duties of the other.

Regional Superintendent of Schools

A regional superintendent of schools is an elected official who acts as the chief administrative officer of a single-county or multi-county educational service region. 105 ILCS 5/3-0.01(a), 3A-1 *et seq.* (West 2014); 105 ILCS 5/3-1 (West 2014), as amended by Public Act 99-030, effective July 10, 2015. Article 3 of the School Code (105 ILCS 5/3-0.01 *et seq.* (West 2014)) sets out the general powers and duties of the regional superintendent. Pursuant to article 3, the regional superintendent is responsible for supervising, controlling, and monitoring all school districts within his or her educational service region (105 ILCS 5/3-14.2, 3-14.21 (West 2014)) and acting as the official adviser and assistant to school officers and teachers in the region (105 ILCS 5/3-14.7 (West 2014)).

The regional superintendent also serves as an intermediary between the State Board of Education and the school districts within the educational service region (105 ILCS 5/3-14.7, 3-14.21, 3-15.8 (West 2014)). In this regard, section 2-3.66b of the School Code (105 ILCS 5/2-3.66b (West 2014)), which creates the IHOPE Program to encourage high school dropouts to earn their diplomas, provides, in pertinent part:

²Section 3-3 of the School Code (105 ILCS 5/3-3 (West 2014)) makes it unlawful for a superintendent of an educational service region "to practice or to hold himself out as practicing any other profession." In opinion No. NP-956, issued August 28, 1975, Attorney General Scott noted that the word "profession," as used in section 3-3 of the School Code (then codified at Ill. Rev. Stat. 1973, ch. 122, par. 3-3), is generally applied to the professions of theology, law, and medicine, which require special professional knowledge and skill. He further stated that aldermen need not possess the special professional knowledge and skill connoted by the term "profession." Consequently, Attorney General Scott concluded that section 3-3 did not prohibit the superintendent of an educational service region from holding the office of alderman simultaneously. The reasoning of opinion No. NP-956 is equally applicable to the office of community college district trustee. Accordingly, section 3-3 does not prohibit a regional superintendent of schools from simultaneously holding the office of community college district trustee.

(a) There is established the Illinois Hope and Opportunity Pathways through Education (IHOPE) Program. The State Board of Education shall implement and administer the IHOPE Program. The goal of the IHOPE Program is to develop a comprehensive system in this State to re-enroll significant numbers of high school dropouts in programs that will enable them to earn their high school diploma.

(b) *The IHOPE Program shall award grants, subject to appropriation for this purpose, to educational service regions * * * from appropriated funds to assist in establishing instructional programs and other services designed to re-enroll high school dropouts. * * **

*The IHOPE Program shall provide incentive grant funds for regional offices of education * * * to develop partnerships with school districts, public community colleges, and community groups to build comprehensive plans to re-enroll high school dropouts in their regions or districts.*

** * * Programs may include without limitation comprehensive year-round programming, evening school, summer school, community college courses, adult education, vocational training, work experience, programs to enhance self-concept, and parenting courses. * * **

(c) *In order to be eligible for funding under the IHOPE Program, an interested regional office of education * * * shall develop an IHOPE Plan to be approved by the State Board of Education. * * * Each Plan shall involve school districts, public community colleges, and key community programs that work with high school dropouts located in an educational service region * * *. No funds may be distributed to a regional office of education * * * until the State Board has approved the Plan.*

(d) *A regional office of education * * * may operate its own program funded by the IHOPE Program or enter into a contract with other not-for-profit entities, including school districts, public community colleges, and not-for-profit community-based organizations, to operate a program.*

*A regional office of education * * * that receives an IHOPE grant from the State Board of Education may provide funds under a sub-grant, as specified in the IHOPE Plan, to other not-for-profit entities to provide services according to the IHOPE Plan that was developed. These other entities may include school districts, public community colleges, or not-for-profit community-based organizations or a cooperative partnership among these entities. (Emphasis added.)*

Further, section 18-8.05 of the School Code (105 ILCS 5/18-8.05 (West 2014), as amended by Public Acts 99-002, effective March 26, 2015; 99-194, effective July 30, 2015) addresses the apportionment of State aid moneys to schools operating certain types of programs, and provides, in pertinent part:

(K) Grants to Laboratory and Alternative Schools.

In calculating the amount to be paid to the governing board of a public university that operates a laboratory school under this Section or to any alternative school that is operated by a regional superintendent of schools, the State Board of Education shall require by rule such reporting requirements as it deems necessary.

* * *

As used in this Section, "alternative school" means a public school which is created and operated by a Regional Superintendent of Schools and approved by the State Board of Education. Such alternative schools may offer courses of instruction for which credit is given in regular school programs, courses to prepare students for the high school equivalency testing program or vocational and occupational training. *A regional superintendent of schools may contract with a school district or a public community college district to operate an alternative school.* An alternative school serving more than one educational service region may be established by the regional superintendents of schools of the affected educational service regions. An alternative school serving more than one educational service region may be operated under such terms as the regional superintendents of schools of those educational service regions may agree. (Emphasis added.)

In addition to serving as an intermediary between the State Board of Education and the school districts, the regional superintendent also coordinates functions among school districts and other units of local government. Section 3-9.1 of the School Code (105 ILCS 5/3-9.1 (West 2014)) provides, in pertinent part:

Investment of funds. Funds of the educational service region are public funds within the meaning of the Public Funds Investment Act³ and may be invested by the educational service region as provided in that Act, except as otherwise provided in this Code.

Any educational service region, with the approval of its regional superintendent of schools, is authorized to enter into agreements of any definite or indefinite term regarding the deposit, redeposit, investment, reinvestment or withdrawal of educational service region funds, including, without limitation, agreements with other educational service regions, agreements with community college districts authorized by Section 3-47 of the Public Community College Act and agreements with township and school treasurers authorized by Section 8-7 of this Code.

Each educational service region is permitted to * * * (ii) *join with other educational service regions, community college districts, and township and school treasurers in investing educational service region funds, community college funds and school funds. Those joint investments shall be made * * * in the case of investments made jointly with community colleges * * * in investments authorized by law for the investment of * * * community college funds * * * [.] [W]hen moneys of an educational service region are combined with moneys * * * of community college districts * * *, the moneys combined for that purpose shall be accounted for separately in all respects, and the earnings from that investment shall be separately and individually computed and recorded, and credited to the fund or * * * community college district * * * for which the investment was acquired. (Emphasis added.)*

³See 30 ILCS 235/0.01 et seq. (West 2014).

Community College District Trustee

A community college board is a body politic and corporate (110 ILCS 805/3-11 (West 2014)) that is generally responsible for administering the academic and business affairs of the community college district. Article 3 of the Public Community College Act (the Act) (110 ILCS 805/3-1 *et seq.* (West 2014)) sets out the powers and duties of a community college board. A community college board has exclusive control over the expenditure of all moneys collected for the community college district (110 ILCS 805/3-20.1, 3-20.3, 3-27 (West 2014)). Section 3-47 of the Act (110 ILCS 805/3-47 (West 2014)), which addresses the investment of community college funds, contains language substantially similar to that found in section 3-9.1 of the School Code that authorizes community college boards to enter into investment agreements with educational service regions:

Any community college district, with the approval of its board, is authorized to enter into agreements of any definite or indefinite term regarding the deposit, redeposit, investment, reinvestment or withdrawal of community college funds, including, without limitation, agreements with other community college districts, agreements with township and school treasurers authorized by Section 8-7 of the School Code and agreements with educational service regions authorized by Section 3-9.1 of the School Code. (Emphasis added.)

A community college district trustee has an inherent duty to represent and protect the interests of the community college district which he or she serves as trustee. 110 ILCS 805/2-8 (West 2014); Ill. Const. 1970, art. XIII, §3; Ill. Att'y Gen. Op. No. 94-021, issued October 25, 1994. The regional superintendent of schools has a concomitant duty with respect to the interests of the educational service region. 105 ILCS 5/3-2 (West 2014); Ill. Const. 1970, art. XIII, §3. Based on the statutory provisions cited above, it is clear that there are potential conflicts between the duties of the offices of regional superintendent of schools and community college district trustee that could prevent one person from faithfully discharging the duties of both offices simultaneously.

For example, if one person were to serve as both a community college district trustee and the regional superintendent of schools, and those bodies contract for IHOPE or alternative school programs or funds pursuant to sections 2-3.66b or 18-8.05 of the School Code, the officer would be required to fully and faithfully represent the interests of both the community college board and the educational service region. It is well established, however, that one person cannot adequately represent the interests of two governmental units when those units contract with one another. Ill. Att'y Gen. Op. No. 94-021 at 3, citing 1991 Ill. Att'y Gen. Op. 30, 32; 1976 Ill. Att'y Gen. Op. 116, 117.

Additionally, under sections 3-9.1 of the School Code and 3-47 of the Act, there may be instances in which an educational service region and a community college board agree to combine funds for investment purposes. The governing statutes specifically provide that the investments are to be "accounted for separately in all respects" and any earnings are "individually computed and recorded, and credited" to the entity for which the investment was acquired. 105 ILCS 5/3-9.1 (West 2014); 110 ILCS 805/3-47 (West 2014). The statutes do not address, however, how decisions will be made regarding the investment of funds or how the fees associated with investment decisions, if any, will be paid. Although nothing in section 3-9.1 of the School Code or section 3-47 of the Act expressly references the creation of a contractual relationship governing joint investments by a regional superintendent or educational service region and community college district, reducing such an agreement to writing would be the diligent practice. One person could not adequately represent the interests of both the educational service region and the district if those entities were to enter into such an agreement.

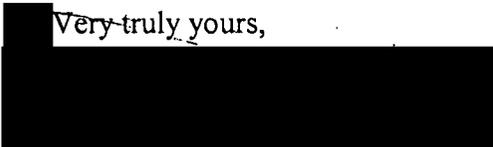
Even absent a written contract, however, the pertinent statutory provisions require the approval of both the regional superintendent of schools and the community college district board to enter into an investment agreement. Community college district board approval generally requires a vote by the board of trustees. *See* 110 ILCS 805/3-9 (West 2014). Accordingly, a person who served as both a regional superintendent and a community college district trustee would be required to participate in the approval of the agreement in each capacity. One person cannot adequately represent the interests of both governmental units in such circumstances.

CONCLUSION

Because of the potential conflicts in the duties of the offices of regional superintendent of schools and community college district trustee, a person who served in both offices simultaneously would not be able, in every instance, to represent the interests of both entities adequately, fully, and faithfully. Therefore, the offices of regional superintendent of schools and community college district trustee are incompatible, and one person may not hold both offices simultaneously.

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
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