



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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I - 11-003

COMPATIBILITY OF OFFICES:
Elementary School Board Member
and High School Board Member

The Honorable Sidney H. Mathias
State Representative, 53rd District
200-1N Stratton Building
Springfield, Illinois 62706

Dear Representative Mathias:

I have your letter inquiring whether the offices of elementary school board member and high school board member are incompatible. If the offices are determined to be incompatible, you have also inquired as to the legal ramifications, if any, of the election of an incumbent member of one school board to serve as a member of the other school board simultaneously. For the reasons discussed below, the offices of elementary school board member and high school board member are incompatible and, therefore, one person cannot hold both offices simultaneously. Further, as a matter of law, the acceptance of a second, incompatible office by the incumbent of another office constitutes an *ipso facto* resignation of the first office held.

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 office 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 simultaneously serving as an elementary school board member and a high school board member.¹ 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 office.

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 2008)). A school board exercises the corporate powers of the school district (105 ILCS 5/10-20 through 10-23.12 (West 2008)), including, among other things, supervising the education of children, raising revenue by tax levy, hiring teachers, and maintaining the schools. *See* 105 ILCS 5/10-20.1 through 10-23.12 (West 2008); *see also* 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. A school board member exercising the duties of that office under the School Code is obligated to faithfully discharge his or her duties, including protecting the school district's assets and the best interests of the school district. 105 ILCS 5/10-16.5 (West 2008), as amended by Public Act 96-998, effective July 2, 2010.

The School Code expressly authorizes school boards to contract with one another for a variety of programs and functions, including producing and broadcasting radio and television programming (105 ILCS 5/10-22.30 (West 2008)); acquiring special education facilities and personnel (105 ILCS 5/10-22.31 (West 2009 Supp.), as amended by Public Act 96-1000, effective July 2, 2010); creating joint educational programs (105 ILCS 5/10-22.31a (West 2008)); and engaging in joint building programs (105 ILCS 5/10-22.31b (West 2008)). 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-09-002, issued March 12, 2009; Ill. Att'y Gen. Inf. Op. No. I-01-025, issued May 23, 2001.

Based on the foregoing statutory provisions, it is clear that potential conflicts in the duties of the offices of elementary school board member and high school board member could prevent one person who holds both an elementary school board seat and a high school board seat simultaneously from fully and faithfully representing the interests of both school

¹Section 10-3 of the School Code (105 ILCS 5/10-3 (West 2008)) provides that "[a]ny person who, on the date of his or her election, is a citizen of the United States, of the age of 18 years or over, is a resident of the State and of the territory of the district for at least one year immediately preceding his or her election, is a registered voter as provided in the general election law, is not a school trustee or a school treasurer, and is not a child sex offender * * * shall be eligible to [sic] the office of school director."

districts when those districts must approve or consent to contracts between them, as well as any mutual contracts between the school districts and third parties. Therefore, the offices of high school board member and elementary school board member are incompatible.²

You have also inquired regarding the legal ramifications of the election of an incumbent office holder to an incompatible office. Under the common law, the acceptance of a second, incompatible office by the incumbent of another office constitutes an *ipso facto* resignation of the first office held. *Brown*, 356 Ill. App. 3d at 1101; Ill. Att'y Gen. Inf. Op. No. I-09-005, issued May 20, 2009. Thus, if an incumbent elementary school board member is elected to and accepts the office of high school board member, acceptance of the incompatible high school board office constitutes a resignation from the elementary school board as a matter of law. Similarly, if an incumbent high school board member is elected to and accepts the incompatible office of elementary school board member, acceptance of the elementary school board office constitutes an automatic resignation from the high school board. Under either scenario, once an incumbent board member accepts a second, incompatible office, he or she is not at liberty to choose which office to retain; the initial office is deemed, as a matter of law, vacant upon acceptance of the new office. If, however, an incumbent officer is elected to an incompatible office but chooses not to accept it, then no resignation from the first office results.

CONCLUSION

Because of the potential conflicting duties, a person who serves on a high school board and an elementary school board simultaneously would be unable, in every instance, to represent the interests of both school districts fully and faithfully. Therefore, the offices of high school board member and elementary school board member are incompatible, and one person may not hold both positions simultaneously. Further, the acceptance of a second, incompatible office by the incumbent of another office constitutes an *ipso facto* resignation of the first office held.

²This conclusion is consistent with previously issued opinions of this office. In opinion No. 185, issued April 5, 1933 (1933 Ill. Att'y Gen. Op. 264), Attorney General Kerner, prior to the enactment of the current School Code (105 ILCS 5/1-1 *et seq.* (West 2008)), was asked whether the offices of community high school district board member and grade school district board member were incompatible. In reaching his conclusion that the two offices were incompatible, Attorney General Kerner stated:

If one person can legally be a member of the two boards, then all other members can likewise serve on the two boards, and, in that event, the board * * * would be contracting with itself, and this the law prohibits. 1933 Ill. Att'y Gen. Op. at 265.

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

 Very truly yours,

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