



NEIL F. HARTIGAN
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD
62706

May 29, 1990

I - 90-016

COMPATIBILITY OF OFFICES:
The Offices of School Board
Member and Board of Review
Member Are Incompatible

Honorable David W. Neal
State's Attorney, Grundy County
111 East Washington Street
Morris, Illinois 60450

Dear Mr. Neal:

I have your letter wherein you inquire whether one person may simultaneously hold the offices of school board member and board of review member and, if not, whether acceptance of a second, incompatible office would serve as a constructive resignation of the first office. For the reasons hereinafter stated, it appears that the offices of school board member and board of review member are incompatible and, further, that the acceptance of an incompatible office constitutes as a resignation or vacation of the first office.

Incompatibility between offices exist 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. Rogers v. Village of Tinley Park (1983), 116 Ill. App. 3d 437, 440-41; People ex rel. Myers v. Haas (1908), 145 Ill. App. 283, 286.

There is no constitutional or statutory provision prohibiting one person from simultaneously serving as a school board member and as a board of review member. Therefore, it must be determined whether the duties of either office are such that the

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

Under section 108b of The Revenue Act of 1939 (Ill. Rev. Stat. 1989, ch. 120, par. 589.2), a taxing body may have local assessments reviewed by the board of review by filing a written complaint:

"Any taxing body that has an interest in an assessment made by any local assessment officer or officers may have such assessment reviewed by the board of review by filing a complaint in writing with the board within 20 calendar days after the assessment books are delivered to the board. * * *"

In opinion No. S-1459, issued August 20, 1979 (1979 Ill. Att'y Gen. Op. 121), Attorney General Scott construed this statute and determined that it rendered the offices of township trustee and board of review member incompatible:

" * * *

* * * In examining the duties of these two offices, there is a duty which a member of the board of review has which could prevent the proper performance of his duties as a township trustee. * * * By operation of [section 108b], a member of the board of review would have to review an assessment of which he, as a member of the township board of trustees, a taxing body, complained.

* * *

(1979 Ill. Att'y Gen. Op. 121.) "

A similar analysis may be applied to the offices of school board member and board of review member. Because the board of review is required under section 108b to review assessments upon complaint by any taxing body, a member of the board of review would be placed in the untenable position of having to review an assessment which he or she, as a member of a school board, a taxing body, questioned. In view of this potential conflict, a person could not properly and faithfully perform his or her duties as both a school board member and a member of the board of review.

It should also be noted that although school property is generally exempt from taxation, property not used by schools exclusively for school purposes or property leased by such school or otherwise used with a view to profit is subject to taxation. (Ill. Rev. Stat. 1987, ch. 120, par. 500.1.) In opinion No. S-590, issued May 22, 1973, Attorney General Scott advised

Honorable David W. Neal - 3.

that the offices of township tax assessor and school board member are incompatible because:

" * * *

* * * The property of a school not exempted * * * would be subject to tax. If a tax assessor were also a member of a school board he could find himself assessing property of a school in his district. He could not in every instance properly and faithfully perform all the duties of each office. A dispute could also arise as to whether certain property of the schools is taxable. * * *

* * *

(1973 Ill. Att'y Gen. Op. 83, 85.) "

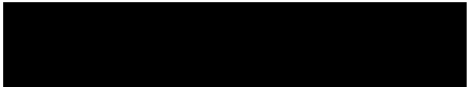
Because a board of review has the authority to revise assessments relating to school property, a similar conflict of duties could arise if a board of review member were also a member of a school board.

Based upon the above reasoning, it appears that the office of board of review member is incompatible with the office of school board member, and, therefore, one person cannot simultaneously hold both offices.

In response to your second question, it is well settled in Illinois that the acceptance of an incompatible office by the incumbent of another office will be regarded as ipso facto resignation or vacation of the first office. (People v. Bott (1931), 261 Ill. App. 261, 265; People ex rel. Myers v. Haas (1908), 145 Ill. App. 283, 287.) Formal resignation or ouster by legal proceedings is not required. (Packingham v. Parker (1895), 61 Ill. App. 96, 100.) Accordingly, it appears that the acceptance of a second incompatible office constitutes a resignation of the first office.

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



ROLAND W. BURRIS

ATTORNEY GENERAL
STATE OF ILLINOIS

June 8, 1994

I - 94-030

GOVERNMENTAL ETHICS AND
CONFLICT OF INTEREST:
Simultaneous Tenure in Municipal
and School District Positions

Honorable Robert M. Raica
Chairman
Senate Local Government and
Elections Committee
129 Capitol Building
Springfield, Illinois 62706

Dear Senator Raica:

I have your letter wherein you inquire whether one person may serve simultaneously in the following positions: (1) city manager and school board member; (2) high school principal and city alderman; and (3) city fire chief and school board member. 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 questions you have raised.

In considering the propriety of simultaneous tenure in two or more positions, the first issue to be addressed is whether the positions in question are subject to the common law doctrine of incompatibility of offices. The doctrine of incompatibility, being traditionally limited to offices, is not applicable to positions which constitute mere employments. (1975 Ill. Att'y Gen. Op. 278, 280.) In response to your first inquiry, therefore, although it is clear that the position of school board member constitutes a public office, the position of city manager must be examined to determine its status.

Honorable Robert M. Raica - 2.

In opinion No. S-515, issued October 17, 1972 (1972 Ill. Att'y Gen. Op. 241), Attorney General Scott discussed the attributes of a public office:

" * * *

To summarize, there are two indispensable requirements of a public office. One, to be a public office, a position must possess a delegation of a portion of the sovereign power of the government. Secondly, the position must be created by the constitution or by law and must be of an enduring nature and not subject to abolition by whim of superior officials. Other indicia that a position is a public office are whether the individuals must give bond or take an oath.

* * *

(1972 Ill. Att'y Gen. Op. 241, 244.) "

The duties of an office are prescribed not by contract, but by law. (Wargo v. Industrial Commission (1974), 58 Ill. 2d 234, 236-37.) In determining whether a position constitutes an office, courts have also considered whether the statute or ordinance creating the position refers to the position as an "office"; whether salary is fixed by or according to law, rather than by contract; and whether a term of office is fixed. People ex rel. Adamowski v. Wilson (1960), 20 Ill. 2d 568, 583.

Section 5-3-7 of the Illinois Municipal Code (65 ILCS 5/5-3-7 (West 1992)) provides that in municipalities which have adopted the managerial form of municipal government:

"The council or board of trustees * * * shall appoint a municipal manager, who shall be the administrative head of the municipal government and who shall be responsible for the efficient administration of all departments. * * * The manager shall be appointed for an indefinite term, and the conditions of the manager's employment may be set forth in an agreement. * * * The manager may at any time be removed from office by a majority vote of the members of the council or the board.

* * *

"

Honorable Robert M. Raica - 3.

Under section 5-3-7, the position of city manager is continuous and enduring in nature, and cannot be eliminated by the fiat of a superior official. Although the person holding the position can be removed at any time, the position itself continues. I note parenthetically that the phrase "manager's employment", as used in section 5-3-7, appears to denote "managerial tenure", rather than to signify that the manager holds a position of employment.

As previously noted, the authority to exercise a portion of the sovereign power of government is also a characteristic of a public office. Cases from other jurisdictions have stated that the exercise of duties or powers independently of a governing board or other officer is of the essence to the concept of sovereignty. (Edwards v. Brunner (Ala. 1989), 547 So.2d 1172, 1175-6; Main v. Claremont Unified School District (Cal. App. 1958), 326 P.2d 573, 583.) An officer has supervisory and discretionary authority which an employee does not. Daniels v. City of Venice (1987), 162 Ill. App. 3d 788, 790.

Pursuant to section 5-3-7 of the Municipal Code, the city manager's powers include: (1) the enforcement of laws and ordinances within the municipality; (2) the appointment and removal of all directors of departments; (3) the control of all municipal departments and divisions; and (4) attendance at council meetings and the making of recommendations of measures for adoption by the city council. Although some of these powers are ministerial in nature, the city manager clearly exercises independent and discretionary authority with respect to the operations of all municipal departments and divisions.

Based upon this analysis, the position of city manager appears to constitute a public office. Other supporting criteria include the required filing of a bond and the taking of an oath by the city manager (65 ILCS 5/5-3-8, 5-3-9 (West 1992)), and the fixing of the city manager's salary by ordinance rather than by contract. (65 ILCS 5/5-4-2 (West 1992).) The common law doctrine of incompatibility of offices is, therefore, applicable to simultaneous tenure in the positions of city manager and school board member.

The doctrine of incompatibility of offices precludes simultaneous tenure in two 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 v. Village of Tinley Park (1983), 116 Ill. App. 3d 437, 440-41; People ex rel. Myers v. Haas (1908), 145 Ill. App. 283,

286.) There is no constitutional or statutory provision which prohibits one person from serving simultaneously as both a city manager and as a member of a board of education. The issue, therefore, is whether the duties of either office are such that the holder of one cannot fully and faithfully discharge all of the duties of the other.

As a member of a board of education, a school board member exercises the corporate powers of the school district (105 ILCS 5/10-20.1 through 10-23.12 (West 1992)). These powers include: supervising the education of children within the district; the raising of revenue by tax levy; the hiring of teachers; and the maintaining of schools. There are situations in which a school district and a municipality are statutorily authorized to contract with one another, including: (1) the transfer, lease or sale of real property (65 ILCS 5/11-45-15, 11-74.2-12; 50 ILCS 605/0.01 et seq.; 105 ILCS 5/10-22.11, 16-9 (West 1992)); (2) traffic regulation in school parking areas (105 ILCS 5/10-22.42 (West 1992)); (3) municipal fire protection of school buildings (65 ILCS 5/11-6-2; 105 ILCS 5/16-10 (West 1992)); and (4) furnishing a school water supply (105 ILCS 5/10-20.17 (West 1992)). Moreover, under the Intergovernmental Cooperation section of the 1970 Illinois Constitution (Ill. Const. 1970, art. VII, sec. 10) and the Intergovernmental Cooperation Act (5 ILCS 220/1 et seq. (West 1992)), municipalities and school districts are authorized generally to enter into contracts to obtain or to share services, and to exercise, combine or transfer powers and functions.

Although a city manager would not vote or otherwise be a party to any contract between the city and the school district, he or she is still in a position to influence that contract. In opinion No. S-1120, issued July 1, 1976 (1976 Ill. Att'y Gen. Op. 232), Attorney General Scott concluded that the offices of county superintendent of highways and alderman were incompatible because the county superintendent of highways could be called upon by the county board for advice in situations where the interests of the county and those of the municipality might be opposed to each other.

Because a city manager is expressly authorized to make recommendations to the city council concerning municipal matters, a person who served as both a school board member and a city manager would be required, when these two bodies enter into contracts with each other, to represent the interests of the school district and, at the same time, to advise the city council as to the best interests of the municipality. In such circumstances, the interests of the school district and the city may

Honorable Robert M. Raica - 5.

conflict, and the dual officeholder could be subject to divided loyalties.

In addition to the contractual conflicts, a city council, pursuant to section 3 of the State Revenue Sharing Act (30 ILCS 115/3 (West 1992)), may allocate all or part of its revenue sharing funds to a school district which lies at least partly within the municipality. A conflict could also arise, therefore, between the dual officeholder's authority as a city manager to advise the city council regarding how revenue sharing funds should be spent to serve the needs of the municipality, and his or her duty as a school board member to provide for the revenue necessary to maintain the district's schools. While the city council is not required to seek or follow the recommendations of the city manager in any of these circumstances, the advice of the city manager is, in practice, heavily relied upon by the council.

Accordingly, because of the potential conflicts in the duties and responsibilities of these offices, it appears that the offices of city manager and school board member are incompatible, and one person, therefore, cannot serve simultaneously in both offices.

In response to your second inquiry, I note initially that although the position of alderman is clearly a public office, it appears that the position of high school principal is not. As previously stated, the primary indicium of public office, as distinguished from public employment, is that the holder of an office has been authorized to exercise some portion of the sovereign power. Under section 10-21.4a of the School Code (105 ILCS 5/10-21.4a (West 1992)), principals supervise the operation of school attendance centers, but they are subject to the direction of the school superintendent and the school board in exercising their administrative responsibilities. Because such duties do not constitute an independent exercise of solemn functions of government, the position of high school principal is one of employment, and the doctrine of incompatibility of offices would not be applicable to preclude a person from simultaneously serving as a high school principal and a city alderman. It must also be determined, however, whether the holding of these two positions would violate other provisions proscribing conflicts of interest.

Section 3.1-55-10 of the Illinois Municipal Code (65 ILCS 5/3.1-55-10 (West 1992 Supp.)) prohibits, with certain limited exceptions, municipal officers from possessing any direct or indirect personal pecuniary interest in a contract entered

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into by the governmental body of which he or she is a member. As previously noted, there are circumstances in which a municipality and a school district may enter into contracts for various purposes. These instances, however, would not appear to give rise to a per se violation of section 3.1-55-10, since an officer of a governmental entity does not generally have a personal pecuniary interest in the contracts of the entity which he serves. When one public body contracts with another, the contracts between such entities do not necessarily benefit the officers or employees of either financially, as the compensation of such employees is not likely to depend upon such contracts. (See 1992 Ill. Att'y Gen. Op. No. 92-026, issued October 27, 1992; 1976 Ill. Att'y Gen. Op. 56.) In the absence of a personal pecuniary interest in the contract, therefore, it appears that no violation of the section 3.1-55-10 would occur.

Although there is no statute or per se rule which would prohibit a high school principal from simultaneously serving as a city alderman, situations could nevertheless arise in which the person would have an actual personal interest as an employee of the school district in a matter coming before the city council. Such potential conflicts, generally referred to as common law conflicts of interest, can occur whenever official action could result in a personal advantage or disadvantage to the interested official. It is well established that where a member of a governmental body has a personal interest in a matter before the body, he or she is disqualified from voting or otherwise acting thereon. (In re Betts (1985), 109 Ill. 2d 154, 168; 1977 Ill. Att'y Gen. Op. 51; see generally Annotation 10 ALR 3d 694.) In these circumstances, therefore, it appears that the city alderman should abstain from voting or otherwise acting upon matters from which he or she may benefit in some manner as an employee of the school district.

In response to your final inquiry, concerning the positions of city fire chief and school board member, it appears that a municipal fire chief may be either an officer or an employee. The office of fireman was unknown at common law and does not exist unless created by statute or by municipal ordinance adopted under statutory authority. (See generally Rinchich v. Village of Bridgeview (1992), 235 Ill. App. 3d 614; People ex rel. Kwiat v. Board of Fire and Police Commissioners of the Village of Schiller Park (1973), 14 Ill. App. 3d 45.) While there is no statute which expressly creates the office of city fire chief, section 3-7-1 of the Illinois Municipal Code (65 ILCS 5/3-7-1 (West 1992)) provides that a city may create any office which the city council considers necessary or expedient. Accordingly, a city may, by ordinance, designate the position of

Honorable Robert M. Raica - 7.

municipal fire chief to be a city office. In addition, section 10-2.1-4 of the Illinois Municipal Code (65 ILCS 5/10-2.1-4 (West 1992)) provides that, in cities which have adopted the statutory provisions governing a board of fire and police commissioners, full time members of a municipal fire department are deemed to be city officers:

" * * *

Any full time member of a regular fire or police department of any municipality which comes under the provisions of this Division or adopts this Division 2.1 or which has adopted any of the prior Acts pertaining to fire and police commissioners, is a city officer.

* * *

The common law rule of incompatibility of offices would therefore be applicable if the office of municipal fire chief has been created by ordinance or if the city has adopted the aforementioned provisions pertaining to a board of fire and police commissioners and the position of fire chief is held by a full time member of the fire department.

There is no constitutional or statutory provision which prohibits one person from simultaneously holding the offices of municipal fire chief and school board member. Furthermore, there does not appear to be a significant relationship between the duties of a municipal fire chief and the duties of a school board member which would conflict and render the offices incompatible. Although the school district may, for example, enter into contractual arrangements for fire protection services with the municipality, it is the city council, rather than the municipal fire chief, which would act to approve or disapprove such a contract. Moreover, such contractual agreements with respect to these two offices would not appear to result in a potential conflict of duties as was found with the offices of city manager and school board member. Unlike the city manager, a municipal fire chief is under no general statutory duty to make recommendations or render advice to the city council concerning matters before the council. For that reason, a person who holds the offices of city fire chief and school board member would be responsible for acting with respect to a fire protection services contract only in his or her capacity as a school board member.

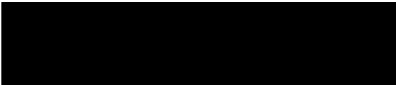
Honorable Robert M. Raica - 8.

Accordingly, it appears that in municipalities in which the position of fire chief qualifies as an office, the offices of municipal fire chief and school board member are not incompatible, and, therefore, one person may simultaneously hold both offices.

Similarly, in those municipalities in which the position of fire chief is merely one of employment, there does not appear to be any per se violation of the conflict of interest statutes which would prevent one person from serving as a municipal fire chief and a school board member. Under section 10-9 of the School Code (105 ILCS 5/10-9 (West 1992)), which prohibits a school board member from having a direct or indirect interest in any contract of the district which he or she serves, a public official typically does not have the sort of financial interest in the contracts of his governmental employer which a private firm's employee may have. For that reason, any contract between the municipality and the school district, such as one for fire protection services, would not appear to violate the pertinent conflict of interest provisions. Should any common law conflicts of interest arise, the officer in question would be required, as previously discussed, to abstain from acting in matters from which he or she may personally benefit in some manner.

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

MJL:JM:cj



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

December 2, 1996

Jim Ryan

ATTORNEY GENERAL

I - 96-048

COMPATIBILITY OF OFFICES:
Community College District
Trustee Simultaneously
Serving as a School Board
Member

Honorable Jack O'Connor
State Representative - 35th Dist.
12307 South Harlem, Suite 7
Palos Heights, Illinois 60463

Dear Mr. O'Connor:

I have your letter wherein you inquire whether a member of a community college district board of trustees may simultaneously serve as a school board member. 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.

Under the common law doctrine of incompatibility of offices, two offices are deemed to be incompatible where the constitution or a statute prohibits the occupant of either office from holding the other, or where the duties of both offices conflict in such a manner that the holder of one office cannot in every instance properly and faithfully perform all the duties of the other office. (Rogers v. Village of Tinley Park (1983), 116 Ill. App. 3d 437, 440-41; People ex rel. Myers v. Haas (1908), 145 Ill. App. 283, 286.) One person may not simultaneously serve in two incompatible offices.

Community colleges are governed by the provisions of the Public Community College Act (110 ILCS 805/1-1 et seq. (West 1994)), section 3-7 of which (110 ILCS 805/3-7 (West 1994)) provides, in pertinent part, as follows:

"The election of the members of the board of trustees shall be nonpartisan and shall be held at the time and in the manner provided in the general election law.

* * *

Each member must on the date of his election be a citizen of the United States, of the age of 18 years or over, and a resident of the State and the territory which on the date of the election is included in the community college district for at least one year immediately preceding his election. In the event a person who is a member of a common school board is elected or appointed to a board of trustees of a community college district, that person shall be permitted to serve the remainder of his or her term of office as a member of the common school board. Upon the expiration of the common school board term, that person shall not be eligible for election or appointment to a common school board during the term of office with the community college district board of trustees.

* * *

(Emphasis added.)

Section 7-2 of the Act (110 ILCS 805/7-2 (West 1994)), which is applicable only to boards of trustees of community college districts in cities with a population of 500,000 or more, provides:

"The board shall consist of 7 members, appointed by the mayor with the approval of the city council. * * * To be eligible for appointment to a board under this Section, a person must possess the same qualifications and meet the same requirements as are prescribed by this Act for members of an elected board of a community college district." (Emphasis added.)

Common schools are defined as "[s]chools in districts operating grades 1 through 8, 1 through 12 or 9 through 12". (110 ILCS 805/1-2(f) (West 1994).)

Honorable Jack O'Connor - 3.

Determining the intent of the General Assembly is the primary goal of statutory interpretation. (Barnett v. Zion Park Dist. (1996), 171 Ill. 2d 378, 388.) That intent is best demonstrated by the language of the statute. (People v. Thomas (1996), 171 Ill. 2d 207, 221.) Where the statutory language is clear and unambiguous, it should be given effect as written. People v. Robinson (1996), 172 Ill. 2d 452, 457.

The General Assembly has provided for simultaneous tenure in the offices of community college district trustee and school board member in section 3-7 of the Public Community College Act (110 ILCS 805/3-7 (West 1994)). Section 3-7 expressly permits a person who serves as a common school board member to complete the school board term if he or she is subsequently elected or appointed to a community college district board of trustees. When the school board term expires, however, section 3-7 states "* * * that person shall not be eligible for election or appointment to a common school board during the term of office with the community college district board of trustees." Section 7-2, which governs the selection of trustees in municipalities with 500,000 or more inhabitants, incorporates the language of section 3-7 by reference. Therefore, under the plain language of these statutes, if a person who is elected or appointed to a community college district board of trustees is already serving on a common school board, he or she may complete the school board term. Thereafter, the community college board trustee would not be eligible for appointment or election to a common school board while serving as a trustee.

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
Bureau Chief, Opinions

MJL:KB:dn



WILLIAM J. SCOTT

ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD

March 26, 1973

FILE NO. NP-560

COUNTIES:

**Compatibility of Office of
County Board Member with that of
Member of Community Unit
District School Board**

Honorable Dayton L. Thomas
State's Attorney
Gallatin County
P. O. Box 412
Shawneetown, Illinois 62984

Dear Mr. Thomas:

I have your recent letter wherein you state:

"One of our County Board members is also an elected member of Community Unit District #4 School Board. By this letter I am requesting an opinion as to whether this board member's duties on the County Board and the Community Unit District #4 are compatible. I have been unable to find any statutory provisions on this."

You have inquired as to whether the office of county board member and member of a community unit district school board are compatible.

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 in interest may arise, or where 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.

Your attention is first called to "An Act in relation to State revenue sharing with local governmental entities," (Ill. Rev. Stat. 1971, ch. 85, pars. 611 through 614). Section 1 of said Act provides that 1/12 of the net revenue realized from the Illinois Income Tax Act shall be placed in a special fund in the State treasury, to be known as the Local Government Distribution Fund. Said fund is to be allocated among the several municipalities and counties of the State pursuant to Section 2 of said Act. Section 3 of said Act provides:

"The amounts allocated and paid to the municipalities and counties of this State pursuant to the provisions of this Act shall be used

solely for the general welfare of the people of the State of Illinois, including financial assistance to school districts, any part of which lie within the municipality or county, through unrestricted block grants for school purposes carried out within the municipality or county making the grant."

It can be observed from the provisions of Section 3 that a county can grant some or all of the money to a school district, any part of which lies within the county. If a member of the county board were also a member of the school board of a community unit school district, any part of which was located in the county, then he would be in a position to vote funds for the benefit of his particular school district. Although he would not be in a position to benefit himself personally, it is doubtful that he could properly and faithfully perform the duties of each office.

Because of the foregoing I am of the opinion that the offices of county board member and member of a board of a community unit school district, any part of which is located in the same county, are incompatible.

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

August 9, 1989

I - 89-039

COMPATIBILITY OF OFFICES:
Offices of School Board Member and
County Board Member

Honorable Gordon Lustfeldt
State's Attorney, Iroquois County
Iroquois County Court House
Watseka, Illinois 60970

Dear Mr. Lustfeldt:

I have your letter wherein you state that a recently-elected county board member of Iroquois County also serves on the school board of a school district which extends into Iroquois County. You inquire whether the offices of school board member and county board member are incompatible. Because you have requested informal assistance, I shall respond accordingly.

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 properly and faithfully perform all of 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 county board member and school board member. Therefore, the issue is whether a conflict of duties would exist if one individual were to occupy both of these offices simultaneously.

Attorney General Scott, in opinion No. S-590, issued May 22, 1973, advised that the office of county board member is incompatible with that of a school board member of a school district, any part of which is located in the same county. (1973 Ill. Att'y Gen. Op. 85.) He noted therein that sections 1 through 4 of "AN ACT in relation to State revenue sharing with local governmental entities" (now Ill. Rev. Stat. 1987, ch. 85, pars. 611-614) establish a fund from income tax revenue, which fund is paid to municipalities and counties of Illinois, to be used for the general welfare of the people of Illinois. Section 3 of that Act (Ill. Rev. Stat. 1987, ch. 85, par. 613) provides:

"§ 3. Use of Fund. The amounts allocated and paid to the municipalities and counties of this State pursuant to the provisions of this Act shall be used solely for the general welfare of the people of the State of Illinois, including financial assistance to school districts, any part of which lie within the municipality or county, through unrestricted block grants for school purposes carried out within the municipality or county making the grant."

As a school board member, one has the duty to provide for the revenue necessary to maintain the schools in his or her district. (Ill. Rev. Stat. 1987, ch. 122, par. 10-20-3.) Attorney General Scott concluded that since a school district lying partially within a county would be eligible for unrestricted grants from the county, a conflict could arise between a dual officeholder's duty to determine how county funds should be spent to best serve the needs of the county, and his or her duty as a member of the board of education to provide for the revenue necessary to maintain the district schools. This potential conflict was deemed sufficient to render the offices of county board member and school board member incompatible.

The statutes relied upon by Attorney General Scott in opinion No. S-590 are still in effect, and the reasoning of that opinion appears to be valid. Therefore, it appears that the offices of county board member and school board member of a school district, which lies wholly or partly within a county, are incompatible, and, consequently, one person cannot simultaneously hold both offices.

Honorable Gordon Lustfeldt - 3.

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



OFFICE OF THE ATTORNEY GENERAL

STATE OF ILLINOIS
May 28, 1996

Jim Ryan

ATTORNEY GENERAL

I - 96-028

COMPATIBILITY OF OFFICES:
County Board Member and
School Board Member;
County Board Member and
Deputy Coroner; County
Board Member and Deputy Sheriff

Honorable Terry C. Kaid
State's Attorney, Wabash County
Wabash County Courthouse
401 Market Street
Mt. Carmel, Illinois 62863

Dear Mr. Kaid:

I have your letter wherein you inquire whether one person may serve simultaneously in the offices of: 1) county board member and school board member; 2) county board member and deputy coroner; and 3) county board member and deputy sheriff. Because of the nature of your inquiry, I do not believe that the issuance of an official opinion of the Attorney General is necessary. I will, however, comment informally upon the questions you have raised.

Your first inquiry concerns potential incompatibility in the offices of county board member and school board member. The common law doctrine of incompatibility of offices precludes simultaneous tenure in two 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. 2nd 458, 465; Rogers v. Village of Tinley Park (1983), 116 Ill. App. 3d 437, 440-41; People ex rel. Myers v. Haas (1908), 145 Ill. App.

Honorable Terry Kaid - 2.

283, 286.) There are no constitutional or statutory provisions which expressly prohibit simultaneous tenure in the offices of county board member and school board member. Therefore, the issue is whether a conflict in duties could arise if one person were to occupy both offices simultaneously.

In opinion No. 93-011 (Ill. Att'y Gen. Op. No. 93-011, issued May 25, 1993), a copy of which I have enclosed for your review, Attorney General Burris concluded that the office of county board member is incompatible with that of school board member. He noted therein that one potential area of conflict relates to the several instances in which contracts or agreements are authorized between a county and a school district. (See, e.g., 55 ILCS 5/3-6036, 5/5-1060 (West 1994); 55 ILCS 90/10 (West 1994); 105 ILCS 5/29-16 (West 1994).) Another potential conflict in duties arises with respect to the allocation of revenue sharing funds under section 3 of the State Revenue Sharing Act (30 ILCS 115/3 (West 1994)). These potential conflicts were deemed sufficient to render the offices of county board member and school board member incompatible.

In reviewing the provisions of the Counties Code (55 ILCS 5/1-1001 et seq. (West 1994)) and the School Code (105 ILCS 5/1-1 et seq. (West 1994)), and the pertinent cases decided thereunder, it appears that the reasoning of opinion No. 93-011 is still valid. Consequently, the offices of county board member and school board member are incompatible under the common law doctrine of incompatibility of offices.

This issue cannot be concluded at this point, however. Since incompatibility is a common law doctrine, it may be modified or superseded legislatively. Shortly after opinion No. 93-011 was issued, the General Assembly enacted Public Act 88-471, effective September 1, 1993, which added section 1.2 to the Public Officer Prohibited Activities Act (50 ILCS 105/1.2 (West 1994)). Under section 1.2 of the Act, persons in a county having fewer than 40,000 inhabitants are expressly permitted to hold the offices of county board member and school board member simultaneously. According to 1990 Federal census figures, the population of Wabash County is 13,111 inhabitants. (Illinois Blue Book 424 (1993-94).) Consequently, in this instance, it appears that one person may hold the offices of county board member and school board member in Wabash county simultaneously, notwithstanding that those offices may be incompatible at common law.

You have also asked whether one person may serve simultaneously as a county board member and a deputy coroner in circumstances in which the deputy coroner does not receive a

Honorable Terry Kaid - 3.

salary, but is reimbursed for mileage and other expenses. There are no constitutional or statutory provisions which expressly prohibit simultaneous tenure in the offices of county board member and deputy coroner. Therefore, the issue is whether a conflict in duties could arise if one person were to occupy both offices simultaneously.

In People ex rel. Teros v. Verbeck (1987), 155 Ill. App. 3d 81, the court was asked to determine whether one person could hold the offices of county board member and deputy coroner simultaneously. In reaching its conclusion that the offices of county board member and deputy coroner are incompatible, the court noted:

" * * *

* * *Common law incompatibility may be established where defendant in one position has authority to act upon the appointment, salary and budget of his superior in a second position. (People ex rel. Fitzsimmons v. Swailes (1984), 101 Ill. 2d 458, 463 N.E.2d 431.) In the present case, it is undisputed that the county board is charged with the duty to fix the compensation of the county coroner within statutory limitations (Ill. Rev. Stat. 1985, ch. 53, par. 37a.1 [55 ILCS 5/4-6002 (West 1994)]) and to provide for reasonable and necessary operating expenses for the coroner's office (Ill. Rev. Stat. 1985, ch. 34, par. 432 [55 ILCS 5/5-1106 (West 1994)]). It is further undisputed that the deputy coroner's compensation is fixed by the coroner, subject to budgetary limitations established by the county board. (Ill. Rev. Stat. 1985, ch. 31, par. 1.2 [55 ILCS 5/3-3003 (West 1994)].) Thus, under the statutory scheme, defendant's two offices are fiscally incompatible since defendant as a member of the county board has authority to act upon the salary and budget of the county coroner who, in turn, determines defendant's salary as deputy coroner. The potential for influencing his superior's salary and budget and, ultimately, his own salary, without more, renders defendant's offices incompatible.

* * *

"

Honorable Terry Kaid - 4.

(People ex rel. Teros v. Verbeck (1987), 155 Ill. App. 3d at 83-4.)

Based upon the foregoing, it is clear that each fiscal year a county board must consider and provide that amount of funding which it considers to be reasonably necessary for the coroner to procure equipment, materials and services, which includes an appropriation for personal services. While you have indicated in your letter that the deputy coroner who is the focus of your inquiry does not currently receive any compensation for his services, there is no requirement that this policy must continue. Thus, a county board member who also serves as a deputy coroner would be called upon to vote upon the budget from which his compensation, if any, would be paid. This creates competing duties of loyalty. Consequently, it does not appear that a county board member may serve as a deputy coroner, even in those circumstances in which the deputy coroner does not receive compensation for carrying out his duties.

Lastly, you have inquired whether one person may serve simultaneously as a county board member and a deputy sheriff in those instances in which the deputy sheriff does not receive a salary for his services, but is reimbursed for mileage and other expenses. There are no constitutional or statutory provision which expressly prohibit simultaneous tenure in the offices of county board member and deputy county sheriff. Therefore, the issue again becomes whether a conflict in duties could arise if one person were to occupy both offices simultaneously.

In Rogers v. Village of Tinley Park (1983), 116 Ill. App. 3d 437, the court was asked to determine whether the offices of village trustee and municipal police officer were incompatible. In reaching its conclusion that one person could not serve simultaneously in those two offices, the court reviewed the elements of the doctrine of common law incompatibility:

" * * *

'It is to be found in the character of the offices and their relationship to each other, in the subordination of the one to the other, and in the nature of the duties and functions which attach to them.

Incompatibility of offices exist where there is a conflict in the duties of the offices, so that the performance of the duties of the one interferes with the performance of the duties of the other. They

are generally considered incompatible where such duties and functions are inherently inconsistent and repugnant, so that because of the contrariety and antagonism which would result from the attempt of one person to discharge faithfully, impartially, and efficiently the duties of both offices, considerations of public policy render it improper for an incumbent to retain both.

At common law, it is not an essential element of incompatibility of offices that the clash of duty should exist in all or in the greater part of the official functions. If one office is superior to the other in some of its principal or important duties, so that the exercise of such duties may conflict, to the public detriment, with the exercise of other important duties in the subordinate office, then the offices are incompatible.'

* * *

(Rogers v. Village of Tinley Park (1983), 116 Ill. App. 3d at 441.)

A review of the provisions of the Counties Code (55 ILCS 5/1-1001 et seq. (West 1994)) indicates that the county board is authorized to establish the number of deputy sheriffs to be appointed. (55 ILCS 5/3-6008 (West 1994).) In this regard, a county board member who also serves as a deputy sheriff would be called upon to determine whether his position as a deputy sheriff was necessary for the proper functioning of county government. This creates competing interests and divided loyalties which could hamper a county board member in the full and faithful performance of his duties.

In addition to determining the number of deputy sheriffs the county will employ, the county board is also charged with the duty to fix the compensation of the county sheriff, within statutory limitations (55 ILCS 5/4-6003 (West 1994)), and to provide for reasonable and necessary operating expenses for the sheriff's office (55 ILCS 5/5-1106 (West 1994)). As discussed supra, a county board member who also serves as a deputy sheriff would be required, when voting upon the budget of the county sheriff, to act annually upon the budget from which the sheriff's personal service contracts are satisfied. Thus, a county board member simultaneously serving as a deputy sheriff could create the appearance as well as the actuality of competing

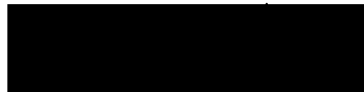
Honorable Terry Kaid - 6.

interests and divided loyalties which could hamper a county board member in the full and faithful performance of his duties. Consequently, it does not appear that one person may serve simultaneously as a county board member and a deputy county sheriff.

I would further note that you have inquired whether any potential conflict in duties which may exist could be resolved by the county board member in question refraining from participation in matters brought before the county board which involve the school district, the county coroner's office or the county sheriff's office, respectively. Our courts have consistently held that abstention will not avoid application of the doctrine of incompatibility of offices. (People ex rel. Teros v. Verbeck (1987), 155 Ill. App. 3d 81, 84; Rogers v. Village of Tinley Park (1983), 116 Ill. App. 3d 437.) Moreover, the court in Rogers v. Village of Tinley Park noted that "[t]he common law doctrine of incompatibility * * * insure[s] that there be the appearance as well as the actuality of impartiality and undivided loyalty." (116 Ill. App. 3d at 442 quoting O'Connor v. Calandrillo (1971), 285 A.2d 275, aff'd, 296 A.2d 326 (1972), cert. denied, 299 A.2d 727 (1973), cert. denied, 93 S.Ct. 2775 (1973).) Therefore, it does not appear that abstention from participation will resolve a conflict of interest or a conflict in duties.

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
Bureau Chief, Opinions

MJL:LP:dn



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

May 1, 2003

I - 03-002

COMPATIBILITY OF OFFICES:
County Board Member and
School Board Member

The Honorable Mark L. Shaner
State's Attorney, Crawford County
105 Douglas Street
Robinson, Illinois 62454

Dear Mr. Shaner:

I have your letter wherein you inquire whether, pursuant to section 1.2 of the Public Officer Prohibited Activities Act (50 ILCS 105/1.2 (West 2000)), a member of the county board in a county with fewer than 40,000 inhabitants may simultaneously hold the offices of county board member and school board member for more than one term of office. 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 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; Rogers v. Village of Tinley Park (1983), 116 Ill. App. 3d 437, 440-41; People ex rel. Myers v. Haas (1908), 145 Ill. App. 283, 286.) In opinion No. 93-011 (Ill. Att'y Gen. Op. No. 93-011, issued May 25, 1993), Attorney General Burris

concluded that the office of county board member was incompatible with that of school board member because of potential conflicts between the duties delegated to those offices.

Since incompatibility of offices is a common law doctrine, however, it may be modified or superseded legislatively. (See informal opinion No. I-96-028, issued May 28, 1996.) Shortly after opinion No. 93-011 was issued, the General Assembly enacted Public Act 88-471, effective September 1, 1993, which added section 1.2 to the Public Officer Prohibited Activities Act (50 ILCS 105/1.2 (West 2000)). Section 1.2 provides as follows:

"County board member; education office.
A member of the county board in a county having fewer than 40,000 inhabitants, during the term of office for which he or she is elected, may also hold the office of member of the board of education, regional board of school trustees, board of school directors, or board of school inspectors."

You have inquired whether the General Assembly's use of the phrase "term of office" in section 1.2 of the Public Officer Prohibited Activities Act, rather than "terms of office", was intended to preclude a person from simultaneously holding the offices of county board member and school board member for more than a single term of office.

The primary purpose of statutory construction is to ascertain and give effect to the intent of the General Assembly. (People v. Whitney (1999), 188 Ill. 2d 91, 97.) Legislative intent is best evidenced by the language used in the statute. (King v. Industrial Comm'n (2000), 189 Ill. 2d 167, 171.) Where the language of a statute is clear and unambiguous, it must be given effect as written without reading into it exceptions, limitations or conditions that the legislature did not express. (In re D.L. (2000), 191 Ill. 2d 1, 9.) Moreover, construction defeating a statute's purpose or yielding an absurd or unjust result should be avoided. People v. Latona (1998), 184 Ill. 2d 260, 269.

The plain and unambiguous language of section 1.2 of the Public Officer Prohibited Activities Act permits a county board member in a county with fewer than 40,000 inhabitants to

serve simultaneously in one of the education offices specified therein, including the office of school board member. Although the General Assembly used the singular tense "term of office" in section 1.2, there is nothing to suggest that its use was intended to limit a county board member in such a county to serving on a school board for only one term of office. When the General Assembly has elsewhere intended to limit simultaneous tenure to one term, it has done so specifically. See, for example, section 3-7 of the Public Community College Act (110 ILCS 805/3-7 (West 2000)), which provides:

" * * *

* * * In the event a person who is a member of a common school board is elected or appointed to a board of trustees of a community college district, that person shall be permitted to serve the remainder of his or her term of office as a member of the common school board. Upon the expiration of the common school board term, that person shall not be eligible for election or appointment to a common school board during the term of office with the community college district board of trustees.

* * *

"

Furthermore, similar phraseology is used in other provisions of the Public Officer Prohibited Activities Act authorizing simultaneous tenure in office (see, e.g., 50 ILCS 105/1, 1.1, 1.2 and 1.3 (West 2000)), but such language has apparently never been interpreted as limiting simultaneous tenure to a single term of office.

Lastly, I note that during the legislative debates concerning Senate Bill 345, which was enacted as Public Act 88-471, the sponsor of the legislation stated: "* * * [t]his language is added because there are many people, many times in * * * smaller counties in the State of Illinois where its [sic] individuals simply can't be found to hold these offices * * *". (Remarks of Rep. Steczo, July 13, 1993, House Debate on House Bill No. 345, at 88.) To construe section 1.2 of the Public Officer Prohibited Activities Act as limiting a person to holding

The Honorable Mark L. Shaner - 4.

the offices of county board member and school board member for only one term would defeat the stated purpose of the statute.

It appears, therefore, that under section 1.2 of the Public Officer Prohibited Activities Act, a county board member in a county with fewer than 40,000 inhabitants may simultaneously serve as a school board member indefinitely.

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

Sincerely,

A solid black rectangular redaction box covering the signature of Michael J. Luke.

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

MJL:LAS/KJS:an



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 31, 2006

I - 06-013

COMPATIBILITY OF OFFICES:

County Board Member
and School Board Member

The Honorable Terence M. Patton
State's Attorney, Henry County
307 West Center Street
Cambridge, Illinois 61238

Dear Mr. Patton:

I have your letter inquiring whether, in light of *People ex rel. Smith v. Wilson*, 357 Ill. App. 3d 204 (2005), a person who has been elected to the incompatible offices of county board member and school board member will be deemed to have vacated one of the offices as a matter of law. For the reasons set forth below, a county board member, during his or her term of office, may not be elected to the office of school board member. Pursuant to Illinois statute, the election to the school board is void. Under Illinois common law, if a school board member, during his or her term of office, is elected to the county board, assumption of the incompatible office of county board member will constitute an *ipso facto* resignation from the office of school board member.

According to the information you have provided, two members of the Henry County Board also serve simultaneously as school board members. The first individual (Member A) was elected to the school board in 1997 and then elected to the county board in 1998. Member A was re-elected to the school board in 2001 and the county board in 2002, and was again re-elected to the county board in 2004 and to the school board in 2005. The second individual (Member B) was elected to the school board in 2002 and then elected to the county board in 2004. Because the offices of county board member and school board member are

incompatible, you have asked which of the offices the school board-county board members must vacate, under the court's holding in *Wilson* or the common law, as the case may be.

In *Wilson*, the appellate court determined that the offices of county board member and school board member were incompatible under section 1 of the Public Officer Prohibited Activities Act (the Act) (50 ILCS 105/1 (West 2004), as amended by Public Act 94-617, effective August 18, 2005). The case arose because, approximately five months after becoming a county board member, the defendant Wilson was elected to the local school board. In reaching its conclusion that one person may not hold the office of county board member and be elected to the office of school board member, the court reviewed section 1 of the Act, which provides, in pertinent part:

*No member of a county board, during the term of office for which he or she is elected, may be appointed to, accept, 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, (ii) alderman of a city or member of the board of trustees of a village or incorporated town if the city, village, or incorporated town has fewer than 1,000 inhabitants and is located in a county having fewer than 50,000 inhabitants, or (iii) trustee of a forest preserve district created under Section 18.5 of the Conservation District Act; 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. * * * Nothing in this Act shall be construed to prohibit an elected county official from holding elected office in another unit of local government so long as there is no contractual relationship between the county and the other unit of local government.^[1] This amendatory Act of 1995 is declarative of existing law and is not a new enactment. (Emphasis added.)*

The court concluded that, under the plain language of section 1 of the Act and except to the extent specifically authorized therein, a county board member is prohibited from simultaneously holding any other public office. The court further concluded that if a county

¹In *Wilson*, defendant argued that this sentence allowed him to hold the offices of county board member and school board member simultaneously. The court concluded that this sentence would not allow the defendant to hold these offices simultaneously because a school district is not a "unit of local government," as that phrase is defined in the Illinois Constitution. *Wilson*, 357 Ill. App. 3d at 206-07.

board member is elected to another office, except in the limited circumstances authorized, any such election is void. Thus, because Wilson was an incumbent county board member at the time he was elected to the school board, his election to the school board was void, and he was ordered removed therefrom.

Applying the court's analysis to your inquiry, it appears that Member A, who was re-elected to the county board in 2004 and re-elected to the school board in 2005, is currently entitled to hold the office of county board member but not that of school board member. Member A was serving as a county board member when he or she was most recently elected to the office of school board member. This is precisely the factual situation reviewed by the court in *Wilson*. Consequently, as in *Wilson*, Member A's election to the school board was void.

With respect to Member B, however, *Wilson* is not dispositive of the issue. Member B was serving as a school board member at the time that he or she was elected to the county board. As previously discussed, the *Wilson* case was based upon the specific statutory prohibition of section 1 of the Act that is applicable to incumbents of the county board. Because Member B was not serving on the county board when he or she was elected to the school board, section 1 of the Act was not applicable.

In the absence of a specific statutory provision addressing the incompatibility of particular public offices, the propriety of holding two offices simultaneously is reviewed under the common law doctrine of incompatibility of offices. See generally *People ex rel. Smith v. Brown*, 356 Ill. App. 3d 1096 (2005). The common law doctrine of incompatibility of offices precludes simultaneous tenure in two public offices 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); *Brown*, 356 Ill. App. 3d at 1098; *People ex rel. Myers v. Haas*, 145 Ill. App. 283, 286 (1908). Under the common law, the acceptance of an incompatible office by the incumbent of another office constitutes an *ipso facto* resignation of the first office held. See *Brown*, 356 Ill. App. 3d at 1101; *Myers*, 145 Ill. App. at 287; 1991 Ill. Att'y Gen. Op. 177, 178; 1991 Ill. Att'y Gen. Op. 188, 189; 1981 Ill. Att'y Gen. Op. 47, 48; 1980 Ill. Att'y Gen. Op. 81, 84; 1972 Ill. Att'y Gen. Op. 45, 47.

In opinion No. 93-011, issued May 25, 1993, Attorney General Burris was asked to determine whether one person may simultaneously hold the offices of school board member and county board member. Under the common law analysis, Attorney General Burris concluded that the office of school board member was incompatible with that of county board member because of potential conflicts between the duties delegated to those offices. Shortly after opinion No. 93-011 was issued, the General Assembly enacted Public Act 88-471, effective September 1, 1993, which added section 1.2 to the Act (50 ILCS 105/1.2 (West 2004)) and authorizes county

board members in a county of fewer than 40,000 inhabitants to hold, among other things, the office of member of a board of education or school board member. Based on Federal census figures, it appears that Henry County's population exceeds 40,000 inhabitants. See Illinois Blue Book 421 (2003-2004).

Applying the common law doctrine of incompatibility of offices to the specific facts in your inquiry, it appears that Member B, who was elected to the school board in 2002 and then to the county board in 2004, is considered to have resigned his or her office as school board member as a matter of law upon qualifying for and assuming the office of county board member. See *Brown*, 356 Ill. App. 3d at 1098.²

In summary, a county board member, during his or her term of office, may not be elected to the office of school board member, and any such election to the school board is void under section 1 of the Act. If a school board member, during his or her term, is elected to the county board, assumption of the incompatible office of county board member will constitute an *ipso facto* resignation from the office of school board member under the common law doctrine of incompatibility of offices.

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

Very truly yours,



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

LEP:CIE:an

² On the same day that the appellate court handed down its opinion in *Wilson*, the court also decided another compatibility of offices case. In *Brown*, the appellate court determined that the offices of park district board member and city alderman were incompatible due to a conflict of duties between the offices. In that case, the defendant was elected to the park district board in 2001 and to the position of alderman in 2003. Because the court found the two positions to be incompatible, the court concluded that the defendant's acceptance of the position of alderman was an *ipso facto* resignation as park district board member. *Brown*, 356 Ill. App. 3d at 1098. Because of the different holdings in *Wilson* and *Brown*, confusion may have resulted as to which incompatible office an officer must vacate, or whether the officer must vacate a specific office as a matter of law. The distinction between the two cases, like the distinction between the situations concerning the two Henry County board members, is based on the fact that a specific statute prohibited election to the one office (*Wilson*, 357 Ill. App. 3d at 207), while no such statute existed in the other case to prohibit election to the second office (*Brown*, 356 Ill. App. 3d at 1098).



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

May 20, 2009

I - 09-005

COMPATIBILITY OF OFFICES:
County Board Member and
School Board Member

The Honorable Jonathan H. Barnard
State's Attorney, Adams County
Adams County Courthouse
521 Vermont Street
Quincy, Illinois 62301

Dear Mr. Barnard:

I have your letter inquiring whether, pursuant to the court's holding in *People v. Wilson*, 357 Ill. App. 3d 204 (2005), the election of an incumbent county board member to a school board at the consolidated election held on April 7, 2009, is void. Based on the decision in *Wilson*, a county board member in a county of 40,000 or more inhabitants may not simultaneously hold the office of school board member. Therefore, the election of an incumbent county board member to a school board in a county of 40,000 or more is void under section 1 of the Public Officer Prohibited Activities Act (the Prohibited Activities Act) (50 ILCS 105/1 (West 2006)). Further, because such election is void, a county board member has no discretion to accept the office of school board member. He or she does, however, remain entitled to hold the office of county board member.

BACKGROUND

Your letter states that an individual currently serving as an Adams County Board member was first elected to the office of school board member on November 7, 1989, and

assumed the office of county board member on December 7, 1992. His service in these offices has been continuous and without interruption since the dates indicated. He was most recently re-elected to the office of school board member at the consolidated election held on April 7, 2009.

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.¹ *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 expressly prohibits one person from simultaneously serving as a county board member and a school board member. However, the provisions of section 1 of the Prohibited Activities Act, which address the ability of county board members to hold other public offices, necessarily preclude a county board member from simultaneously holding the office of school board member in these circumstances.

Section 1 of the Prohibited Activities Act provides, in pertinent part:

*No member of a county board, during the term of office for which he or she is elected, may be appointed to, accept, 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, (ii) alderman of a city or member of the board of trustees of a village or incorporated town if the city, village, or incorporated town has fewer than 1,000 inhabitants and is located in a county having fewer than 50,000 inhabitants, or (iii) trustee of a forest preserve district created under Section 18.5 of the Conservation District Act, 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. * * * Nothing in this Act shall be construed to prohibit an elected county official from*

¹In opinion No. 93-011, issued May 25, 1993, Attorney General Burriss was asked to determine whether one person may simultaneously hold the offices of school board member and county board member. Because of a potential conflict in duties, Attorney General Burriss concluded that the office of school board member was incompatible with that of county board member. In opinion No. S-590, issued May 22, 1973 (1973 Ill. Att'y Gen. Op. 83), Attorney General Scott concluded, on similar grounds, that the offices of county board member and school board member were incompatible.

holding elected office in another unit of local government so long as there is no contractual relationship between the county and the other unit of local government. This amendatory Act of 1995 is declarative of existing law and is not a new enactment. (Emphasis added.)

The Illinois Appellate Court construed section 1 in *Wilson* and concluded that the offices of county board member and school board member were incompatible under the Prohibited Activities Act. The case arose because, approximately five months after becoming a county board member, the defendant was elected to the local school board. *Wilson*, 357 Ill. App. 3d at 205. The court held that, under the plain language of section 1 of the Prohibited Activities Act and except to the extent specifically authorized by law, a county board member is prohibited from simultaneously holding another public office. *Wilson*, 357 Ill. App. 3d at 206. The court further concluded that, except in the limited circumstances specifically authorized by law, if a county board member is elected to another office, the election is void. *Wilson*, 357 Ill. App. 3d at 206.²

²At the time of the initial election of the individual who is the subject of your inquiry to the county board, section 1 of the Prohibited Activities Act (50 ILCS 105/1 (West 1992)) provided:

No member of a county board, during the term of office for which he or she is elected, may be appointed to, accept, or hold any office other than 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. (Emphasis added.)

This language prohibited an incumbent county board member from being appointed to another office, other than those specified, if the appointment was made by the county board. See 1980 Ill. Att'y Gen. Op. 123, 124.

Public Act 88-623, effective January 1, 1995, amended section 1 and broadened its scope. Specifically, Public Act 88-623 added subparagraph (ii) which expressly permits a member of the county board to hold the office of alderman of a city or member of the board of trustees of a village or incorporated town, if the village or incorporated town has fewer than 1,000 inhabitants and is located in a county having fewer than 50,000 inhabitants. The amendment also placed the phrase "by appointment or election of the board of which he or she is a member" within subparagraph (i) to describe the exception for appointment of the chairman of the county board or member of the regional planning commission, rather than limit the application of section 1 generally. As the *Wilson* holding makes clear, the manner by which the General Assembly added the language allowing simultaneous service in those offices to section 1 of the Prohibited Activities Act, rather than the Public Officer Simultaneous Tenure Act (50 ILCS 110/0.01 *et seq.* (West 2006)), also broadened the scope of the general prohibition contained in section 1. Thus, with the enactment of Public Act 88-623, county board members are prohibited from being appointed or elected to any other offices, unless authorized by law.

Pursuant to section 1 of the Prohibited Activities Act, as construed by the court in *Wilson*, no county board member may be elected or appointed, during the term of office for which he or she is elected, to any office other than those specified in section 1 or elsewhere in Illinois law.³ Neither section 1 nor any other statute expressly permits one person to serve simultaneously as a county board member and a school board member in counties having populations of 40,000 inhabitants or more. Therefore, pursuant to section 1 of the Prohibited Activities Act, an Adams County Board member may not be appointed or elected to the office of school board member. If an Adams County Board member, during his or her term of office, is elected to the office of school board member, the election is void under section 1 of the Prohibited Activities Act.

You have also asked whether, pursuant to the court's holding in *Wilson*, an individual who has been elected in succeeding elections to serve simultaneously in the offices of county board member and school board member may choose which of the offices to retain. Under the common law, the acceptance of an incompatible office by the incumbent of another office constitutes an *ipso facto* resignation of the first office held. See *Brown*, 356 Ill. App. 3d at 1101; *Myers*, 145 Ill. App. at 287; 1991 Ill. Att'y Gen. Op. 188, 189; 1991 Ill. Att'y Gen. Op. 177, 178; 1981 Ill. Att'y Gen. Op. 47, 48; 1980 Ill. Att'y Gen. Op. 81, 84; 1972 Ill. Att'y Gen. Op. 45, 47. Thus, under the common law, if an incumbent officer chooses not to accept the incompatible office, no resignation from the first office results.

Under section 1 of the Prohibited Activities Act, as applied in *Wilson*,⁴ however, any election of a county board member to another office not specifically authorized by law is

³For example, section 1.2 of the Prohibited Activities Act (50 ILCS 105/1.2 (West 2006)) authorizes county board members "in a county having fewer than 40,000 inhabitants" to hold, among other positions, the office of "member of the board of education" or school board member. Based on 2000 Federal census figures, Adams County's population is 68,277 people. Based on 1990 Federal census figures, Adams County's population was 66,090 people. The population of Adams County has exceeded 40,000 inhabitants at all pertinent times. See Illinois Blue Book 500 (2007-2008); Illinois Blue Book 412 (1993-1994). Therefore, an Adams County Board member may not serve on a school board pursuant to section 1.2 of the Prohibited Activities Act.

⁴As noted in informal opinion No. I-06-013, issued January 31, 2006, and informal opinion No. I-09-001, issued March 5, 2009, on the same day that the appellate court handed down its decision in *Wilson*, the court also decided another compatibility of offices case. In *People ex rel. Smith v. Brown*, 356 Ill. App. 3d 1096 (2005), the appellate court determined that the offices of park district board member and city alderman were incompatible due to a conflict of duties between the offices. In that case, the defendant was elected to the park district board in 2001 and to the position of alderman in 2003. Because the court found the two positions to be incompatible, the court concluded that the defendant's acceptance of the position of alderman was an *ipso facto* resignation as park district board member. *Brown*, 356 Ill. App. 3d at 1098, 1101. Because of the different holdings in *Wilson* and *Brown*, confusion may have resulted as to which incompatible office an officer must vacate, or whether the officer must vacate a specific office as a matter of law. The distinction between the two cases is based on the fact that, in the case of county board members, a specific statute prohibited election to the one office (*Wilson*, 357 Ill. App. 3d at 207), while no such statute existed in the other case to prohibit election to the second office (*Brown*, 356 Ill. App. 3d at 1098).

void. Therefore, in the circumstances underlying your inquiry, the county board member holds only one office—county board member. Even though the county board member received the requisite number of votes to be elected to the office of school board member, the election is void. Accordingly, there is no other office for the county board member to choose to accept. Therefore, as in *Wilson*, the county board member remains entitled to complete his or her term on the county board, and is subject to removal from the school board if he or she attempts to serve thereon.

CONCLUSION

Pursuant to section 1 of the Public Officer Prohibited Activities Act, a county board member may not be elected to or hold the office of school board member simultaneously unless specifically authorized to do so by statute. If a county board member in a county of 40,000 or more inhabitants, during his or her term of office, is elected to the office of school board member, the election is void under section 1 of the Prohibited Activities Act. Because the election is void, a county board member who receives the requisite number of votes to be elected to the office of school board member has no discretion to accept the office of school board member. The incumbent county board member remains entitled to hold the office of county board member.

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

Very truly yours,

A large black rectangular redaction box covering the signature of Lynn E. Patton.

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

LEP:LAS:lk



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

June 21, 2006

I - 06-031

COMPATIBILITY OF OFFICES:

School Board Member and
County ESDA Coordinator

School Board Member and
County Zoning Administrator

The Honorable John H. Vogt
State's Attorney, Stephenson County
Stephenson County Courthouse
15 North Galena Avenue
Freeport, Illinois 61032

Dear Mr. Vogt:

I have your letter inquiring whether a school board member may simultaneously serve either as a county Emergency Services and Disaster Agency (ESDA) Coordinator, or as a county zoning administrator. For the reasons stated below, the office of school board member is incompatible with both the office of county ESDA coordinator and the office of county zoning administrator.

School Board Member and County ESDA Coordinator

Your first question concerns whether a school board member may serve simultaneously as Stephenson County's Emergency Services and Disaster Agency (ESDA)

Coordinator.¹ These positions both constitute public offices.² 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, 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 prohibiting one person from simultaneously holding the offices of county ESDA coordinator and school board member. The issue, therefore, is whether the duties of either office are such that the holder of one cannot fully and faithfully discharge all of the duties of the other.

The duties of school board members are set out, generally, in article 10 of the School Code (105 ILCS 5/10-1 *et seq.* (West 2004)). The school board exercises the corporate powers of the school district. 105 ILCS 5/10-20.1 through 10-23.12 (West 2004). These powers relate exclusively to the administration of schools within a particular district and include supervising the education of children within the district, the raising of revenue by tax levy, the hiring of teachers, and the maintaining of schools. *See* 105 ILCS 5/10-20.1 through 10-23.12 (West 2004); *see also* Ill. Att'y Gen. Inf. Op. No. I-94-030, issued June 8, 1994; Ill. Att'y Gen. Inf. Op. No. I-89-066, issued December 5, 1989. In connection with emergency preparedness issues, section 10-22.35 of the School Code (105 ILCS 5/10-22.35 (West 2004)) provides that it is the duty of the school board:

To make school buildings available for use as civil defense shelters for all persons; to cooperate with the Illinois Emergency Management Agency, local organizations for civil defense, disaster relief organizations, including the American Red Cross, and federal agencies concerned with civil defense relative thereto, including,

¹Although referred to by ordinance as the "Director of Emergency Management and Planning," it is clear from the supplemental materials that you have provided that this title refers to the statutory position of county ESDA coordinator. *See* 20 ILCS 3305/10(i) (West 2004), as amended by Public Act 94-733, effective April 27, 2006; *see generally* Stephenson County Code, §5-1 *et seq.* Accordingly, the statutory title will be used in this opinion.

²Informal opinion No. I-04-017, issued October 15, 2004, concluded that one person could not hold the positions of county board chairman (elected at-large) and county ESDA coordinator simultaneously. In reaching this conclusion, it was necessary to determine whether the position of county ESDA coordinator was a public office. Applying the several indicia of public office to the position of county ESDA coordinator, it was determined that the position does constitute a public office. I am enclosing a copy of informal opinion No. I-04-017 for your reference.

but not limited to, making space available for the stocking of shelters with food and other provisions; *and to cooperate with such agencies and organizations in the use of other resources, equipment, and facilities*, and to cooperate with such agencies and organizations in the construction of new buildings to the end that the buildings be so designed that shelter facilities may be provided. (Emphasis added.)

In addition to serving as civil defense shelters, school buildings may be used for other purposes during an emergency situation, such as a site for members of the public to receive vaccinations, medications, or treatments. School equipment and resources might be needed to respond to an emergency situation; for example, school buses could be used for transportation during an evacuation of a county's population.

In carrying out the Illinois Emergency Management Agency Act (the Emergency Management Act) (20 ILCS 3305/10(i) (West 2004), as amended by Public Act 94-733, effective April 27, 2006), each "political subdivision," a term that includes counties (20 ILCS 3305/4 (West 2004), as amended by Public Act 94-334, effective January 1, 2006), may enter into contracts and incur obligations necessary to place it in a position to combat disasters, to protect the health and safety of persons, to protect property, and to provide emergency assistance to victims of disasters. 20 ILCS 3305/10(j) (West 2004), as amended by Public Act 94-733, effective April 27, 2006. Pursuant to this grant of authority, a county may enter into contracts and intergovernmental agreements for various disaster response activities. If the county board is unable to meet during a disaster, by local ordinance, the county ESDA coordinator, with the advice and consent of the county board chairman or chairman of the public safety committee of the board, is authorized to procure the services, supplies, equipment, or materials described in section 10(j) of the Emergency Management Act. *See Stephenson County Code sec. 5-10 (Ord. of 8-10-76, §10).*

It has long been established that one person cannot adequately represent the interests of two governmental units when those units contract with one another. 1991 Ill. Att'y Gen. Op. 188, 189; 1975 Ill. Att'y Gen. Op. 37, 43-47; Ill. Att'y Gen. Inf. Op. No. I-05-002, issued January 31, 2005; Ill. Att'y Gen. Inf. Op. No. I-05-003, issued January 31, 2005. Although a county ESDA coordinator would not ordinarily be a party to a contract or intergovernmental agreement between the county and the school district, he or she may nonetheless influence the making of the contract. In *Peabody v. Sanitary District of Chicago*, 330 Ill. 250 (1928), the Supreme Court held that a contract between the board of trustees of a sanitary district and a contractor was void because the treasurer of the district had a business relationship with the contractor and an interest in the contract. The Court noted that because the treasurer's duties included serving as financial advisor to the trustees, he might have been called on to act on the

letting of the contract by advising the board as to the financial status of the bidders. For that reason, the Court held that the conflict of interest statute (*see Cahill's Stat. 1927, ch. 102, par. 3*) was violated.

Based on *Peabody*, Attorney General Scott concluded in opinion No. S-1120, issued July 1, 1976 (1976 Ill. Att'y Gen. Op. 232), that the offices of county superintendent of highways (now county engineer) and city alderman were incompatible. Attorney General Scott stated therein:

Like the treasurer in *Peabody*, the county superintendent of highways in the present situation might naturally be called upon by the county board for advice in these situations in which the interests of the county and those of the municipality might be opposed to each other. The maintenance which is the subject of the agreement authorized in section 5-410 would come under the supervision of the county superintendent of highways. Similarly, the improvements contracted for pursuant to section 5-502 are to be planned by the county superintendent of highways. With regard to the deletion of highways from the county system it should be noted that the county superintendent of highways is responsible for supervising the construction and maintenance of all county highways within the county. (Ill. Rev. Stat. 1975, ch. 121, par. [5-] 205.5 [now codified at 605 ILCS 5/5-205.5 (West 2004)].) In each of these situations there is the possibility that the county board might ask for the advice of the county superintendent of highways. In that case, the county superintendent's duty to advise the county board as to the best interest of the county might conflict with his duty as alderman to act for the best interest of the city. 1976 Ill. Att'y Gen. Op. at 233-34.

In light of the county ESDA coordinator's statutory duties (*see 20 ILCS 3305/10* (West 2004), as amended by Public Act 94-733, effective April 27, 2006), it is foreseeable that the county ESDA coordinator could be called on to assist in negotiating or reviewing the terms of any contracts or intergovernmental agreements or to advise the county board with regard to the same. A school district is a likely participant in such agreements. If one person were to serve as both a county ESDA coordinator and a school board member, and those governmental entities were to enter into a contract or agreement relating to emergency preparedness, he or she would be placed in the untenable position of ensuring that the best interests of both the county ESDA and the school district would be served.

Because of the potential conflicts in the duties of these offices, a person who serves simultaneously as both a county ESDA coordinator and a school board member would not be able to represent the interests of both entities adequately, fully, and faithfully. Therefore, the two offices are incompatible, and one person cannot simultaneously hold both.

School Board Member and County Zoning Administrator

Your second question is whether a school board member may serve simultaneously as the county zoning administrator.³ There is no constitutional or statutory provision that prohibits one person from serving simultaneously as both a school board member and a county zoning administrator. As in your first question, 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.

Division 5-12 of the Counties Code (55 ILCS 5/5-12001 *et seq.* (West 2004)) authorizes a county to enact a zoning ordinance. Section 5-12008 of the Code (55 ILCS 5/5-12008 (West 2004)) provides:

All ordinances or resolutions passed under the terms of this Division shall be enforced by such officer of the county as may be designated by ordinance or resolution. The ordinance or resolution * * * may vest in the officer designated to enforce the ordinance or resolution, the power to make orders, requirements, decisions and determinations with respect to applications for such permits and with respect to the enforcement of the terms of the ordinance or resolution.

Under section 13.02 of the Stephenson County Code, a copy of which you have provided, Stephenson County has established the office of county zoning administrator to administer and enforce the county zoning ordinance. Section 13.02 additionally provides that the county zoning administrator shall, among other things: examine and approve applications pertaining to the use of land or structures when the application conforms with the provisions of the zoning ordinance; issue zoning certificates and sign permits; issue occupancy certificates; supervise inspections of structures and uses of land to determine compliance with the terms of the county zoning ordinance, and where there are violations, initiate action to secure compliance; decide or make recommendations on all other matters under the zoning ordinance upon which the

³You have referred in your letter to the position of "Director of Planning and Zoning." Based on the supplemental materials provided, it appears that the title "Director of Planning and Zoning" refers to the office of county zoning administrator. Accordingly, the office is referred to herein by its generic title.

zoning administrator is required to act; initiate, direct, and review, from time to time, a study of the provisions of the zoning ordinance and make reports of his recommendations to the zoning board of appeals, the county planning commission, and the board of supervisors at least annually; and assist the State's Attorney in developing proposed amendments to the zoning ordinance.

As previously noted, under article 10 of the School Code, a school board exercises the corporate powers of the school district, including those related to the administration of schools within a particular district and the maintaining of schools. With regard to zoning issues, a school board is empowered to seek zoning changes, variations, and special uses for property held or controlled by the school district. 105 ILCS 5/10-22.13a (West 2004). In any hearing before a zoning commission or board of appeals, a school district has the right to appear and present evidence concerning any property or part thereof located in the school district. 55 ILCS 5/5-12019 (West 2004).

In opinion No. S-1367, issued June 29, 1978 (1978 Ill. Att'y Gen. Op. 127); Attorney General Scott addressed the analogous question of whether the offices of county zoning board of appeals member and school board member were incompatible. Relying on various sections of "AN ACT in relation to county zoning" (Ill. Rev. Stat. 1977, ch. 34, pars. 3154, 3156, 3158, now codified at 55 ILCS 5/5-12009, 5-12011, 5-12014 (West 2004)), which set forth the powers of a county zoning board of appeals, Attorney General Scott concluded that because of potential conflicts of duties regarding zoning decisions, one person could not simultaneously serve as a county zoning board of appeals member and school board member. Attorney General Scott explained the interests of school boards in zoning matters as follows:

The school board is interested in the character of the neighborhood surrounding its schools. It also is concerned with the number and type of residential units within its district since this will affect student enrollment. * * * Basically, zoning decisions determine the character of the development in * * * [school] districts. Development determines the tax base and demand for services on each district. A person holding a position on the county board of appeals and * * * [the school board] could not in every instance properly and faithfully perform all the duties of both offices. 1978 Ill. Att'y Gen. Op. at 128-29.

It is clear that potential conflicts in the duties of these offices could prevent one person from faithfully discharging the duties of each office simultaneously. By allowing a school district to appear and present evidence in any hearing regarding any property within the school district, the Counties Code recognizes a school district's interest in county zoning. 55 ILCS 5/5-12019 (West 2004); 1978 Ill. Att'y Gen. Op. at 128-29. A county zoning administrator, in

exercising the duties granted to that office under the Counties Code and the county zoning ordinance, may be called on to take action or make recommendations with regard to zoning matters in which the school district is interested, while simultaneously representing the interests of the district. These respective interests may well be inconsistent. Therefore, one person cannot fully represent the interests of both governmental entities. *See also* 1982 Ill. Att'y Gen. Op. 53, 54-55 (office of city alderman and county zoning administrator incompatible). Consequently, the offices of school board member and county zoning administrator are incompatible; and one person may not hold both positions simultaneously.

Legal Consequences of Holding Incompatible Offices

You have also inquired regarding the legal consequences of holding incompatible offices. First, I note that mere abstention from voting or otherwise acting on matters will not resolve the inherent conflict between incompatible offices. *See People ex rel. Teros v. Verbeck*, 155 Ill. App. 3d 81, 84 (1987), *appeal dismissed*, 115 Ill. 2d 550 (1987); Ill. Att'y Gen. Op. No. 96-042, issued December 4, 1996. Rather, it is well settled in Illinois that the acceptance of a second, incompatible office by the incumbent of another office constitutes an *ipso facto* resignation of the first office held. *See Brown*, 356 Ill. App. 3d at 1101; *Haas*, 145 Ill. App. at 287; 1991 Ill. Att'y Gen. Op. 177, 178; 1981 Ill. Att'y Gen. Op. 47, 48; 1980 Ill. Att'y Gen. Op. 81, 84; 1972 Ill. Att'y Gen. Op. 45, 47.

Applying the common law doctrine of incompatibility of offices to the specific facts in your inquiry, upon qualifying for and assuming the second incompatible office, the dual officeholder will be considered, as a matter of law, to have resigned from the first public office held. This is not an official opinion of the Attorney General. If we may be of further assistance, please advise.


Very truly yours,


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

LEP:LAS:an:ljc

Enclosure



ROLAND W. BURRIS

ATTORNEY GENERAL
STATE OF ILLINOIS



January 7, 1994

I - 94-003

COMPATIBILITY OF OFFICES:
School Board Member and
County Engineer

Honorable Sherri L. E. Tungate
State's Attorney, Clay County
Clay County Courthouse
Louisville, Illinois 62858

Dear Ms. Tungate:

I have your letter wherein you inquire whether one person may serve simultaneously in the offices of school board member and county engineer. 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.

Incompatibility between offices arises when a statute or the constitution prohibits the holder of one office from also holding the other, or where the duties of either office are such that the holder of the one office cannot fully, properly and faithfully perform all of the duties of the other office. (People ex rel. Myers v. Haas (1908), 145 Ill. App. 283.) There is no statutory or constitutional prohibition regarding simultaneous tenure as a county engineer and a school board member. Therefore, the issue presented is whether the duties of the offices in question may conflict.

The office of county engineer (formerly county superintendent of highways) is provided for in section 5-201 of the Illinois Highway Code (Ill. Rev. Stat. 1991, ch. 121, par. 5-201;

Honorable Sherri L. E. Tungate - 2.

605 ILCS 5/5-201 (West 1992)). Subsequent sections of the Code set forth the term of office and the duties thereof. There are no statutory duties of the office of county engineer which expressly relate to school districts.

The office of school board member is created by, and the duties thereof are set forth in, article 10 of the School Code (Ill. Rev. Stat. 1991, ch. 122, par. 10-1 et seq.; 105 ILCS 5/10-1 et seq. (West 1992)). In connection with the construction of schools, school boards are required to lay out and provide for the construction of access roads. (Ill. Rev. Stat. 1991, ch. 122, par. 10-22.36A; 105 ILCS 5/10-22.36A (West 1992).) However, such roads are to be constructed as part of general school construction projects, and there is no provision in the School Code which requires the county to undertake any act with respect to the construction or maintenance of roads for schools.

You have stated that the county highway department does assist the school district in minor highway maintenance work, at the county's established rates for such work. The county board, and not the county engineer, is responsible for entering into intergovernmental agreements regarding the use of county personnel and equipment. The county board is responsible for providing all of the equipment and personnel reasonably required by the county engineer in the discharge of the duties of his office. (Ill. Rev. Stat. 1991, ch. 121, par. 5-202; 605 ILCS 5/5-202 (West 1992).) The recommendations of the county engineer do not become official until they are adopted by the county board. (Moffett v. Hicks (1923), 229 Ill. App. 296, 308-09.) Although he occupies a distinct office, the county engineer is subordinate to the county board. (1978 Ill. Att'y Gen. Op. 75, 76.) Therefore, the county engineer is not a party to any contract which may be entered into between the county and the school district.

Despite the fact that the county engineer would not be a party to a contract between the county and the school district, he may nonetheless influence that contract. In Peabody v. Sanitary District of Chicago (1928), 330 Ill. 250, the supreme court held that a contract between the board of trustees of a sanitary district and a contractor was void because the treasurer of the district had an interest in the contract. The court noted that since the duties of the treasurer included serving as financial advisor to the trustees, he might have been called upon to act on the letting of the contract by advising the board as to the financial status of the bidders. For that reason, the court held that the conflict of interest statute (see Cahill's Statutes 1927, ch. 102, par. 3) was violated.

Honorable Sherri L. E. Tungate - 3.

Based upon the Peabody case, Attorney General Scott concluded in opinion No. S-1120, issued July 1, 1976 (1976 Ill. Att'y Gen. Op. 232) that the offices of county superintendent of highways (now county engineer) and alderman were incompatible. Attorney General Scott stated therein:

" * * *

Like the treasurer in Peabody, the county superintendent of highways in the present situation might naturally be called upon by the county board for advice in these situations in which the interests of the county and those of the municipality might be opposed to each other. The maintenance which is the subject of the agreement authorized in section 5-410 would come under the supervision of the county superintendent of highways. Similarly, the improvements contracted for pursuant to section 5-502 are to be planned by the county superintendent of highways. With regard to the deletion of highways from the county system it should be noted that the county superintendent of highways is responsible for supervising the construction and maintenance of all county highways within the county. (Ill. Rev. Stat. 1975, ch. 121, par. 205.5.) In each of these situations there is the possibility that the county board might ask for the advice of the county superintendent of highways. In that case, the county superintendent's duty to advise the county board as to the best interest of the county might conflict with his duty as alderman to act for the best interest of the city.

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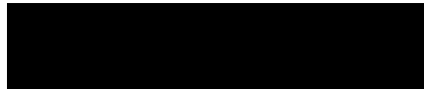
You have noted that the county does provide certain roadway maintenance services to the school district. The county board may naturally call upon the county engineer to advise it concerning such work. In these circumstances, the interests of the county and those of the school district may conflict, and a county engineer who also served as a school board member could be placed in a position in which his loyalties would be divided. Therefore, because of the potential conflicts in the duties of

Honorable Sherri L. E. Tungate - 4.

these offices, it appears that the offices of county engineer and school board member are incompatible.

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

Very truly yours,

A solid black rectangular redaction box covering the signature of Michael J. Luke.

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

MJL:KJS:cj



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 4, 2018

I - 18-001

COMPATIBILITY OF OFFICES:
County Treasurer and School
Board Member

The Honorable Sean Featherstun
State's Attorney, Jefferson County
Jefferson County Courthouse
100 South 10th Street, Room 203
Mount Vernon, Illinois 62864

Dear Mr. Featherstun:

I have your letter inquiring whether one person may serve simultaneously as a county treasurer and a school board member for a school district in the same county. According to the information you have provided, the Jefferson County treasurer is interested in running for the office of school board member in School District 80. The school district is located entirely within Jefferson County and entirely within one township and one high school district. For the reasons stated below, the offices of county treasurer and school board member are not incompatible and, therefore, one person may hold both offices simultaneously.

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. 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 that expressly prohibits one person from

serving simultaneously as both a county treasurer and a school board member. 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.

A school board is a body politic and corporate. 105 ILCS 5/10-2 (West 2016). The school board exercises the corporate powers of a school district. 105 ILCS 5/10-20.1 through 10-23.13 (West 2016). The principal duties of school board members are set forth in article 10 of the School Code (105 ILCS 5/10-1 *et seq.* (West 2016)) and include supervising the education of children, maintaining schools, raising revenue by tax levy, and hiring teachers and superintendents. 105 ILCS 5/10-20.1 through 10-23.13 (West 2016); *see* Ill. Att'y Gen. Inf. Op. No. I-11-003, issued March 31, 2011; Ill. Att'y Gen. Inf. Op. No. I-09-002, issued March 12, 2009; Ill. Att'y Gen. Inf. Op. No. I-94-030, issued June 8, 1994; Ill. Att'y Gen. Inf. Op. No. I-89-066, issued December 5, 1989. School board members have a duty to act in a manner that represents and protects the interests of the school district that they serve (*see* 105 ILCS 5/10-16.5 (West 2016)), and school boards, acting as a whole, possess wide discretion in the exercise of their statutory powers. *Tyska v. Board of Education of Township High School District 214*, 117 Ill. App. 3d 917, 923, *citing People ex rel. McCollum v. Board of Education of School District No. 71*, 396 Ill. 14 (1947), *rev'd on other grounds*, 333 U.S. 203, 68 S. Ct. 461 (1948).

The county treasurer is primarily responsible for the safekeeping and disbursement of county funds. The duties of the county treasurer are found in division 3-10 of the Counties Code (55 ILCS 5/3-10001 *et seq.* (West 2016)) and include receiving and safely keeping the revenues and public moneys of the county and all money and funds authorized by law to be paid to the office, and disbursing those money and funds pursuant to law (55 ILCS 5/3-10005 (West 2016)), filing monthly financial reports with the county clerk and chairman of the county board (55 ILCS 5/3-10005.2 (West 2016)), and maintaining special funds (55 ILCS 5/3-10005.3 (West 2016)). Additionally, the county treasurer acts as the *ex-officio* county collector (35 ILCS 200/19-35 (West 2016)). As such, the county treasurer is charged with receiving and distributing property tax proceeds and applicable interest to the various taxing districts, including school districts, in accordance with the Property Tax Code (*see* 35 ILCS 200/20-85 through 20-150 (West 2016)). Further, under section 19-27 of the School Code (105 ILCS 5/19-27 (West 2016)), county treasurers are to pay over surplus bond funds to the school treasurer in qualifying circumstances.

A review of the applicable provisions of the Counties Code, Property Tax Code, and School Code indicates that there is no relationship between the duties of the county treasurer and the duties of a school board member that would give rise to conflicting duties or interests. The duties of the county treasurer are ministerial in nature. *See Mitchell v. Short*, 251 Ill. App. 357, 359 (1929) (the duties of a county treasurer are ministerial and, as such, they may be performed by an individual appointed as deputy treasurer); Ill. Att'y Gen. Inf. Op. No. I-92-009,

issued February 4, 1992, at 2 (county treasurer's duties are ministerial and involve no exercise of discretion). None of the applicable provisions vest the county treasurer with any discretion concerning when to act, or the amount of funds to be paid over to the school district. Therefore, no potential benefit to the county treasurer or the school district, or disadvantage to any other school district within the county, could arise from the treasurer's performance of his or her statutory duties.¹ Additionally, there are no statutory provisions authorizing the school district to take any action with respect to the office of county treasurer. Accordingly, the offices of county treasurer and school district board member are not incompatible, and an individual may serve simultaneously in both positions.²

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, Public Access and Opinions Division

LEP:KMC:KAS:MAD:lh

¹See also Ill. Att'y Gen. Op. No. 82-039(NP), issued November 10, 1982, at 3 (although county treasurers are required by law to pay over a portion of real property tax revenue to various taxing districts, the offices of county treasurer and park district commissioner are compatible because the treasurer's duties are ministerial and do not involve an exercise of discretion that could give rise to conflicting duties or interests); Ill. Att'y Gen. Inf. Op. No. I-92-009 at 2 (applying the same analysis as opinion No. 82-039(NP) to the offices of county treasurer and township trustee).

²We note that, in opinion No. 978, issued April 15, 1927 (1927 Ill. Att'y Gen. Op. 151), Attorney General Carlstrom concluded that the offices of county treasurer and school board president were incompatible because a county treasurer might be required to make a discretionary determination concerning the allocation of interest earned on funds levied and collected for the benefit of both the county and school district at issue. Subsequent changes in applicable law relating to the duties of county treasurers have mooted this concern. See 35 ILCS 200/20-135 (West 2016) (requiring the payment of "interest in the same proportionate ratio that district shared in the distribution of principal taxes to all units of local government" (emphasis added)).



WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD
September 24, 1971

FILE NO. NP-341

COUNTIES:
Compatibility
County Zoning Building Inspector
Board of Education

Honorable Ralph J. Moses
State's Attorney
Calhoun County
Hardin, Illinois 62047

Dear Mr. Moses:

In your recent letter to this office you have asked
the following questions:

1. Is the office of Building Inspector of Calhoun County compatible with the office of member of the Board of Education of a School District?
2. If these two offices are incompatible does the acceptance of the office of Building Inspector create a vacancy in the office of the School Board Member?"

According to your letter Calhoun County has a zoning ordinance which provides for the office of Building Inspector whose duties it is to enforce the provisions of the County Zoning Ordinance.

The rule regarding compatibility between offices, often cited, is stated in People v. Haas, 145 Ill. App. 283. The Court there held 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 in interest may arise, or where the duties of either office are such that a holder of one cannot, in every instance, properly and faithfully perform the duties of the other.

Where a person holding one office assumes another office incompatible with the first he thereby ipso facto vacates the first, People v. Bott, 261 Ill. App. 261.

The eligibility requirements for membership on the School Board of Education are set forth in Illinois Revised Statutes 1969, Chapter 122, Paragraph 10-10, which provides as follows:

Honorable Ralph J. Moses

- 3 -

"* * * Each member shall, on the date of his election, be a citizen of the United States of the age of 21 years or over, a resident of the state and the territory of the district for at least one year immediately preceding his election, and shall not be a school trustee or a school treasurer. * * *"

Based on the information provided in your letter, I do not find any incompatibility between these two offices. It is pointed out, however, that there is a factual matter which you can determine based on your knowledge of the facts, as to whether the holder of these two offices is able to give the necessary and required time to each of the said offices in order to properly and faithfully perform the duties thereof.

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

October 28, 1998

Jim Ryan

ATTORNEY GENERAL

I - 98-037

COMPATIBILITY OF OFFICES:
Educational Labor Relations Board
and School Board Member

Ms. Julie Hughes
General Counsel
Illinois Educational Labor Relations Board
160 North LaSalle Street, Suite N-400
Chicago, Illinois 60601-3101

Dear Ms. Hughes:

I have your memorandum wherein you inquire whether a member of the Illinois Educational Labor Relations Board may serve simultaneously as a member of a public school board. 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.

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, 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.) Neither the constitution nor any statute prohibits a member of the Illinois Educational Labor Relations Board from simultaneously serving as a member of a public school board. Therefore, it is necessary to determine whether the duties of the two offices are such that a conflict may arise if one person seeks to perform the duties of both offices, or whether one would

Ms. Julie Hughes - 2.

be able, in every instance, to perform all the duties of both offices properly and faithfully.

The duties of public school boards are set out in article 10 of the School Code (105 ILCS 5/10-1 et seq. (West 1996)). These duties encompass the overall management of the affairs of the school district, and include, specifically, appointing and fixing the salary of teachers (105 ILCS 5/10-20.7 (West 1996)). School boards are necessarily the employers of all teachers and other personnel of a school district, and are "educational employers" as defined by section 2 of the Illinois Educational Labor Relations Act (115 ILCS 5/2 (West 1996)).

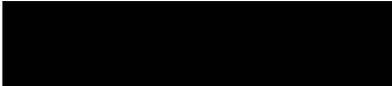
Under the provisions of the Illinois Educational Labor Relations Act (115 ILCS 5/1 et seq. (West 1996)), the Illinois Educational Labor Relations Board has jurisdiction over all educational employers and employee organizations. The Board recognizes bargaining representatives and bargaining units (115 ILCS 5/7 (West 1996)); conducts elections with respect to representation (115 ILCS 5/8 (West 1996)); initiates mediation in impasse situations (115 ILCS 5/12 (West 1996)); and investigates and adjudicates charges of unfair labor practices between educational employers and educational employees and their representatives (115 ILCS 5/15 (West 1996)).

The Board clearly has jurisdiction over every public school board in the State. As such, the Board may be called upon to resolve a dispute directly affecting any school board upon which a Board member may simultaneously serve. In those circumstances, the Board member in question could not properly and faithfully perform all of the duties of both offices. He would be required to abstain from acting as a member of each entity on any matter which might affect the other, thereby depriving each entity of his full, faithful service. Therefore, it appears that one person may not hold the offices of school board member and member of the Illinois Educational Labor Relations Board simultaneously.

Ms. Julie Hughes - 3.

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



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Jim Ryan

ATTORNEY GENERAL

January 3, 1996

I - 96-003

COMPATIBILITY OF OFFICES:
Fire Protection District Trustee
and School Board Member

Honorable Timothy J. Huyett
State's Attorney, Logan County
Logan County Courthouse, Room 31
Lincoln, Illinois 62656

Dear Mr. Huyett:

I have your letter wherein you inquire whether one person may serve simultaneously in the offices of fire protection district trustee and school board member, in circumstances in which the school district does not currently own any buildings located outside of the boundaries of a municipality or a fire protection district. 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 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; Rogers v. Village of Tinley Park (1983), 116 Ill. App. 3d 437, 440-41; People ex rel. Myers v. Haas (1908), 145 Ill. App. 283, 286.) There is no constitutional or statutory provision which expressly prohibits one person from simultaneously serving as a fire protection district trustee and as a school board member. Therefore, the issue 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.

Honorable Timothy J. Huyett - 2.

The provisions of the Fire Protection District Act (70 ILCS 705/0.01 et seq. (West 1994)) govern the operations of fire protection districts. As provided in the Act, the powers of the fire protection district are exercised by its board of trustees. (70 ILCS 705/6 (West 1994).) The duties of a fire protection district board include, inter alia, acquiring and holding lands for the use of the fire protection district (70 ILCS 705/10 (West 1994)); contracting with other fire protection districts or municipalities for the joint ownership of fire fighting equipment, communication equipment and rescue and resuscitator equipment (70 ILCS 705/10b (West 1994)); contracting with corporations organized to furnish fire protection services (70 ILCS 705/11a (West 1994)); implementing and maintaining an address system (70 ILCS 705/11e (West 1994)); borrowing money for corporate purposes and issuing bonds therefor (70 ILCS 705/12 (West 1994)); and levying taxes for the operation of the district (70 ILCS 705/14 (West 1994)); and generally providing fire protection services for the persons and property located with the district. (70 ILCS 705/1 (West 1994).)

The functions of a school board, on the other hand, relate to the management of the school district. (105 ILCS 5/10-20 et seq. (West 1994).) In this regard, the school board is required, inter alia, to report to the county superintendent the names of all teachers employed by the district (105 ILCS 5/10-20.2 (West 1994)); provide revenue necessary to maintain the schools in their district (105 ILCS 5/10-20.3 (West 1994)); visit, inspect and maintain public schools under their jurisdiction (105 ILCS 5/10-20.6 (West 1994)); appoint all teachers and fix the amount of their salaries (105 ILCS 5/10-20.7 (West 1994)); furnish the county superintendent of schools with a list of all text material being used in the schools of the district (105 ILCS 5/10-20.9 (West 1994)); and assign pupils to the several schools in the district (105 ILCS 5/10-22.5 (West 1994)).

Based upon our understanding of the facts, a review of the duties of the two specified offices has failed to disclose any potential conflicts which would, in general, prevent one person from faithfully discharging the duties of the two offices simultaneously. As is apparent from the summaries of duties listed above; a fire protection district and a school board perform very different functions which generally do not overlap. Moreover, under the circumstances you have described, there is no express authorization for one entity to contract with the other, nor any obvious circumstances in which there would be interaction between the two governing boards. The fire protection district may be required to provide fire protection services for school district buildings located within the boundaries of the district, but that obligation is not contractual in nature. Consequently,

Honorable Timothy J. Huyett - 3.

based upon the facts presented, it appears that one person may serve as a fire protection district trustee and a school board member simultaneously.

I must caution, however, that there is one circumstance in which a conflict of duties between the offices of fire protection district trustee and school board member could occur. Section 16-10 of the School Code (105 ILCS 5/16-10 (West 1994)) provides:

"If the location of any public school building is not within any municipality or fire protection district, fire protection service for such building shall be provided by that municipality or fire protection district which maintains the facility for fire fighting equipment which lies closest to such building. The school district shall pay to the municipality or fire protection district, as the case may be, the reasonable cost of such service. If the respective corporate authorities of the school district and of the municipality or fire protection district are unable to agree on the cost of such service, the cost shall be determined by a civil action in the circuit court of the circuit in which the school building is located." (Emphasis added.)

Similarly, section 11c of the Fire Protection District Act (70 ILCS 705/11c (West 1994)) provides:

"The board of trustees of any fire protection district organized hereunder shall provide fire protection service for public school buildings situated outside the district in accordance with Section 16-10 of 'The School Code'."

Under the statutes quoted above, it is foreseeable, in these circumstances, that the school board and the fire protection district would enter into an agreement regarding the cost of providing fire protection services for school buildings located outside of the boundaries of the fire protection district. It is well established that one person cannot adequately represent the interests of two governmental units when those units contract with one another. (1991 Ill. Att'y Gen. Op. 51; 1991 Ill. Att'y Gen. Op. 188.) Because of the potential for conflicts in duties which arise when one governmental unit is authorized to contract

Honorable Timothy J. Huyett - 4.

with another, an individual serving as both fire protection district trustee and school board member under this set of circumstances would be unable to represent the interests of both entities adequately, fully and faithfully. Therefore, it appears that one person may not simultaneously hold the offices of fire protection district trustee and school board member if the school district owns buildings located outside of the boundaries of the fire protection district, and if the fire protection district is required to provide fire protection services to the school district under section 16-10 of the School Code.

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:LP:dn



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Jim Ryan
ATTORNEY GENERAL

September 1, 2000

I -00-037

MEETINGS:

Local Professional Development
Committees and Regional Professional
Development Review Committees

Mr. Respicio F. Vazquez
General Counsel
Illinois State Board of Education
100 North First Street
Springfield, Illinois 62777-0001

Dear Mr. Vazquez:

I have your predecessor's letter wherein he posed the following questions:

1. Are local professional development committees (hereinafter referred to as "LPDCs") and regional professional development review committees ("RPDCs") established pursuant to section 21-14 of the School Code (105 ILCS 5/21-14 (West 1999 Supp.)) subject to the Open Meetings Act (5 ILCS 120/1 et seq. (West 1998))?
2. Can a member of a school board serve simultaneously on either of the two committees? and
3. Is either the State Employees Indemnification Act (5 ILCS 350/0.01 et seq. (West 1998)) or the Local Governmental and Governmental Employees Tort Immunity

Mr. Respicio F. Vazquez - 2.

Act (745 ILCS 10/1-101 et seq. (West 1998)) applicable to such committees?

Because of the nature of this inquiry, I do not believe that the issuance of an official opinion is necessary. I will, however, comment informally upon the questions which have been raised.

LPDCs are established pursuant to the provisions of subsection 21-14(f) of the School Code (105 ILCS 5/21-14(f) (West 1999 Supp.)), which provides, in part:

" * * *

(f) Notwithstanding any other provisions of this Code, each school district, charter school, and cooperative or joint agreement with a governing body or board of control that employs certificated staff, shall establish and implement, in conjunction with its exclusive representative, if any, one or more local professional development committees, as set forth in this subsection (f), which shall perform the following functions:

(1) review and approve certificate renewal plans and any modifications made to these plans, including transferred plans;

(2) maintain a file of approved certificate renewal plans;

(3) monitor certificate holders' progress in completing approved certificate renewal plans;

(4) assist in the development of professional development plans based upon needs identified in certificate renewal plans;

Mr. Respicio F. Vazquez - 3.

(5) determine whether certificate holders have met the requirements of their certificate renewal plans and notify certificate holders of its determination;

(6) provide a certificate holder with the opportunity to address the committee when it has determined that the certificate holder has not met the requirements of his or her certificate renewal plan;

(7) issue and forward recommendations for renewal or nonrenewal of certificate holders' Standard Teaching Certificates to the appropriate regional superintendent of schools, based upon whether certificate holders have met the requirements of their approved certificate renewal plans, with 30-day written notice of its recommendation provided to the certificate holder prior to forwarding the recommendation to the regional superintendent of schools, provided that if the local professional development committee's recommendation is for certificate nonrenewal, the written notice provided to the certificate holder shall include a return receipt; and

(8) reconsider its recommendation of certificate nonrenewal, upon request of the certificate holder within 30 days of receipt of written notification that the local professional development committee will make such a recommendation, and forward to the regional superintendent of schools its recommendation within 30 days of receipt of the certificate holder's request.

Each local professional development committee shall consist of at least 3 classroom teachers; one superintendent or chief administrator of the school district,

charter school, or cooperative or joint agreement or his or her designee; and one at-large member who shall be either (i) a parent, (ii) a member of the business community, (iii) a community member, or (iv) an administrator, with preference given to an individual chosen from among those persons listed in items (i), (ii), and (iii) in order to secure representation of an interest not already represented on the committee. If mutually agreed upon by the school district, charter school, or governing body or board of control of a cooperative or joint agreement and its exclusive representative, if any, additional members may be added to a local professional development committee, provided that a majority of members are classroom teachers. The school district, charter school, or governing body or board of control of a cooperative or joint agreement and its exclusive representative, if any, shall determine the term of service of the members of a local professional development committee. All individuals selected to serve on local professional development committees must be known to demonstrate the best practices in teaching or their respective field of practice.

The exclusive representative, if any, shall select the classroom teacher members of the local professional development committee. If no exclusive representative exists, then the classroom teacher members of a local professional development committee shall be selected by the classroom teachers that come within the local professional development committee's authority. The school district, charter school, or governing body or board of control of a cooperative or joint agreement shall select the 2 non-classroom teacher members (the superintendent or chief

Mr. Respicio F. Vazquez - 5:

administrator of the school district, charter school, or cooperative or joint agreement or his or her designee and the at-large member) of a local professional development committee. Vacancies in positions on a local professional development committee shall be filled in the same manner as the original selections. The members of a local professional development committee shall select a chairperson. Local professional development committee meetings shall be scheduled so as not to interfere with committee members' regularly scheduled teaching duties, except when otherwise permitted by the policies of or agreed to or approved by the school district, charter school, or governing body or board of control of a cooperative or joint agreement, or its designee.

* * *

RPDRCs are created pursuant to the provisions of subsection 21-14(g) of the School Code (105 ILCS 5/21-14(g) (West 1999 Supp.)), which provides, in pertinent part:

* * *

(g) (1) Each regional superintendent of schools shall review and concur or nonconcur with each recommendation for renewal or nonrenewal of a Standard Teaching Certificate he or she receives from a local professional development committee or, if a certificate holder appeals the recommendation to the regional professional development review committee, the recommendation for renewal or nonrenewal he or she receives from a regional professional development review committee and, within 14 days of receipt of the recommendation, shall provide the State

Teacher Certification Board with verification of the following, if applicable:

* * *

(2) Each certificate holder shall have the right to appeal his or her local professional development committee's recommendation of nonrenewal to the regional professional development review committee, within 14 days of receipt of notice that the recommendation has been sent to the regional superintendent of schools. Each regional superintendent of schools shall establish a regional professional development review committee or committees for the purpose of advising the regional superintendent of schools, upon request, and handling certificate holder appeals. This committee shall consist of at least [4] classroom teachers, one non-administrative certificated educational employee, 2 administrators, and one at-large member who shall be either (i) a parent, (ii) a member of the business community, (iii) a community member, or (iv) an administrator, with preference given to an individual chosen from among those persons listed in items (i), (ii), and (iii) in order to secure representation of an interest not already represented on the committee. The teacher and non-administrative certificated educational employee members of the review committee shall be selected by their exclusive representative, if any, and the administrators and at-large member shall be selected by the regional superintendent of schools. A regional superintendent of schools may add additional members to the committee, provided that the same proportion of teachers to administrators and at-large members on the committee is maintained. Any additional teacher and non-administrative

Mr. Respicio F. Vazquez - 7.

certificated educational employee members shall be selected by their exclusive representative, if any. * * *

* * *

The "exclusive representative" responsible for appointing the teacher members of each committee is the labor organization which represents the majority of the educational employees in a unit. (See 115 ILCS 5/2 (West 1998).)

Each of these committees is created pursuant to statute, and is organizationally related to, although operating independently of, the local school district or the regional superintendent of schools, respectively. LPDCs perform administrative functions with respect to the development, review, approval and monitoring of certificate renewal plans and maintenance of records of such plans; quasi-adjudicative functions with respect to whether the requirements of such plans have been met; and advisory functions with respect to recommendations for renewal or nonrenewal of teaching certificates. RPDCs perform quasi-adjudicative functions, with respect to appeals of decisions and recommendations of LPDCs, and advisory functions, with respect to recommendations requested by the regional superintendent.

Section 1.02 of the Open Meetings Act defines "public body" as follows:

"

* * *

'Public body' includes all legislative, executive, administrative or advisory bodies of the state, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees or commissions of this State, and any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees which are supported in whole or in part by tax revenue, or which expend tax revenue,

Mr. Respicio F. Vazquez - 8.

except the General Assembly and committees or commissions thereof.

* * *

It appears that LPDCs are administrative or subsidiary bodies of school districts, for purposes of the Open Meetings Act. They are created in each school district pursuant to statute. Their duties relate to the State's teacher certificate renewal system, which is clearly a public activity. They are supported in whole or in part by tax revenue. (See 105 ILCS 5/21-14(k) (West 1999 Supp.)) Although LPDCs do not report to the school boards which create them, they perform functions which the General Assembly has mandated to be performed at the school district level. Indeed, the General Assembly could have required that school boards carry out these duties directly, but elected instead to delegate them to a body containing representatives of both the school districts and their employees or employee representatives.

It has been suggested that LPDCs are analogous to the University of Illinois Assembly Hall Advisory Committee, which was held not to be subject to the Act in Pope v. Parkinson (1977), 48 Ill. App. 3d 797. The Advisory Committee was an ad hoc committee appointed by the university chancellor to advise the Assembly Hall director on policy matters. It occasionally reported directly to the chancellor, but not to the Board of Trustees. The creation of such a committee was not mandated by statute, and it had no statutory duties. The membership of the committee was not specified by any statute, and members could be dismissed at any time. Clearly, LPDCs are distinguishable from the committee at issue in Pope v. Parkinson, because they are created by statute, have specifically mandated membership and perform public duties prescribed by statute.

It appears, therefore, that LPDCs are public bodies which are subject to the provisions of the Open Meetings Act. In accordance with the Act, meetings of these committees are required to be open to the public, except to the extent that one of the exceptions provided for in subsection 2(c) of the Act (5 ILCS 120/2(c) (West 1998)) authorizes the closure of a specific meeting or part of a meeting. In this regard, your predecessor

Mr. Respicio F. Vazquez - 9.

asked whether the exceptions set out in subsections 2(c)(4) and (15) of the Act would be applicable to LPDCs:

" * * *

(c) Exceptions. A public body may hold closed meetings to consider the following subjects:

* * *

(4) Evidence or testimony presented in open hearing, or in closed hearing where specifically authorized by law, to a quasi-adjudicative body, as defined in this Act, provided that the body prepares and makes available for public inspection a written decision setting forth its determinative reasoning.

* * *

(15) Professional ethics or performance when considered by an advisory body appointed to advise a licensing or regulatory agency on matters germane to the advisory body's field of competence.

* * *

"

A quasi-adjudicative body is one charged by law with the responsibility of conducting hearings, receiving evidence or testimony and making determinations based thereon. (5 ILCS 120/2(d) (West 1998)). An LPDC which receives evidence regarding whether a certificate holder has met the requirements for certificate renewal, and determines whether to recommend certificate renewal based upon that evidence, will be acting in a quasi-adjudicative manner, for purposes of the Open Meetings Act. Further, LPDCs are authorized to advise the regional superintendent, and in turn the State Teacher Certification Board, on matters germane to the "licensing" of teachers, a matter which is within the competence of those qualified for

Mr. Respicio F. Vazquez - 10.

appointment to such committees. It appears, therefore, that in appropriate circumstances, an LPDC may hold closed meetings under subsections 2(c)(4) or (15) of the Act.

RPDCs are established by the several regional superintendents for the purpose of reviewing the decisions of LPDCs and advising the regional superintendent on various matters. It appears, therefore, that RPDCs would be considered quasi-adjudicative administrative and advisory bodies, for purposes of the Act. Like LPDCs, RPDCs are statutorily created, publicly funded entities. Consequently, RPDCs appear to be "public bodies" which are subject to the provisions of the Open Meetings Act, and may likewise avail themselves of the exceptions to the requirement of holding open meetings, where appropriate.

Your predecessor also inquired whether it was permissible for a member of the board of education of a local school district to be appointed as the at-large member of either a LPDC or RPDC. With respect to LPDCs, it is generally held that, as a matter of common law, offices are incompatible where the incumbent of one has the power of appointment to the other office. (Hetrich v. County Commissioners of Anne Arundel County (1960), 222 Md. 304, 159 A.2d 642, 644-45; Knuckles v. Board of Education of Bell County (1938), 272 Ky. 431, 114 S.W.2d 511, 514.) This principle has been enacted into law in Illinois with respect to county boards, township boards and municipal councils. (50 ILCS 105/1, 2, 2a (West 1998).) Although the principle has not been codified with respect to school boards, the common law rule, not having been altered by statute with respect to school districts, remains the rule of decision in Illinois. (5 ILCS 50/1 (West 1998).) Therefore, because the school board has been granted the power to appoint the at-large member of an LPDC, it appears that a member of the school board may not properly be appointed to serve in that office.

With respect to RPDCs, I note that in the city of Chicago, at-large members of RPDCs, like those of LPDCs, are appointed by the school board. This factor necessarily precludes the appointment of a school board member to a RPDC in Chicago. With respect to RPDCs outside the city of Chicago, however, the administrator and at-large members of which are appointed by

Mr. Respicio F. Vazquez - 11.

regional superintendents of schools, further analysis is necessary.

Public 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.) No constitutional or statutory provision appears to prohibit a school board member from being appointed to or serving as the at-large member of a RPDRC. Therefore, it must be considered whether the duties of the positions may conflict.

Your predecessor had suggested that because RPDRCs review and make recommendations concerning teacher certification, and school boards make employment decisions, a conflict may exist if a RPDRC is required to review a plan or make a recommendation concerning a teacher employed by the district when an RPDRC member also serves on the school board. An employing school board is entitled to know the certificate status of a teacher whom it hires, however. The mere fact that a particular member of a school board has access to information relevant to hiring decisions does not create conflicting interests. Incompatibility of offices does not arise because information learned in one position may be of use with regard to duties in another. Rather, incompatibility of offices arises when the fiduciary duty owed to one body may conflict with the fiduciary duty owed to another. In this regard, it appears that the offices of RPDRC member and school board member are not incompatible.


Lastly, your predecessor inquired whether either the Local Governmental and Governmental Employees Tort Immunity Act or the State Employees Indemnification Act will be applicable to LPDCs or RPDRCs. As discussed above, LPDCs are legislatively created bodies which are essentially outgrowths of school districts, while RPDRCs are administrative and advisory bodies associated with the regional superintendents of education. Both school districts and educational service regions, of which

Mr. Respicio F. Vazquez - 12.

regional superintendents are the administrative officers, are "local public entities" to which the provisions of the Local Governmental and Governmental Employees Tort Immunity Act are applicable. (745 ILCS 10/1-206 (West 1998).) It appears, therefore, that both LPDCs and RPDCs will likewise be encompassed by the provisions of that Act.

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:ab



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Jim Ryan
ATTORNEY GENERAL

November 6, 1996

I-96-046

COMPATIBILITY OF OFFICES:
County Sheriff and School Board Member

Honorable David R. Cherry
State's Attorney, Scott County
Scott County Courthouse
Winchester, Illinois 62694

Dear Mr. Cherry:

I have your letter wherein you inquire whether one person may simultaneously serve as a school board member and a county sheriff. 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.

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 school board member and county sheriff. Therefore, the issue is whether the duties of the offices are such that the holder of one cannot, in every instance, fully and faithfully discharge the duties of the other.

The duties of a sheriff are set out in division 3-6 of the Counties Code (55 ILCS 5/3-6001 et seq. (West 1994)), and include taking custody of the courthouse and jail (55 ILCS 5/3-6018 (West 1994)), acting as a conservator of the peace throughout the county (55 ILCS 5/3-6021 (West 1994)), attending upon the courts, including execution of writs and warrants (55 ILCS 5/3-6023 (West 1994)), and serving as supervisor of safety (55 ILCS 5/3-6036 (West 1994)). The sheriff is specifically prohibited by statute from serving as county treasurer (55 ILCS 5/3-6024 (West 1994)) or from practicing as an attorney (55 ILCS 5/3-6025 (West 1994)), but not from serving as a member of a school board. The sheriff is responsible for carrying out his duties as conservator of the peace in schools as well as elsewhere in the county.

The duties of school board members are set out, generally, in article 10 of the School Code (105 ILCS 5/10-1 et seq. (West 1994)). These duties relate exclusively to the administration of schools within a particular district.

With respect to law enforcement activities, the school board is responsible for establishing a parent-teacher advisory committee to assist it in developing policies for a reciprocal reporting system with local law enforcement agencies regarding criminal offenses committed by students (105 ILCS 5/10-20.14 (West 1994)). The extent to which a law enforcement agency can share such information is specifically limited by statute, however. (705 ILCS 405/1-7 (West 1995 Supp.)) Further, a school board may adopt a policy authorizing school officials to request the assistance of law enforcement officials in conducting searches of school property for illegal drugs.

Although the sheriff and the school district are clearly authorized to cooperate with respect to the enforcement of laws on school premises, and as they relate to students, it does not appear that these provisions contemplate the creation of specific contractual relationships for this or other purposes, or that either as sheriff or as school board member the duties to be exercised would conflict. Therefore, it appears that the offices of school board member and county sheriff are not incompatible.

Honorable David R. Cherry - 3.

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

Sincerely,

A solid black rectangular redaction box covering the signature of Michael J. Luke.

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

MJL:KJS:cj



ROLAND W. BURRIS

ATTORNEY GENERAL
STATE OF ILLINOIS



July 9, 1993

I - 93-037

COMPATIBILITY OF OFFICES:

Village Trustee and Fire Protection
District Trustee; Township Clerk
and School Board Member; Fire Protection
District Trustee and Community College Trustee

Honorable Jack O'Malley
State's Attorney, Cook County
500 Richard J. Daley Center
Chicago, Illinois 60602

Dear Mr. O'Malley:

I have Assistant State's Attorney Jeanette Sublett's letter wherein she inquired, on your behalf, regarding the potential incompatibility of several local offices. Because of the nature of these inquiries, I do not believe that the issuance of an official opinion of the Attorney General is necessary. I will, however, comment informally upon the questions which have been 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 which are the

focus of this inquiry. Therefore, the issue is whether a conflict of duties could arise if one person were to occupy the particular offices in question.

Your first question concerns whether the offices of village trustee and fire protection district trustee are incompatible. Sections 10b and 11a of the Fire Protection District Act (Ill. Rev. Stat. 1991, ch. 127 1/2, pars. 30b, 31a; 70 ILCS 705/10b, 11a) respectively provide, in pertinent part:

"Any two or more fire districts or one or more fire protection districts and one or more cities, villages or incorporated towns may provide for joint ownership of fire fighting equipment, communication equipment, rescue and resuscitator equipment and real and personal property necessary for the care and housing of such equipment. In case of joint ownership the term of the agreement shall be fair, just and equitable to all parties and shall be set forth in a written agreement entered into by the corporate authorities of each participating unit.

* * *

"The Board of Trustees of any fire protection district organized hereunder may contract with any corporation organized to furnish fire protection service or with any association organized to furnish fire protection service or with any city, village, incorporated town, or organized fire protection district lying adjacent to such district for fire protection service to be furnished by such corporation or such association or such municipality or fire protection district for the property within such district or to be furnished by such district for the property within such municipality. The board of trustees may also contract for the installation, rental or use of fire hydrants within the fire protection district and for the furnishing of water to be used within such district for fire protection purposes, and for mutual aid from and to other fire protection districts, and for mutual aid from and

to corporations and associations organized to furnish fire protection service and for mutual aid from and to municipalities.

* * *

"

(Emphasis added.)

Similarly, section 11-6-1 of the Illinois Municipal Code (Ill. Rev. Stat. 1991, ch. 24, par. 11-6-1; 65 ILCS 5/11-6-1 (West 1992)) provides:

"The corporate authorities of each municipality may provide and operate fire stations, and all material and equipment that is needed for the prevention and extinguishment of fires, and may enter into contracts or agreements with other municipalities and fire protection districts for mutual aid consisting of furnishing equipment and man power from and to such other municipalities and fire protection districts." (Emphasis added.)

Under the statutes quoted above, it is foreseeable that a village and a fire protection district could enter into a contract for the provision of equipment and other materials necessary for the prevention and extinguishment of fires. Moreover, under section 11 of the Act, the board of trustees of a fire protection district is authorized to provide emergency ambulance service. (Ill. Rev. Stat. 1991, ch. 127 1/2, par. 31; 70 ILCS 705/11 (West 1992).) Municipalities possess the authority to provide or contract for ambulance services, as well as the power to license and to regulate the operation of ambulances. (Ill. Rev. Stat. 1991, ch. 24, par. 11-5-7; 65 ILCS 5/11-5-7 (West 1992).)

It is well established 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. 91-023, issued June 6, 1991; Ill. Att'y Gen. Op. No. 85-019, issued November 19, 1985.) Because of the potential for conflicts in duties to arise when one governmental unit is authorized to contract with another, an individual serving as both a village trustee and a fire protection district trustee would be unable to represent the units of both entities adequately, fully and faithfully. Therefore, it appears that one person may not simultaneously hold the offices of village trustee and fire protection district trustee.

Honorable Jack O'Malley - 4.

Secondly, you inquire whether the offices of township clerk and board of education member are incompatible. Township clerks are custodians of all records, books and papers of the town (Ill. Rev. Stat. 1991, ch. 139, par. 111; 60 ILCS 5/12-1 (West 1992)) and are authorized to certify to the county clerks the amount of taxes required to be raised for town purposes (Ill. Rev. Stat. 1991, ch. 139, par. 114; 60 ILCS 5/12-4 (West 1992)). Board of education members are responsible for conducting the business affairs of a school district (Ill. Rev. Stat. 1991, ch. 122, pars. 10-22 through 10-23.12; 105 ILCS 5/10-22 - 10-23.12 (West 1992)). The clerk's duties are ministerial in nature and do not require the exercise of discretion. A review of the duties of the two specified offices has failed to disclose any potential conflicts which could prevent one person from faithfully discharging the duties of either office. Consequently, it appears that one person may serve as township clerk and school board member simultaneously.

Lastly, you have asked whether a person may serve as both a fire protection district trustee and a community college board trustee. Section 3-38.2 of the Public Community College Act (Ill. Rev. Stat. 1991, ch. 122, par. 103-38.2; 110 ILCS 805/3-38.2 (West 1992)) authorizes a community college board:

"To enter into contracts with any municipality or fire protection district in which any community college buildings are located for the purpose of reimbursing such fire protection district or municipality for the additional costs of providing fire fighting equipment, apparatus or additional paid personnel occasioned by the presence of community college buildings within the municipality or fire protection district." (Emphasis added.)

Under section 3-38.2 of the Public Community College Act, it appears that the General Assembly specifically contemplated that a fire protection district and a community college could enter into a contract to reimburse the fire protection district for costs associated with the provision of fire fighting services on the community college campus or to the community college's buildings. As noted earlier, one person cannot represent the interests of two governmental units when those units contract with one another. (1991 Ill. Att'y Gen. Op. No. 91-023; 1985 Ill. Att'y Gen. Op. No. 85-019.) Consequently, given the authorization for the two bodies to contract for services, it

Honorable Jack O'Malley - 5.

does not appear that one person may simultaneously hold the positions of fire protection district trustee and community college board trustee.

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

MJL:LP:cj



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

March 12, 2009

I - 09-002

COMPATIBILITY OF OFFICES:
School Board Member and
Township Highway Commissioner

The Honorable Gary L. Spencer
State's Attorney, Whiteside County
Whiteside County Courthouse
200 East Knox Street
Morrison, Illinois 61270

Dear Mr. Spencer:

I have your letter inquiring whether the offices of school board member and township highway commissioner¹ are compatible. For the reasons discussed below, the offices of school board member and township highway commissioner are incompatible. Consequently, one person may not hold both offices simultaneously.

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. 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

¹Under the Township Code (60 ILCS 1/1-1 *et seq.* (West 2006)) and the Illinois Highway Code (605 ILCS 5/1-101 *et seq.* (West 2006)), the statutory title for the office of township road commissioner is township highway commissioner (*see* 60 ILCS 1/73-5 (West 2006); 605 ILCS 5/6-112 (West 2006)). To avoid confusion, we will refer to the office as township highway commissioner in accordance with State statute.

(1908). There is no constitutional or statutory provision that expressly prohibits one person from simultaneously serving as a school board member and township highway commissioner. 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 all of the duties of the other.

Powers and Duties of School Board Member

The principal duties of school board members are set forth in article 10 of the School Code (105 ILCS 5/10-1 *et seq.* (West 2006)). The school board exercises the corporate powers of the school district. 105 ILCS 5/10-20.1 through 10-23.12 (West 2006). Their powers relate exclusively to the administration of schools within a particular district and include supervising the education of children, raising revenue by tax levy, hiring teachers, and maintaining schools. *See* 105 ILCS 5/10-20.1 through 10-23.12 (West 2006); *see also* Ill. Att'y Gen. Inf. Op. No. I-94-030, issued June 8, 1994; Ill. Att'y Gen. Inf. Op. No. I-89-066, issued December 5, 1989.

In connection with the construction of schools, school boards are authorized to lay out and provide for the construction of access roads necessary to connect school grounds, on which a new school is being or is about to be constructed, to an improved road or highway. Such roads are to be considered part of the general school construction project and financed solely from funds derived from the sale of bonds. 105 ILCS 5/10-22.36A (West 2006). School boards are also authorized "[t]o acquire, install, operate and maintain traffic signals relative to school crossing protection and school crossing stop signals" with the prior approval of "any public body or official having jurisdiction over any street or highway affected[.]" 105 ILCS 5/10-22.28a (West 2006). Further, under section 5-29 of the School Code (105 ILCS 5/5-29 (West 2006)), whenever township or road district authorities lay out a new road, street, or highway, or alter, widen, or relocate existing roads, streets, or highways, and require property used or owned for school purposes, "the trustees of schools or school officials having legal title to such lands have the power, with the consent of the school board of the district, to sell and convey to the * * * township or road district the land required for such purposes[.]"

Powers and Duties of Township Highway Commissioner

Under article 6 of the Illinois Highway Code (605 ILCS 5/6-101 *et seq.* (West 2006)), in counties under township organization, each township is considered to be a road district for all purposes relating to the construction, repair, maintenance, financing, and supervision of township roads, unless the township has been consolidated into a consolidated road district. 605 ILCS 5/6-102 (West 2006). The township highway commissioner has general charge of the roads in the district (605 ILCS 5/6-201.8 (West 2006)) and is authorized to direct the expenditure of all moneys collected in the district for road purposes (605 ILCS 5/6-201.6 (West 2006)),

including, among other things, laying out, altering, widening, or vacating township roads (605 ILCS 5/6-201.2 (West 2006)), constructing, maintaining, and repairing roads within the district, and letting contracts, employing labor, and purchasing materials and machinery therefor (605 ILCS 5/6-201.7 (West 2006)). Under the Illinois Highway Code (605 ILCS 5/1-101 *et seq.* (West 2006)), township and district road systems include "all rural roads to which this Code applies under Section 1-103 and which are not a part of the State highway system, county highway system or municipal street system, and includes any access road constructed under Section 10-22.36A of The School Code which connects school grounds with such a rural road." 605 ILCS 5/2-103 (West 2006).

Conflict of Duties

Based on the foregoing statutory provisions, it is clear that potential conflicts in the duties of the offices of school board member and township highway commissioner could prevent one person from faithfully discharging the duties of each office simultaneously.

One potential area of conflict relates to the use of tax moneys for township highway or road purposes. As previously noted, a township road district is responsible for the maintenance and repair of all roads in the district, including access roads constructed by school districts. A person simultaneously holding the offices of school board member and township highway commissioner may not fairly represent the interests of each governmental entity in deciding the appropriate use of tax dollars for highway maintenance and repair purposes relative to school access roads. *See generally* Ill. Att'y Gen. Inf. Op. No. I-05-002, issued January 31, 2005 (finding the office of village trustee and township highway commissioner to be incompatible). Further, if a school district wishes to install and operate school crossing signals along a township highway or road, then the township highway commissioner's prior approval is required. Again, a person holding both offices could be placed in the position of favoring one governmental entity over the other.

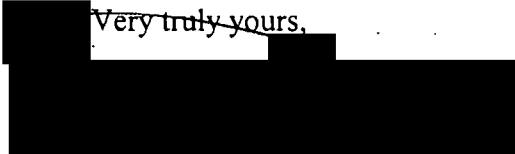
In addition, the township highway commissioner is authorized to purchase school property necessary for the construction or alteration of township highways or roads. Prior to any such sale, the school board for the affected district must provide its consent to the sale. If an individual were to serve as both a school board member and a township highway commissioner, and those governmental entities were to contract for the sale of school property, the officer would be required to protect the interests of both the school district and the township road district. It has long been established, however, that one person cannot adequately represent the interests of two governmental units when those units contract with one another. 1991 Ill. Att'y Gen. Op. 188, 189; 1975 Ill. Att'y Gen. Op. 37, 43-47; Ill. Att'y Gen. Inf. Op. No. I-01-025, issued May 23, 2001. A school board member, in exercising the duties granted to that office under the School Code, is to faithfully discharge his or her duties, which include protecting the school district's

assets and representing the best interests of the school district. 105 ILCS 5/10-16.5 (West 2006). A township highway commissioner has a concomitant duty to faithfully discharge his or her duties by protecting and representing the best interests of the township road district. 605 ILCS 5/6-118 (West 2006); Ill. Const. 1970, art. XIII, §3. The fulfillment of these duties is subject to compromise, if the same individual holds both the office of school board member and township highway commissioner, because a person holding both offices could be placed in the position of favoring one governmental entity to the detriment of the other. It is a logical extension of this principle that one person cannot fully and faithfully represent the interests of two governmental entities when those entities must approve or consent to a contract related to the sale of public property.

CONCLUSION

Because of the potential conflicts in the duties of the offices of school board member and township highway commissioner, a person who serves 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 school board member and township highway commissioner are incompatible, and one person may not hold both positions 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
Senior Assistant Attorney General
Chief, Opinions Bureau

LEP:MMS:lk



NEIL F. HARTIGAN
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD
62706

December 5, 1989

I - 89-066

COMPATIBILITY OF OFFICES:
Township Land Commissioner
and School Board Member

Honorable Tony Lee
State's Attorney, Ford County
Ford County Courthouse
Paxton, Illinois 60957

Dear Mr. Lee:

I have your letter wherein you inquire whether a person may simultaneously hold the offices of township land commissioner and school board member, when all or part of the school district is located in the same county in which the township land commissioner serves. Because of the nature of your question, I do not believe that the issuance of an official opinion of the Attorney General is necessary. I will, however, comment informally upon the question 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 347, 440-441; People ex rel. Myers v. Haas (1908), 145 Ill. App. 283, 286.

Section 15-24 of The School Code (Ill. Rev. Stat. 1987, ch. 122, par. 15-24), which establishes the office of township land commissioner and sets forth its duties, provides:

"Management of permanent funds. The common school lands and township loanable funds in Class I counties shall be managed and operated by township land commissioners who shall receive no salary.

In counties of fewer than 220,000 inhabitants, there shall be 3 land commissioners, who shall be elected in the same manner as provided for the election of school directors, who shall serve the same terms as school directors and shall be organized in the same manner as school directors. In counties having 220,000 inhabitants or more but fewer than 1,000,000 inhabitants, the members of the regional board of school trustees shall be the township land commissioners, except that township land commissioners elected in any such county prior to the effective date of this amendatory Act of 1963 shall continue to serve until the end of the term for which they were elected. The township land commissioners shall hold title to, manage and operate all common school lands and township loanable funds of such township and receive the rents, issues and profits therefrom. Elections shall be conducted in accordance with the general election law. The land commissioners shall appoint a treasurer for a term of 2 years and fix his salary which shall not be changed during such term. The proceeds of the rents, issues and profits from such land and fund shall be promptly deposited with him upon its receipt by the land commissioners. After the payment of the necessary expenses incidental to the operation of such land and fund by orders drawn on the treasurer and signed by the president and secretary of the land commissioners, including actual expenses of the land commissioners, the net income from such land and fund including accumulated income undistributed at the effective date of this Act shall, upon an order drawn by such treasurer and signed by the president and secretary of such township land commissioners be distributed annually on or before February 1 as provided in this Act."

Members of the regional board of school trustees are expressly prohibited from serving as school board members by section 6-3 of The School Code (Ill. Rev. Stat. 1987, ch. 122, par. 6-3). In addition, trustees are ineligible to serve as school board members under section 10-3 of The School Code (Ill. Rev. Stat. 1987, ch. 122, par. 10-3). Consequently, in more populous counties where the members of the regional board of school trustees serve as the township land commissioners, a township land commissioner is statutorily prohibited from serving simultaneously as a school board member.

In regard to less populous counties, however, no express statutory or constitutional language prohibits a township land commissioner from also serving on a school board. Therefore, it

Honorable Tony Lee - 3.

is necessary to examine the duties, functions and powers of these positions to determine whether a conflict of duties exists.

The powers of a school board are specifically enumerated by statute. These powers include: supervising the education of children within the district, the raising of revenue by tax levy, the hiring of teachers, and the maintaining of schools. (Ill. Rev. Stat. 1987, ch. 122, par. 10-20 et seq.) A school board may also exercise those implicit powers which are necessary to carry into effect the powers expressly granted by the General Assembly. (Spinelli v. Immanuel Lutheran Evangelical Congregation, Inc. (1987), 118 Ill. 2d 389, 403; Wesclin Education Association v. Board of Education (1975), 30 Ill. App. 3d 43, 44.) A school board is a supervisory body which makes decisions that directly impact upon the education of children with the district.

The duties performed by a township land commissioner are ministerial in nature. The land commissioners are responsible for management of all common school lands and additional duties incidental to this function. The land commissioners have no authority to advise, to supervise or to interfere, in any manner, with the education of children within the district. A land commissioner would have no pecuniary interests, by virtue of his office, which could affect his or her decisions as a school board member. The office is uncompensated and custody of all profits, rents and issues from the land are the responsibility of the treasurer, who is to be appointed by the land commissioner. (Ill. Rev. Stat. 1987, ch. 122, par. 15-24.) Distribution of the income from the common school lands and township loanable funds is to be made in accordance with the provisions of The School Code.

Based upon the responsibilities of the offices of township land commissioner and school board member, it does not appear that the duties of the two offices are such that the holder of one office could not fully and faithfully discharge the duties of the other. Consequently, it appears that the offices of township land commissioner and school board member, when all or part of the school district is located in the same county for which the land commissioner serves, are not incompatible.

Very truly yours,



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



ROLAND W. BURRIS

ATTORNEY GENERAL
STATE OF ILLINOIS



October 21, 1993

I - 93-050

COMPATIBILITY OF OFFICES:
Township Supervisor and School
Board Member of District
Maintaining Grades 9 through 12

Honorable Michael J. Waller
State's Attorney, Lake County
18 North County Street
Waukegan, Illinois 60085

Dear Mr. Waller:

I have your letter wherein you inquire whether one person may simultaneously hold the offices of township supervisor and school board member of a school district which maintains grades 9 through 12, and which lies partly within the township. 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 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. (Rogers v. Village of Tinley Park (1983), 116 Ill. App. 3d 437, 440-41; People ex rel. Myers v. Haas (1908), 145 Ill. App. 283, 286.) There is no constitutional or statutory provision which prohibits one person from simultaneously serving as both a township supervisor and as a member of a board of

education. The issue, therefore, is whether the duties of either office are such that the holder of one cannot fully and faithfully discharge all of the duties of the other.

I note, initially, that section 13-16 of the Township Law of 1874 (Ill. Rev. Stat. 1991, ch. 139, par. 126.6; 60 ILCS 5/13-16 (West 1992)), authorizes a township board of trustees, of which the township supervisor is a member (Ill. Rev. Stat. 1991, ch. 139, par. 117; 60 ILCS 5/13-1 (West 1992)), to distribute surplus town funds to certain school districts:

"To the extent that moneys in the general fund of the township have not been appropriated for other purposes, the board of town trustees may direct that distributions be made from that fund as follows:

(1) either or both to school districts maintaining grades 1 through 8 which are wholly or partly located within the township or to governmental units, as defined in Section 1 of the 'Community Mental Health Act', providing mental health facilities and services * * *;

* * *

(Emphasis added.)

Because a school board member has a duty to provide for the revenue necessary to maintain the schools in the district (Ill. Rev. Stat. 1991, ch. 122, par. 10-20.3; 105 ILCS 5/10-20.3 (West 1992)), it is clear that in districts which lie wholly or partly within the township and which maintain grades 1 through 8, a conflict could arise between the township supervisor's duty to determine how township funds should be spent to best serve the township, and his or her duty as a member of the school board to provide for necessary school revenue. While such a conflict would render the office of township supervisor incompatible with that of a school board member in a school district which is eligible for township funds under section 13-16 of the Township Law of 1874, the conflict in duties would not exist in a school district which maintains only grades 9 through 12 and thus does not qualify for township funds under section 13-16.

Moreover, there appears to be no conflict between the other duties of a township supervisor and the duties of a school board member of a school district which maintains grades 9 through 12 and lies partly within the township. As a member of


Honorable Michael J. Waller - 3.

the governing board of a township, a township supervisor exercises the corporate powers of the township. (See Ill. Rev. Stat. 1991, ch. 139, pars. 126.1 through 126.28; 60 ILCS 5/13-11 through 13-38 (West 1992).) In addition, township supervisors serve ex officio as supervisor of general assistance (Ill. Rev. Stat. 1991, ch. 23, par. 12-21.2; 305 ILCS 5/12-21.2 (West 1992)) and as treasurer of the road district. (Ill. Rev. Stat. 1991, ch. 121, par. 6-114; 605 ILCS 5/6-114 (West 1992).) As a member of a board of education, a school board member exercises the corporate powers of the school district. (Ill. Rev. Stat. 1991, ch. 122, par. 10-20.1 through 10-23.12; 105 ILCS 5/10-20.1 through 10-23.12 (West 1992).) There is no relationship between the various duties of the township supervisor and the duties of a school board member of the school district in question which would conflict and render the offices incompatible.

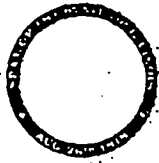
Accordingly, it appears that the offices of township supervisor and school board member of a school district, which lies partly within the township, and which maintains only grades 9 through 12, are not incompatible, and, therefore, one person may simultaneously hold both offices.

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

MJL:JM:cj



NEIL F. HARTIGAN
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD
62706

February 16, 1988

I - 88-003

COMPATIBILITY OF OFFICES:
The Offices of Town Trustee and
School Board Member

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

Dear Mr. Schumacher:

I have your letter wherein you inquire whether the offices of town trustee and school board member are compatible. 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 issue you have posed.

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), 145 Ill. App. 283, 286; see generally People ex rel. Teros v. Verbeck (1987), 155 Ill. App. 3d 81.) There is no constitutional or statutory provision prohibiting one person from simultaneously serving as a town trustee or township supervisor, who pursuant to statute is a member of the town board of trustees (Ill. Rev. Stat. 1985, ch. 139, par. 117), and as a member of a board of

education. The issue devolves, therefore, to whether the duties of either office are such that the holder of one cannot, in every instance, properly and faithfully perform all of the duties of the other.

Section 13-16 of the Township Law of 1874 (Ill. Rev. Stat. 1985, ch. 139, par. 126.6) provides in part as follows:

"To the extent that moneys in the general fund of the township have not been appropriated for other purposes, the board of town trustees may direct that distributions be made from that fund as follows:

(1) either or both to school districts maintaining grades 1 through 8 which are wholly or partly located within the township or to governmental units, as defined in Section 1 of the 'Community Mental Health Act', providing mental health facilities and services, including facilities and services for the mentally retarded, under that Act within the township;

* * *

(Emphasis added.)

As a school board member, one has a duty to provide for the revenue necessary to maintain the schools in his or her district. (Ill. Rev. Stat. 1985, ch. 122, par. 10-20-3.) In the instance of a school district which lies partly or wholly within the township and which maintains grades 1 through 8, a conflict could arise between a dual officerholder's duty to determine how township funds should be spent to best serve the needs of the township and his or her duty as a member of the board of education to provide for the revenue necessary to maintain the district's schools.

Accordingly, it appears that the offices of town trustee or township supervisor and school board member of a school district, which lies wholly or partly within the township, and which maintains grades 1 through 8, are incompatible. Our research has disclosed nothing, however, which would render the office of town trustee or township supervisor incompatible with that of a school board member of a school district not eligible for township funds under section 13-16 of the Township Law of 1874.

Honorable Dennis Schumacher - 3.

This is not an official opinion of the Attorney General. If I can be of further service, please advise.

Very truly yours,

SHAWN W. DENNEY
Solicitor General



NEIL F. HARTIGAN
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD
62706

March 7, 1989

I - 89-019

COMPATIBILITY:

County Board Member and
Township Supervisor

County Board Member and
Township Trustee

Township Trustee and School
Board Member

Honorable Vincent Moreth
State's Attorney, Macoupin County
Macoupin County Courthouse
Post Office Box 480
Carlinville, Illinois 62626

Dear Mr. Moreth:

I have your letter of February 22, 1989, wherein you inquire whether the offices of (1) county board member and member of the township board of trustees, (2) township supervisor and county board member, and (3) township trustee and local school board member are incompatible. Because of the nature of your question, I do not believe that an official opinion of the Attorney General is necessary. I will, therefore, comment informally upon your inquiry.

At common law, incompatibility of offices 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. (People ex rel. Myers v. Haas (1908), 145 Ill. App.

283, 286.) Because of the inability of a person holding both offices to fairly represent the conflicting interests of both the county and township, Attorney General Scott advised in opinion No. S-877, issued March 17, 1975, (1975 Ill. Att'y Gen. Op. 37), that the offices of county board member and township supervisor were incompatible and, in opinion No. NP-1108, (Ill. Att'y Gen. Op. No. NP-1108, issued June 15, 1976), that the offices of county board member and township auditor (trustee) were incompatible. Since the issuance of those opinions, however, the General Assembly has declared it to be lawful for any person to hold simultaneously the offices of county board member and township supervisor and, in counties of less than 100,000 population, the offices of county board member and township trustee. (Ill. Rev. Stat. 1987, ch. 102, par. 4.11.) The offices of township trustee and county board member remain incompatible in counties with a population of 100,000 or more. See People ex rel. Fitzsimmons v. Swailes (1984), 101 Ill. 2d 458 (offices of county board member and township assessor incompatible in counties of over 300,000 population).

Because there is no constitutional or statutory provision prohibiting one person from simultaneously holding the offices of township trustee and school board member, the issue with respect to those offices devolves to whether the duties of either office are such that the holder of one cannot, in every instance, properly and faithfully perform all of the duties of the other.

Section 13-16 of the Township Law of 1874 (Ill. Rev. Stat. 1987, ch. 139, par. 126.6) provides in part as follows:

"To the extent that moneys in the general fund of the township have not been appropriated for other purposes, the board of town trustees may direct that distributions be made from that fund as follows:

(1) either or both to school districts maintaining grades 1 through 8 which are wholly or partly located within the township or to governmental units, as defined in Section 1 of the 'Community Mental Health Act', providing mental health facilities and services, including facilities and services for the mentally retarded, under that Act within the township;

* * *

(Emphasis added.)

Honorable Vincent Moreth - 3.

As a school board member, one has a duty to provide for the revenue necessary to maintain the schools in his or her district. (Ill. Rev. Stat. 1987, ch. 122, par. 10-20.3.) In the instance of a school district which lies partly or wholly within the township and which maintains grades 1 through 8, a conflict could arise between a dual officerholder's duty to determine how township funds should be spent to best serve the needs of the township and his or her duty as a member of the board of education to provide for the revenue necessary to maintain the district's schools.

Accordingly, it appears that the offices of town trustee or township supervisor and school board member of a school district, which lies wholly or partly within the township, and which maintains grades 1 through 8, are incompatible. Our research has disclosed nothing, however, which would render the office of town trustee or township supervisor incompatible with that of a school board member of a school district not eligible for township funds under section 13-16 of the Township Law of 1874. See Informal Opinion No. I-88-003, issued February 16, 1988.

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



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

February 24, 2006

I - 06-018

COMPATIBILITY OF OFFICES:
School Board Member and Village
Zoning Board of Appeals Member

The Honorable Louis A. Bianchi
State's Attorney, McHenry County
McHenry County Government Center
2200 North Seminary Avenue
Woodstock, Illinois 60098

Dear Mr. Bianchi:

I have your letter inquiring whether one person may simultaneously hold the offices of school board member and village zoning board of appeals member, where the territory of the school district and the village overlap. For the reasons stated below, it appears that the offices of school board member and village zoning board of appeals member are incompatible.

According to your letter and the supplemental information provided, the Village of Fox River Grove, a non-home-rule municipality, has adopted an ordinance creating a 7-member zoning board of appeals (zoning board). See Village of Fox River Grove Zoning Ordinance of 1998 art. XI(D)(1) (eff. January 1, 1999). Members of the zoning board are appointed by the village president, with the consent of the village board of trustees. Village of

Fox River Grove Zoning Ordinance of 1998 art. XI(D)(1) (eff. January 1, 1999).¹ According to the terms of the zoning ordinance, the zoning board is an advisory body that only makes recommendations on zoning matters to the village board for final action. Village of Fox River Grove Zoning Ordinance of 1998 art. XI(D)(3) (eff. January 1, 1999). Because the zoning ordinance characterizes the duties of the zoning board as advisory only, you have inquired whether one person may simultaneously serve in the offices of school board member and zoning board member.

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, 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 that prohibits one person from serving simultaneously as both a school board member and a zoning board member. See 65 ILCS 5/11-13-2, 11-13-3 (West 2004); 105 ILCS 5/10-10 (West 2004), as amended by Public Act 94-231, effective July 14, 2005. The issue, therefore, is whether the duties of the offices in question may conflict.

The principal duties of school board members are set forth in article 10 of the School Code (105 ILCS 5/10-1 *et seq.* (West 2004)). The school board exercises the corporate powers of the school district. 105 ILCS 5/10-20.1 through 10-23.12 (West 2004). These powers relate exclusively to the administration of schools within a particular district, and include supervising the education of children within the district, raising revenue by tax levy, hiring teachers, and maintaining schools. See 105 ILCS 5/10-20.1 through 10-23.12 (West 2004); see also Ill. Att'y Gen. Inf. Op. No. I-94-030, issued June 8, 1994; Ill. Att'y Gen. Inf. Op. No. I-89-066, issued December 5, 1989. In connection with zoning issues, a school board is empowered to seek zoning changes, variations, and special uses for property held or controlled by the school district. 105 ILCS 5/10-22.13a (West 2004). In any hearing before the zoning board, a school district shall have the right to appear and present evidence concerning any property or part thereof located in the school district. 65 ILCS 5/11-13-20 (West 2004).

¹ Because the population of Fox River Grove was under 5,000 until the United State Census Bureau, 2004 Population Estimates, we assume that a proposition to elect the zoning board was previously submitted to the electors of Fox River Grove as mandated by subsection 11-13-3(d) of the Illinois Municipal Code (65 ILCS 5/11-13-3(d) (West 2004)) and that such a proposition was defeated. Therefore, the zoning board continues to be appointed by the village president with the consent of the board of trustees.

The powers of a non-home-rule municipality to regulate land use through zoning are set out in article 11, division 13 of the Illinois Municipal Code (the Code) (65 ILCS 5/11-13-1 *et seq.* (West 2004); *see also Hawthorne v. Village of Olympia Fields*, 204 Ill. 2d 243, 255-56 (2003)). Section 11-13-2 of the Code (65 ILCS 5/11-13-2 (West 2004)) provides that the corporate authorities of a municipality may, by ordinance, create a zoning commission to recommend the boundaries of districts and appropriate regulations to be enforced therein. All ordinances passed under division 13 of the Code are to be enforced by those officers designated by municipal ordinance. 65 ILCS 5/11-13-3(a) (West 2004). Section 11-13-3 of the Code authorizes the village president and the board of trustees of villages having a population of less than 500,000 to enact an ordinance providing for the appointment of a 7-member zoning board to administer and interpret these zoning ordinances. 65 ILCS 5/11-13-3(c) (West 2004). As previously noted, the Village of Fox River Grove has adopted an ordinance creating a zoning board. Fox River Grove's zoning ordinance provides that the zoning board is an advisory body and has only the power to make recommendations to the village board for final action.²

In opinion No. S-1367, issued June 29, 1978 (1978 Ill. Att'y Gen. Op. 127), Attorney General Scott addressed the analogous question of whether the offices of county zoning board of appeals member and school board member were incompatible. Attorney General Scott concluded that because of potential conflicts of duties regarding zoning decisions, one person could not serve simultaneously as a county zoning board of appeals member and school board member. Attorney General Scott explained the interests of school boards in zoning matters as follows:

²The Code provides that in all municipalities the zoning board shall "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 adopted under this Division 13." 65 ILCS 5/11-13-3(f) (West 2004); *see also* 65 ILCS 5/11-13-12 (West 2004). The zoning board is likewise empowered to "hear and *decide* all matters referred to it or upon which it is required to pass under such an ordinance." 65 ILCS 5/11-13-3(g) (West 2004). The zoning board further has the power to conduct hearings on: (1) petitions for variations (65 ILCS 5/11-13-5, 11-13-6 (West 2004)); (2) applications for special use permits (65 ILCS 5/11-13-1.1 (West 2004)); and (3) proposed amendments to the zoning ordinance (65 ILCS 5/11-13-14 (West 2004)).

Fox River Grove's zoning ordinance, however, provides that the zoning board is advisory in nature and has only the power to make recommendations to the village board for final action. Village of Fox River Grove Zoning Ordinance of 1998 art. XI(D)(3) (eff. January 1, 1999). The Code contemplates that the zoning board will be a quasi-adjudicative body, with the power to hear and decide appeals and matters referred to it, not merely to make recommendations to the village board. *See* 65 ILCS 5/11-13-3(f), (g) (West 2004); *Monahan v. Village of Hinsdale*, 210 Ill. App. 3d 985, 991 (1991). As a general principle, because a non-home-rule municipality's power to zone is derived solely from statute, its ordinances cannot deviate from the statutory scheme. *See Geneva Residential Ass'n, Ltd. v. City of Geneva*, 77 Ill. App. 3d 744 (1979); *Martin v. City of Greenville*, 54 Ill. App. 3d 42 (1977). It is not necessary to resolve the issue of whether a zoning board may properly be created as a purely advisory body, however, because regardless of whether the zoning board is advisory or quasi-adjudicative in nature, the offices of school board member and zoning board member are incompatible for the reasons discussed below. Accordingly, for purposes of this response, it will be assumed that the duties of the zoning board are advisory in nature.

The school board is interested in the character of the neighborhood surrounding its schools. It also is concerned with the number and type of residential units within its district since this will affect student enrollment. * * * Basically, zoning decisions determine the character of the development in * * * [school] districts. Development determines the tax base and demand for services on each district. A person holding a position on the county board of appeals and * * * [the school board] could not in every instance properly and faithfully perform all the duties of both offices. 1978 Ill. Att'y Gen. Op. at 128-29.

Among the duties of the county zoning board of appeals expressly cited by Attorney General Scott as conflicting with the duties of a school board member were the duties to review enforcement decisions of zoning personnel and to advise the county board on zoning variations and amendments. These duties are advisory in nature. Similar duties are imposed upon the Fox River Grove zoning board.

The fact that a public officer has a duty to advise a public body regarding certain matters may be sufficient to preclude him or her from simultaneously serving in another public office. Thus, in opinion No. S-1120, issued July 1, 1976 (1976 Ill. Att'y Gen. Op. 232), Attorney General Scott concluded that the offices of county superintendent of highways (now county engineer) and alderman were incompatible because:

the county superintendent of highways in the present situation might naturally be called upon by the county board for advice [concerning contracts and highway projects] in which the interests of the county and those of the municipality might be opposed to each other. * * * In each of these situations there is the possibility that the county board might ask for the advice of the county superintendent of highways. In that case, the county superintendent's duty to advise the county board as to the best interest of the county might conflict with his duty as alderman to act for the best interest of the city. 1976 Ill. Att'y Gen. Op. at 233-34.

A school board has the power to seek zoning changes, variations, and special uses for property held or controlled by the school district. For school property located within Fox River Grove, those matters will be reviewed by the zoning board, which will in turn recommend action to the village board. The school district may also be adversely affected by other zoning decisions not directly related to school property. The interests of the village and the interests of

the school district may well be divergent with respect to these zoning matters. Regardless of whether the zoning board is responsible for making a final decision on these issues or merely recommending action to the village board, it is clear that one person cannot fully and faithfully represent the interests of both the municipality and the school district where those interests may be inconsistent. *See also* 1972 Ill. Att'y Gen. Op. 45, 46-47 (office of county board member and city or village zoning board of appeal member are incompatible). Therefore, because of the potential conflicts in the duties of the two offices which could cause a division of loyalties, it appears that the offices of school board member and village zoning board of appeals member are incompatible, and one person may not simultaneously serve in both capacities.³

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

Very truly yours,

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

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³In your letter you have suggested that a reexamination of the opinions cited above might be required in light of the decision in *People v. Claar*, 293 Ill. App. 3d 211 (1997), *appeal denied*, 177 Ill. 2d 574 (1998), in which it was alleged that the offices of village mayor and director of the Illinois Toll Highway Authority were incompatible. In *Claar*, the Third District Appellate Court affirmed the trial court's dismissal of the complaint on the grounds that the plaintiff failed to "demonstrate that there exists a conflict of duties which prohibits defendant from fully and faithfully performing simultaneously" the duties of the two offices. In *dicta*, the court in *Claar* drew a distinction between conflicts of interest and conflicts of duties, the existence of which our courts have not previously or subsequently recognized. The Supreme Court denied the plaintiff's appeal without addressing the merits of the case. More recently, another panel of the third district distinguished and declined to follow the *Claar* reasoning in another incompatibility case, *People ex rel. Smith v. Brown*, 356 Ill. App. 3d 1096 (2005). Because the court's analysis was not consistent with the recognized law of this State, was not necessary to the decision to affirm the dismissal of the complaint, and has not yet been addressed by the Supreme Court, the *Claar* decision cannot be read as replacing the traditional incompatibility of offices analysis.