



ROLAND W. BURRIS

ATTORNEY GENERAL
STATE OF ILLINOIS

RECORDED

June 5, 1991

I-91-017

**Compatibility of Offices: City
Commissioner and River Conservancy
District Trustee**

Honorable Terry M. Green
State's Attorney, Franklin County
202 West Main Street
Post Office Box 518
Benton, Illinois 62812

Dear Mr. Green:

I have your letter wherein you inquire whether the offices of city commissioner and river conservancy district trustee may be held by the same person simultaneously. Because of the nature of your inquiry, I do not believe that the issuance of an official opinion will be necessary. I will, however, comment informally upon the question you have raised.

Offices are deemed to be incompatible where the constitution or a statute specifically prohibits the occupant of one office from holding the other, or where the duties of the two offices conflict so that the holder of one cannot, in every instance, fully and faithfully discharge the duties of the other. (People ex rel. Myers v. Haas (1908), 145 Ill. App. 283, 286; see generally People ex rel. Teros v. Verbeck (1987), 155 Ill. App. 3d 81.) There are no constitutional or statutory provisions which prohibit simultaneous tenure in the offices of

Honorable Terry M. Green

-2-

city commissioner and river conservancy district trustee. Therefore, the issue is whether a conflict of duties could arise if one person were to occupy both offices.

In opinion No. 91-015, issued March 14, 1991 (Ill. Att'y. Gen. Op. No. 91-015), Attorney General Burris concluded that the office of river conservancy district trustee is incompatible with that of city mayor. He noted therein that one potential area of conflict relates to the several instances in which contracts are authorized between a city and a conservancy district. (See Ill. Rev. Stat. 1989, ch. 24, par. 11-124-1 and 11-137-1 and Ill. Rev. Stat. 1989, ch. 42, par. 394(a).) This potential conflict was deemed sufficient to render the offices of river conservancy district trustee and city mayor incompatible.

There are no functional differences between the offices of city mayor and city commissioner which would distinguish these circumstances from those addressed in opinion No. 91-015. Each officer is a member of the governing body of the municipality who may be called upon to vote or act on contracts entered into by the municipality. Thus, the reasoning relied upon by Attorney General Burris in opinion No. 91-015 would also extend to the office of city commissioner. Therefore, it appears that the offices of city commissioner and river conservancy district trustee are incompatible, and consequently, one person cannot simultaneously hold both offices.

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

Very truly yours,

[Redacted]
MICHAEL J. LUKE
Senior Assistant Attorney General
Chief, Opinions Division

MJL:LP:jp



WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

January 6, 1978

FILE NO. NP-1327

COMPATIBILITY:

The Positions of Member
of a County Board and Trustee of
a River Conservancy District
are Incompatible

Honorable James E. Dull
State's Attorney
Jefferson County
P.O. Box 595
Mt. Vernon, Illinois 62864

Dear Mr. Dull:

I have received your letter in which you have
questioned the compatibility of the offices of county
board member of either the Franklin or Jefferson County
Boards and the position of trustee on the Rend Lake
Conservancy District Board.

For a discussion of incompatibility of offices
since the adoption of the Illinois Constitution of 1970
and the enactment of the Intergovernmental Cooperation Act
(Ill. Rev. Stat. 1975, ch. 127, par. 741 et seq.), I refer

Honorable James E. Dull - 2.

you to opinion No. S-877 (1975 Ill. Att'y. Gen. Op. 37). In that opinion I stated that the Intergovernmental Cooperation provision of the Illinois Constitution (Ill. Const., art. VII, §10) and the Intergovernmental Cooperation Act, having greatly increased the possibility of interdependency and contractual relationships between local governmental agencies, have increased the likelihood of incompatibility of positions on the boards of two local governmental agencies.

Section 2 of the Intergovernmental Cooperation Act (Ill. Rev. Stat. 1975, ch. 127, par. 742) defines public agencies as including:

" * * * any unit of local government as defined in the Illinois Constitution of 1970, any school district, the State of Illinois, any agency of the State government or of the United States, or of any other State and any political subdivision of another State."

Units of local government are defined in the Illinois Constitution (Ill. Const., art. VII, §1) as:

" * * * counties, municipalities, townships, special districts, and units, designated as units of local government by law, which exercise limited governmental powers or powers in respect to limited governmental subjects. * * *"

The Rend Lake Conservancy District is a special district formed in accordance with the River Conservancy Districts Act (Ill. Rev. Stat. 1975, ch. 42, par. 383 et seq.) and is clearly a unit of local government.

Honorable James E. Dull - 3.

Sections 3 and 5 of the Intergovernmental Cooperation Act (Ill. Rev. Stat. 1975, ch. 127, pars. 743, 745) give these local governmental agencies the power to contract with one another and to act jointly when not prohibited by statute. There exist several areas of governmental activity which, under the applicable statutes, may be performed by counties and river conservancy districts. As part of the exercise of the county's corporate power, the county board is empowered to make contracts on behalf of the county in relation to the property and concerns of the county. (Ill. Rev. Stat. 1975, ch. 34, par. 303.) The Board of Trustees of a conservancy district is similarly authorized by the River Conservancy Districts Act to make contracts for the construction of its bridges and the operation of its facilities, letting them out to the lowest bidder, when such contracts are not for professional services and are for over \$500. (Ill. Rev. Stat. 1975, ch. 42, par. 394, 399.) County boards have been empowered by statute to authorize stream clearing and brush removal from free flowing natural streams and other water courses in the county. (Ill. Rev. Stat. 1975, ch. 34, pars. 409.11, 430.) In the exercise of these powers the county may levy and collect a tax if such a tax proposal has been submitted to the electors

Honorable James E. Dull - 4.

by the county board and a majority of the electors have approved it. (Ill. Rev. Stat. 1975, ch. 34, par. 409.11.) These powers, specifically enumerated as belonging to the county, overlap the general grant of powers in the area of the regulation of the artificial and natural waterways made to the board of trustees of a river conservancy district under section 9b of the River Conservancy Districts Act (Ill. Rev. Stat. 1975, ch. 42, par. 392a). A river conservancy district is similarly entitled to raise money through taxes to pay interest on debts and to discharge the principal (Ill. Rev. Stat. 1975, ch. 42, par. 398), and for its other corporate purposes. Ill. Rev. Stat. 1975, ch. 42, par. 400.

It would be inappropriate for an individual to be on two boards which may exercise the same power in the same district, especially when he may be called upon to represent a particular board in any attempted plan for the two agencies to perform jointly some function. His duties to both boards would conflict and he could not fairly represent the conflicting interests of both units of government.

For these reasons, I am of the opinion that the positions of member of the Jefferson County or Franklin County Board and trustee of the Rend Lake Water Conservancy

Honorable James E. Dull - 5.

District are incompatible. It is well settled in Illinois that the acceptance of an incompatible office by the incumbent of another office will be regarded as a resignation or vacation of the first office. People v. Bott, 261 Ill. App. 261.

Very truly yours,

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