



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS
December 30, 1996

Jim Ryan
ATTORNEY GENERAL

I - 96-053

COMPATIBILITY OF OFFICES:
Sanitary District Trustee and
County Board Member or
Board of Review Member

Honorable Michael D. Clary
State's Attorney, Vermilion County
7 North Vermilion Street
Danville, Illinois 61832

Dear Mr. Clary:

I have your letter wherein you inquire whether a person who serves as a county board member or a member of a county board of review may be appointed to the board of trustees of a sanitary district located within the county. Pursuant to your request, I will comment informally upon the questions you have raised.

You have stated that the Danville Sanitary District is organized pursuant to the Sanitary District Act of 1917 (70 ILCS 2405/0.1 et seq. (West 1994)). The trustees thereof are appointed by the chairman of the county board with the advice and consent of the board. (70 ILCS 2405/3 (West 1994).) The District has authority to levy taxes. (70 ILCS 2405/12 (West 1994).)

Initially, it appears that the appointment of a member of the county board to the office of sanitary district trustee is precluded by section 1 of the Public Officer Prohibited Activities Act (50 ILCS 105/1 (West 1995 Supp.)), which provides, in part:

"County board. No member of a county board, during the term of office for which he or she is elected, may be appointed to, ac-

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cept, or hold any office other than (i) chairman of the county board or member of the regional planning commission by appointment or election of the board of which he or she is a member * * * unless he or she first resigns from the office of county board member or unless the holding of another office is authorized by law. Any such prohibited appointment or election is void. * * *

The office of sanitary district trustee is not among those that are expressly excepted from the prohibition of this section. Therefore, unless the individual in question first resigns from the county board, it appears that his or her appointment to the office of sanitary district trustee would be void.

Moreover, I note that Attorney General Scott addressed this issue in opinion No. NP-522, issued October 27, 1972. He concluded therein that, even apart from the prohibition in the Public Officer Prohibited Activities Act, the offices of county board member and sanitary district trustee are incompatible because of potential conflicts between the duties of the two offices. I will enclose a copy of that opinion for your reference.

The issue of simultaneous tenure in the offices of board of review member and sanitary district trustee must be considered under traditional incompatibility analysis. Offices are deemed to be incompatible where the constitution or a statute specifically prohibits the occupant of either one of the offices from holding the other, or where, because of the duties of either office a conflict of interest may arise, or 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. (People ex rel. Myers v. Haas (1908), 145 Ill. App. 283, 286; People ex rel. Fitzsimmons v. Swailes (1984), 101 Ill. 2d 458, 465.) There is no constitutional or statutory provision which prohibits one person from simultaneously serving as both a board of review member and a sanitary district trustee. Therefore, the question to be determined is whether the duties of the offices are such that the holder of one can, in every instance, fully and faithfully discharge the duties of the other.

A board of review, on written complaint that any property is overassessed or underassessed, is required to review the assessment and correct it, if necessary, in the interest of justice. (35 ILCS 200/16-55 (West 1994).) Any taxing body that

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has an interest in an assessment may file a complaint for review of the assessment by the board of review. (35 ILCS 200/16-25 (West 1994).) As noted above, a sanitary district is a taxing body.

Based upon these facts, it appears that the doctrine of incompatibility of offices will preclude one person from holding the offices of board of review member and sanitary district trustee simultaneously. Sanitary district trustees, being under a general duty to ensure necessary funds for the operations of the district, may seek review of the assessment of any property within the district which might be underassessed. If a trustee also served on the board of review, he or she would be obligated to review any such assessment in order to ensure a just assessment for the taxpayer, rather than maximizing the receipts of the sanitary district. The duties of the two offices, under such circumstances, are divergent and would conflict. Consequently, the offices appear to be incompatible

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:KJS:cj

Enclosure



WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD

October 27, 1972

FILE NO. NP-522

OFFICERS:
Compatibility

Honorable Paul R. Welch
State's Attorney of McLean County
220 Unity Building
Bloomington, Illinois 61701

Dear Mr. Welch:

I have your letter wherein you state:

"I have been asked to determine whether a Trustee of a Sanitary District created under the Sanitary District Act of 1917, Illinois Revised Statutes, 1971, Chapter 42, Sec. 299-317(g), can serve as a member of the County Board of McLean County. The Sanitary District is solely in McLean County. The Trustee in question was appointed as a Trustee by an Associate Circuit Judge within this County."

Section 3 of the Sanitary District Act of 1917 as amended by P.A. 77-694 provides in part:

"A board of trustees * * * shall be created in the following manner:

- (1) If the district is located wholly within a single county, the governing body of the county shall appoint the trustees for the

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district * * * ." Ill. Rev. Stat., 1971,
ch. 42, par. 301.

Section 1 of "An Act to prevent fraudulent and corrupt
practices * * * " provides in part:

"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 plan-
ning commission by appointment or election of the
board of which he is a member. Any such prohibited
appointment or election is void. * * * " Ill. Rev.
Stat., 1971, ch. 102, par. 1.

Since the district in question was created under the
Sanitary District Act of 1917 and is solely within one county,
the trustees are now to be appointed by the county board. The
above statute would prohibit the county board from appointing
one of its own members as a district trustee. It does not,
however, prohibit one, already a district trustee, from being
elected to and serving as a county board member. Please note
that if the individual was still a member of the county board
when his term as sanitary district trustee expired, he could
not be reappointed as a trustee by the board, since this would
violate the above statute. Therefore, Section 1 of "An Act to
prevent fraudulent and corrupt practices * * * " does not pro-
hibit an individual already a trustee under the Sanitary District
Act of 1917 from serving as a county board member.

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In my opinion, however, the two offices are incompatible. From the general rules laid down in People v. Haas, 145 Ill. App. 283, it appears that incompatibility between offices arises where the constitution, or a statute, specifically prohibits the occupant of either one of the offices from holding the other, or where, because of the duties of either office a conflict of interest may arise, or where the duties of either office are such that the holder of one can not, in every instance, properly and faithfully perform all the duties of the other.

There are no constitutional or statutory restrictions in simultaneously holding the offices mentioned in your letter. Therefore, the question arises as to whether or not a conflict of interest exists if an individual were to occupy simultaneously the offices of a county board member and sanitary district trustee.

Section 4 of the Sanitary District Act of 1917 (Ill. Rev. Stat., 1971, ch. 42, par. 303) reads in part as follows:

* * * * The board of trustees is the corporate authority of such sanitary district, and shall exercise all the powers and manage and control all the affairs and property of the district.
* * * *

Further, the board of trustees have the power to provide for the disposal of sewerage of the district. Ill. Rev. Stat., 1971, ch. 42, par. 306.

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Section 1 of "An Act in relation to contracts for sewerage service between sanitary districts and counties" provides statutory authorization for such contracts if the county has accepted the provisions of the 1959 legislation mentioned in the Act. Section 1 provides in pertinent part:

"Any sanitary district organized and created under the laws of the State of Illinois having a population of less than 500,000 and lying wholly or partly within the boundaries of any county which accepts the provisions of "An Act in relation to water supply, drainage, sewage, pollution and flood control in certain counties," approved July 22, 1959, as heretofore or hereafter amended, may contract with such county for sewerage service to or for the benefit of the inhabitants of the sanitary district.
* * * " Ill. Rev. Stat., 1971, ch. 34, par. 3131.

Thus, one potential area of conflict is the above contract between the sanitary district and county. As the powers of the county are exercised through the county board (Ill. Rev. Stat., 1971, ch. 34, par. 302) a county board member has a distinct influence in the negotiations of such a contract which could ultimately conflict with his duties as a sanitary district trustee.

Another area of potential conflict is the statutory authority given to sanitary districts by Section 16 of the Sanitary District Act of 1917 to take possession of public property. Section 16 reads as follows:

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"When in making any improvements which any district is authorized by this Act to make, it shall be necessary to enter upon and take possession of any existing drains, sewers, sewer outlets, plants for the purification of sewage or water, or any other public property, or property held for public use, the board of trustees of such district shall have the power to do and may acquire the necessary right of way over any other property held for public use in the same manner as is herein provided for acquiring private property, and may enter upon, and use the same for the purposes aforesaid: Provided, the public use thereof shall not be unnecessarily interrupted or interfered with, and that the same shall be restored to its former usefulness as soon as possible." Ill. Rev. Stat., 1971, ch. 42, par. 315.

A county board member who serves as a sanitary district trustee would be open to a conflict of interest if efforts were made to oppose the sanitary district in the taking of county property. Therefore, it is my opinion that the office of county board member is incompatible with the office of sanitary district trustee.

Very truly yours,

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



NEIL F. HARTIGAN
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD
62706

January 4, 1989

I - 89-003

COMPATIBILITY OF OFFICES:
The Offices of Sanitary District
Trustee and Mayor of Village Located
Within the Sanitary District
Are Incompatible

Honorable Donald M. Cadagin
State's Attorney, Sangamon County
Room 404 County Building
Springfield, Illinois 62701

Dear Mr. Cadagin:

I have your letter of October 21, 1988, wherein you inquire whether one person may simultaneously hold the offices of sanitary district trustee and mayor of a village located within the sanitary district. Because of the nature of your question, 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.

Incompatibility between offices exists 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 the duties of the other. People ex rel. Myers v. Haas (1908), 148 Ill. App. 283, 286; see generally People ex rel. Teros v. Verbeck (1987), 155 Ill. App. 3d.

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There are no constitutional or statutory provisions prohibiting simultaneous tenure in the offices mentioned in your letter. Therefore, it must be determined whether a conflict of duties would exist if one individual were to occupy both the offices of village mayor and sanitary district trustee.

The interests of the village and sanitary district are often divergent and contrary. The possibilities of a conflict of interest in serving both village and sanitary district are numerous. The powers of the sanitary district are exercised through its board of trustees (Ill. Rev. Stat. 1987, ch. 42, par. 303). Therefore, a sanitary district trustee would influence all actions of the district directly by his or her vote as a board member. The powers of mayor vary depending on the particular organization of the municipality. In every case, however, the mayor has sufficient power to influence village actions so that a conflict of interest could arise.

One potential area of conflict relates to contracts between the village and the sanitary district. There are numerous instances in which such contracts are authorized. For example, a village is authorized by statute to contract with a sanitary district for collecting and disposing of sewage (Ill. Rev. Stat. 1987, ch. 24, 11-119-1). A sanitary district is authorized by statute to contract with a village for the collection or disposition of garbage refuse and ashes, for the acquisition and maintenance of sanitary facilities owned by a village and for the leasing of space in a village building. (Ill. Rev. Stat. 1987, ch. 42, pars. 319.11a, 306.1, 308.1) Furthermore, section 10 of article VII of the 1970 Illinois Constitution broadens the contracting powers of local governments by granting general power to associate between cities or villages and other units of local government. Section 10 provides, in part:

"(a) Units of local government and school districts may contract or otherwise associate among themselves, with the State, with other states and their units of local government and school districts, and with the United States to obtain or share services and to exercise, combine, or transfer any power or function, in any manner not prohibited by law or by ordinance. Units of local government and school districts may contract and otherwise associate with individuals, associations, and corporations in any manner not prohibited by law or by ordinance. Participating units of government may use their credit, revenues, and other resources

to pay costs and to service debt related to intergovernmental activities.

* * *

Section 1 of the same article defines units of local government to include special districts, a category encompassing sanitary districts. A person holding offices on the governing bodies of both a municipality and sanitary district could not fully represent the interest of both governments when they contract with each other.

Another area of potential conflict concerns a municipalities' exercise of authority outside its boundaries. Cities and villages are granted statutory authority to exercise many powers outside their corporate boundaries. A village may, for example, operate a tuberculosis sanitarium, a cemetery, a stadium, an athletic field, recreational systems and airports and waterworks outside its corporate boundaries. (Ill. Rev. Stat. 1987, ch. 24, pars. 11-29-6, 11-52.1-1, 11-68-1, 11-95-1, 11-101-1, 11-125-2, 11-138-1.) Furthermore, both a municipality and a sanitary district can exercise the power of eminent domain. A village can exercise its power in adjacent unincorporated areas and its planning commissions have authority up to 1 1/2 miles outside the city in unincorporated areas. (Ill. Rev. Stat. 1987, ch. 24, pars. 11-2-5, 11-61-1.) A sanitary district has the right to acquire property necessary to improve any sewerage system. (Ill. Rev. Stat. 1987, ch. 42, par. 319.10.) The exercise of any of these powers may work to the advantage or disadvantage of the sanitary district or village. A person holding office on the governing bodies of both a municipality and a sanitary district could be placed in the position of aiding one governmental unit to the detriment of the other.

The potential for conflicts of duties is exacerbated by the statutory authority granted to sanitary districts to take possession of public property. Section 16 of the Sanitary District Act of 1917 (Ill. Rev. Stat. 1987, ch. 42, par. 315) provides as follows:

"When, in making any improvements which any district is authorized by this Act to make, it shall be necessary to enter upon and take possession of any existing drains, sewers, sewer outlets, plants for the purification of sewage or water, or any other public property, or property held for public use, the board of trustees of such district shall have the power to do and may

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acquire the necessary right of way over any other property held for public use in the same manner as is herein provided for acquiring private property, and may enter upon, and use the same for the purposes aforesaid: Provided, the public use thereof shall not be unnecessarily interrupted or interfered with, and that the same shall be restored to its former usefulness as soon as possible."

A mayor of a village who also serves as a sanitary district trustee would be subject to a conflict of duties if efforts were made to oppose the sanitary district in the taking of village property.

For the reasons stated above, it appears that the office of village mayor is incompatible with the office of sanitary district trustee, and, therefore, 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,

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