



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

September 23, 2005

I - 05-006

COMPATIBILITY OF OFFICES:
County Coroner Serving
as the County Sheriff

The Honorable Albert G. Algren
State's Attorney, Warren County
Warren County Courthouse
Monmouth, Illinois 61462

Dear Mr. Algren:

I have your letter inquiring whether one person may simultaneously hold the offices of county coroner and county sheriff. Because of the nature of your inquiry, I do not believe that an official opinion is necessary. I will, however, comment informally on your question.

According to your letter, the Warren County sheriff plans to retire in October 2005, leaving approximately 13 months remaining in his term of office. The county coroner seeks to be appointed to fill the vacancy in the sheriff's office, while continuing to serve as coroner. You have inquired whether an incumbent county coroner may be appointed to the office of county sheriff and serve in both capacities.

The common law doctrine of incompatibility of offices precludes simultaneous tenure in two public 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 such that the holder of one cannot, in every instance, properly and faithfully perform all 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 county sheriff and a county coroner. 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.

There is no inherent conflict in the duties of sheriff and coroner. To the contrary, section 3-3010 of the Counties Code (55 ILCS 5/3-3010 (West 2004)) expressly provides that the county coroner may perform the duties of a county sheriff in the event of a vacancy in that office:

Deputy sheriff, undersheriff, or coroner to act when sheriff's office vacant. *Where the office of the sheriff is vacant*, the chief deputy sheriff or undersheriff if designated by the sheriff to fill the vacancy, or, *if no designation is made, the coroner of the county shall perform all the duties required by law to be performed by the sheriff, and have the same powers, and be liable to the same penalties and proceedings as if he were sheriff, until another sheriff is elected or appointed and qualified.* The designation shall be in writing and filed with the county clerk. (Emphasis added.)

Under the plain language of section 3-3010, in the event that the office of sheriff becomes vacant and the former sheriff has made no designation to fill the vacancy, the incumbent coroner is directed and empowered to carry out all the duties of the sheriff. The General Assembly has thus determined that, when a vacancy occurs in the office of sheriff, there is no conflict for a coroner to perform the duties of that office until such time as an individual is elected or appointed and qualified to assume the office of sheriff. *See also Greenup v. Stoker*, 12 Ill. 24, 26 (1850) (coroner is authorized to execute duties of sheriff when he assumes such office); *Allbee v. People*, 22 Ill. 533, 534 (1859) (bond of coroner who had succeeded to the office of sheriff upon his death was binding); *Speer v. Skinner*, 35 Ill. 282, 305 (1864) (coroner had authority to act as sheriff); *Reed v. Reber*, 62 Ill. 240, 241 (1871) (coroner fills vacancy in the office of sheriff upon his continued absence); 1913 Ill. Att'y Gen. Op. 728 (when a vacancy occurs in the sheriff's office, the coroner is to perform the duties of sheriff); Ill. Att'y Gen. Op. No. UP-1015, issued September 23, 1963 (offices of deputy sheriff and deputy coroner are compatible); 1969 Ill. Att'y Gen. Op. 155 (coroner is entitled to the sheriff's salary while coroner is serving as sheriff); 1975 Ill. Att'y Gen. Op. 15 (when office of sheriff is vacant, the coroner has the authority to perform duties of sheriff).

Other statutory provisions also provide that, under various circumstances, the coroner or sheriff may be required to perform the duties of the other office. *See, e.g.*, 55 ILCS 5/3-3008 (West 2004) (process may be directed to coroner when sheriff is prejudiced against

party to suit); 55 ILCS 5/3-3009 (West 2004) (process may be directed to any sheriff, any sheriff's deputy or police officer in the county, when there is a vacancy in the office of the coroner or the coroner is prejudiced against party to suit); 55 ILCS 5/3-3043 (West 2004) (sheriff is authorized to fill vacancy in office of appointed coroner); 55 ILCS 5/3-3044 (West 2004) (sheriff is authorized to perform duties of coroner where the office of coroner has been abolished); 55 ILCS 5/4-7001 (West 2004) (coroner is entitled to fees and compensation for performing duties of sheriff); 730 ILCS 125/8 (West 2004) (coroner shall perform the duties of county jail warden when sheriff is imprisoned therein).

The only remaining question is whether the county coroner has sufficient time to faithfully and properly perform the duties of the offices of coroner and sheriff simultaneously. The sheriff is required to keep the office open and to attend to the duties thereof on a full-time basis (55 ILCS 5/3-6019 (West 2004)). In larger counties, it is possible that one person would be unable to perform all the duties of both offices for an extended period of time due to considerations of time and travel. However, in a smaller county, where the duties of the coroner may be less than full-time and the offices of both sheriff and coroner are located in the same building, such considerations could be less pressing. Whether a person has the time to perform the duties of both sheriff and coroner properly and faithfully is a factual question that the county board must determine in its consideration of filling a vacancy in the office of sheriff.

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:KJS:an



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

August 26, 2015

I - 15-007

GOVERNMENTAL ETHICS &
CONFLICT OF INTEREST:
Sheriff or Deputy Sheriff Serving on County's
Emergency Telephone System Board

The Honorable Mark R. Isaf
State's Attorney, Edgar County
115 West Court Street, Room S
Paris, Illinois 61944-1787

Dear Mr. Isaf:

I have your letter in which you state that the Edgar County Emergency Telephone System Board (the ETS Board) has agreed to compensate the Edgar County sheriff's office for providing dispatching services for the Edgar County Emergency Telephone System (the System). You inquire whether, in light of this agreement, either the Edgar County sheriff or an Edgar County deputy sheriff may serve simultaneously as a member of the ETS Board. For the reasons discussed below, in these circumstances, the offices of sheriff and deputy sheriff are incompatible with the office of ETS board member. Accordingly, neither the Edgar County sheriff nor an Edgar County deputy sheriff may serve simultaneously as a member of the Edgar County ETS Board. We are hopeful that this analysis will provide guidance for future appointments to ETS boards as consolidation and restructuring of the boards occurs to comply with the requirements of Public Act 99-006, effective in part June 29, 2015, and January 1, 2016.

BACKGROUND

Pursuant to subsection 15.4(a) of the Emergency Telephone System Act (the Act) (50 ILCS 750/15.4(a) (West 2014)), a county that imposes a telephone surcharge to fund an emergency telephone system is required to establish a governing board for the system:

The corporate authorities shall provide for the manner of appointment and the number of members of the [ETS] Board, provided that the board shall consist of not fewer than 5 members, *one of whom must be a public member who is a resident of the local exchange service territory included in the 9-1-1 coverage area, one of whom (in counties with a population less than 100,000)⁽¹⁾ must be a member of the county board, and at least 3 of whom shall be representative of the 9-1-1 public safety agencies, including but not limited to police departments, fire departments, emergency medical services providers, and emergency services and disaster agencies, and appointed on the basis of their ability or experience. * * * Elected officials, including members of a county board, are also eligible to serve on the board.* (Emphasis added.)²

Subsection 15.4(b) of the Act (50 ILCS 750/15.4(b) (West 2014)), which sets out the powers and duties of an ETS board, currently provides, in pertinent part:

(b) The powers and duties of the board shall be defined by ordinance of the * * * county * * *. The powers and duties shall include, but need not be limited to the following:

- (1) Planning a 9-1-1 system.
- (2) Coordinating and supervising the implementation,

¹According to the 2010 Federal decennial census, the population of Edgar County is 18,576 inhabitants. Illinois Blue Book 441 (2013-2014).

²Public Act 99-006, Article II, effective January 1, 2016, will amend numerous sections of the Act to create a single statewide 9-1-1 system. Specifically, section 15.4 of the Act will be amended to provide that on and after January 1, 2016, no municipality or county may create an ETS board unless it is a joint ETS board, new section 15.4a will be added to require consolidation of certain ETS boards by July 1, 2017, and numerous other changes will be made to implement the recommendations of the 9-1-1 Services Advisory Board. See 9-1-1 Services Advisory Board, Report to the Illinois General Assembly, April 1, 2015, available at <http://www.icc.illinois.gov/911servicesadvisoryboard/>.

upgrading, or maintenance of the system, including the establishment of equipment specifications and coding systems.

(3) *Receiving moneys from the surcharge imposed under Section 15.3, and from any other source, for deposit into the Emergency Telephone System Fund.*

(4) *Authorizing all disbursements from the fund.*

(5) Hiring any staff necessary for the implementation or upgrade of the system.

(6) Participating in a Regional Pilot Project to implement next generation 9-1-1, as defined in this Act, subject to the conditions set forth in this Act. (Emphasis added.)

In addition, subsection 15.4(c) of the Act (50 ILCS 750/15.4(c) (West 2014)) presently authorizes the Board to expend ETS funds for specified purposes:

(c) All moneys received by a board pursuant to a surcharge imposed under Section 15.3 shall be deposited into a separate interest-bearing Emergency Telephone System Fund account. The treasurer of the * * * county that has established the board * * * shall be custodian of the fund. All interest accruing on the fund shall remain in the fund. *No expenditures may be made from such fund except upon the direction of the board by resolution passed by a majority of all members of the board. Expenditures may be made only to pay for the costs associated with the following:*

* * *

(7) * * * products and services necessary for the implementation, upgrade, and maintenance of the system and *any other purpose related to the operation of the system, including costs attributable directly to the construction, leasing, or maintenance of any buildings or facilities or costs of personnel attributable directly to the operation of the system.* Costs attributable directly to the operation of an emergency telephone system do not include the costs of public safety agency personnel who are and equipment that is dispatched in response to an emergency call. (Emphasis added.)

ANALYSIS

Composition of an ETS board

A single county ETS board is an agency of the county. *See* Ill. Att'y Gen. Op. No. 96-038, issued December 3, 1996; Ill. Att'y Gen. Inf. Op. No. I-12-003, issued March 2, 2012; Ill. Att'y Gen. Inf. Op. No. I-07-047, issued September 13, 2007. The county board determines the number of members comprising the board and their method of selection. 50 ILCS 750/15.4(a) (West 2014). Subsection 15.4(a) of the Act requires that at least three members of an ETS board be representatives of 9-1-1 public safety agencies, "including but not limited to police departments, fire departments, emergency medical services providers, and emergency services and disaster agencies[.]"³ The Act defines "public safety agency" as "a functional division of a public agency which provides firefighting, police, medical, or other emergency services." 50 ILCS 750/2.02 (West 2014).

A sheriff is a "conservator of the peace in his or her county," and is under a duty to "prevent crime and maintain the safety and order of the citizens of that county; and may arrest offenders on view[.]" 55 ILCS 5/3-6021 (West 2014). As the supervisor of safety for the county, the sheriff is also charged with enforcing the laws of this State, as well as municipal ordinances, relating to the regulation of motor vehicle traffic and the promotion of safety on public highways. 55 ILCS 5/3-6035, 3-6036 (West 2014). Deputy sheriffs may perform any and all of the duties of the sheriff, in the name of the sheriff, and the acts of the deputies are held to be acts of the sheriff. 55 ILCS 5/3-6015, 3-6016 (West 2014). Because it provides police services, the Edgar County sheriff's office constitutes a "public safety agency," as that term is defined in the Act.⁴ Consequently, both the sheriff and a deputy sheriff would meet the requirements to serve on the Edgar County ETS Board as representatives of a public safety agency, unless they are otherwise disqualified from serving.

³Your letter indicates that the Edgar County ETS Board consists of individuals representing the Paris Fire Department, Hume/Metcalf Police Department, Vermilion Fire Service, Paris Police and Fire Board, the sheriff of Edgar County, and a deputy sheriff of Edgar County. It appears that all of these individuals would be classified as representatives of the 9-1-1 public safety agencies. However, an ETS board is also required to include a public member who is a resident of the local exchange service territory included in the 9-1-1 coverage area, as well as a county board member. *See* 50 ILCS 750/15.4(a) (West 2014).

⁴*See also* *People ex rel. Rexses v. Cermak*, 239 Ill. App. 195, 200-01 (1925) (the police function of patrolling highways attaches to the sheriff); *People v. Dittmar*, 2011 IL App (2d) 091112, ¶29, 954 N.E.2d 263, 271-72 (2011) (holding that it was a "reasonable public-safety endeavor" for a deputy sheriff to check on a stopped vehicle because the deputy sheriff had reason to believe that the occupants might need assistance and/or that passing traffic may harm the occupants).

Incompatibility of Offices

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 all of the duties of the other. *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 are no constitutional or statutory provisions expressly prohibiting one person from simultaneously holding the offices of sheriff or deputy sheriff⁵ and ETS board member. The issue, therefore, is whether the duties of one of the offices are such that its holder could not, in every instance, fully and faithfully discharge all of the duties of the other.

It is our understanding that the Edgar County Board, with the approval of the sheriff, has entered into an agreement with the ETS Board pursuant to which the sheriff's office is compensated for providing dispatching services for the System.⁶ According to your letter, the ETS Board "routinely votes on financial contributions to the Edgar County Sheriff's Department" for providing these services.

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-07-006, issued March 2, 2007, at 3. Although the Edgar County ETS System is a county agency, it is nonetheless quasi-independent, with its own restricted funding sources and a separate governing body. For purposes of this analysis, therefore, the contractual relationship between the county and the ETS Board is analogous to a contractual relationship between two separate units of government.

⁵Unlike a police officer, who was not considered an officer of the city at common law, a deputy sheriff is generally held to occupy an office. *See County of Winnebago v. Industrial Comm'n*, 39 Ill. 2d 260, 263-64 (1968). Accordingly, although the doctrine of incompatibility is not applicable to mere employees, it is applicable to deputy sheriffs, who are officers of the county.

⁶ETS boards are authorized to contract for the provision of emergency telephone system dispatching services, such as receiving telephone requests for emergency services and contacting the appropriate public agency for response. 50 ILCS 750/15.4(c)(7) (West 2014); *see also* Ill. Att'y Gen. Inf. Op. No. I-02-040, issued July 23, 2002. In instances where it is agreed that the county sheriff's office should provide dispatching services, the county board is the appropriate contracting entity for the sheriff. 1980 Ill. Att'y Gen. Op. 60; Ill. Att'y Gen. Inf. Op. No. I-02-040 at 6. While ETS boards may use ETS funds for the costs of dispatching services, the Act provides that "[c]osts attributable directly to the operation of an emergency telephone system do not include the costs of public safety agency personnel who are and equipment that is dispatched in response to an emergency call." 50 ILCS 750/15.4(c)(7) (West 2014). Accordingly, ETS boards are not authorized to expend ETS funds on public safety personnel and equipment dispatched on emergency calls.

One of the inherent duties of a county sheriff is to advise the county board on the needs and capabilities of the sheriff's office. See 1978 Ill. Att'y Gen. Op. 52; Ill. Att'y Gen. Inf. Op. No. I-96-014, issued January 4, 1996. Even if the Edgar County sheriff does not have the ultimate authority to contract with the ETS Board to provide dispatching services, the sheriff may nonetheless have significant influence over both the county board's and the ETS Board's decisions to enter into the agreement and the terms of the agreement. See *Peabody v. Sanitary District of Chicago*, 330 Ill. 250 (1928) (holding 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); Ill. Att'y Gen. Inf. Op. No. I-07-006 (the offices of village commissioner and county sheriff are incompatible where the village contracts with the county for police protection services). If the sheriff or a deputy sheriff were to serve simultaneously as an ETS board member, he or she would be placed in the untenable position of balancing the interests of the sheriff's office and the ETS System. Because the sheriff's or the deputy sheriff's duties to the county and to the System would conflict in these circumstances, the sheriff (or a deputy sheriff) is necessarily precluded from also serving as a county ETS board member, unless another provision of Illinois law expressly permits such simultaneous tenure.

The General Assembly has established specific membership criteria for ETS boards, including the requirement that at least three members of such board be representatives of 9-1-1 public safety agencies. Although the definition of "public safety agency" in the Act would generally encompass a sheriff's office, there is no express requirement in subsection 15.4(a) that sheriffs or deputy sheriffs serve on an ETS board. Further, while section 15.4 provides that elected officials are eligible to serve on the board, the statutory language does not expressly address the offices of sheriff or deputy sheriff.

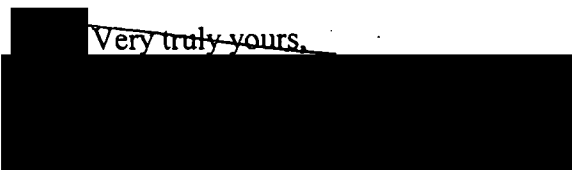
The Edgar County sheriff would have an actual conflict of duties if he were to serve simultaneously as a member of the ETS Board. Moreover, because a deputy sheriff is also a county officer whose powers are derived from the sheriff, the sheriff's conflict extends to his deputies. If the General Assembly had intended to permit a sheriff or a deputy sheriff to serve on an ETS board notwithstanding the potential conflicts stemming from simultaneous tenure, we may presume that the General Assembly would have included that specific authorization in the Act. The general language of subsection 15.4(a) that requires an ETS board to include representatives of public safety agencies and that authorizes elected officials to serve as members of ETS boards does not sufficiently demonstrate the legislature's intent to permit a sheriff to serve on an ETS board, conflicting duties notwithstanding. Accordingly, absent express statutory authorization permitting simultaneous tenure in these circumstances, neither the Edgar County sheriff nor an Edgar County deputy sheriff may simultaneously serve as a member of the Edgar County ETS Board.

CONCLUSION

Based upon the facts that you have provided, and in the absence of express statutory authorization, the offices of Edgar County sheriff and Edgar County deputy sheriff are incompatible with the office of Edgar County Emergency Telephone System Board member. Accordingly, one person cannot hold both offices simultaneously.

You have also referenced potential conflicts of interest affecting other members of the Edgar County ETS Board. Based on your brief description of these issues, I regret that we cannot address them without additional information. If you wish to supplement your inquiry, we will endeavor to advise you. Alternatively, I am providing two previously issued opinions (Ill. Att'y Gen. Inf. Op. No. I-12-003, issued March 2, 2012; Ill. Att'y Gen. Inf. Op. No. I-01-007, issued February 5, 2001) that may provide you with guidance regarding conflicts of interest generally, and the proper expenditure of emergency telephone system funds.

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:ERV:cj

Enclosures



**OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS**

Lisa Madigan
ATTORNEY GENERAL

July 1, 2011

I - 11-005

COMPATIBILITY OF OFFICES:
County Sheriff and Fire
Protection District Trustee

The Honorable Johnathan M. Bates
State's Attorney, Grundy County
111 East Washington Street
Morris, Illinois 60450

Dear Mr. Bates:

I have your letter inquiring whether the offices of county sheriff and fire protection district trustee are incompatible. For the reasons stated below, the office of county sheriff is not incompatible with the office of fire protection district trustee and, therefore, one person may hold both offices simultaneously.

BACKGROUND

Your letter states that the Grundy County sheriff was re-elected to a four-year term of office at the November 2010 general election. At that same election, a majority of the voters of the Gardner Fire Protection District approved a proposition to elect, rather than to appoint, the fire protection district's trustees. At the April 2011 consolidated election, the Grundy County sheriff ran for and was elected to the office of Gardner Fire Protection District trustee. Your letter states that there are no contractual agreements between the sheriff and the fire protection district. You have asked whether the offices of county sheriff and fire protection district trustee are incompatible in these circumstances.

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 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 a county sheriff and as a fire protection district trustee. 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 duties of the county sheriff are set out in division 3-6 of the Counties Code (55 ILCS 5/3-6001 *et seq.* (West 2010)). As conservators of the peace (*see* 55 ILCS 5/3-6021 (West 2010)), county sheriffs are authorized to prevent crime, maintain the safety and order of the citizens throughout the county, and arrest offenders and cause them to be brought before the proper court. Further, a sheriff's duties include taking custody of the courthouse and the jail (55 ILCS 5/3-6017 (West 2010)), serving and executing warrants, process, orders, and judgments legally directed to the sheriff's office (55 ILCS 5/3-6019 (West 2010)), and attending sessions of court and providing security in the courthouse (55 ILCS 5/3-6023 (West 2010)). As the supervisor of safety (55 ILCS 5/3-6035 (West 2010)), the sheriff is responsible for enforcing all laws and ordinances relating to the regulation of motor vehicle traffic and the promotion of safety on public highways. 55 ILCS 5/3-6036 (West 2010). The sheriff is also required to keep his or her office open and to attend to the duties thereof on a full-time basis. 55 ILCS 5/3-6019 (West 2010).

In addition to the foregoing, section 5-1085.5 of the Counties Code (55 ILCS 5/5-1085.5 (West 2010))¹ requires each non-home-rule county to establish written protocols to deal

¹Section 5-1085.5 of the Counties Code provides, in pertinent part:

Homicide and questionable death protocol. Each county, except home rule counties, must establish a written protocol to deal with homicides and questionable deaths. The protocol must be promulgated by the Coroner, Sheriff, State's Attorney, all fire departments and fire protection districts located in the county, and all police departments located in the county. The protocol must include at least the following:

- (a) the types of deaths that fall under the scope of the protocol;
- (b) the agencies concerned with the death;
- (c) the area of responsibility for each agency regarding the death; and
- (d) uniform procedures concerning homicides and questionable deaths.

with homicides and questionable deaths. Together with the county coroner, the State's Attorney, and all fire departments and fire protection districts located in a county, the county sheriff must promulgate the county's written protocol for dealing with homicides and questionable deaths.

The operations of fire protection districts are governed by the Fire Protection District Act. 70 ILCS 705/0.01 *et seq.* (West 2010). The powers of a fire protection district are exercised by its board of trustees. 70 ILCS 705/6 (West 2010). The duties of a fire protection district board include, among other things: acquiring and holding land for the use of the fire protection district (70 ILCS 705/10 (West 2010)); selling or leasing property owned by the district and no longer needed for fire protection purposes (70 ILCS 705/10a (West 2010)); contracting with other fire protection districts or municipalities for the 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 (70 ILCS 705/10b (West 2010)); contracting with corporations organized to furnish fire protection services (70 ILCS 705/11a (West 2010)); implementing and maintaining an address system (70 ILCS 705/11e (West 2010)); borrowing money for corporate purposes and issuing bonds therefor (70 ILCS 705/12 (West 2010)); levying taxes for the operation of the district (70 ILCS 705/14 (West 2010)); and generally providing fire protection services for the persons and property located within the district (70 ILCS 705/1 (West 2010)). Further, pursuant to section 5-1085.5 of the Counties Code, and in conjunction with the county coroner, county sheriff, and State's Attorney, all fire departments and fire protection districts located in a non-home-rule county must promulgate or put into effect the county's written protocol for dealing with homicides and questionable deaths.



There may be incidents in which the county sheriff (or the county sheriff's personnel) and the personnel of a fire protection district will respond to the same situation or otherwise cooperate or interact in the course of performing their respective responsibilities. A review of the duties of the offices of county sheriff and fire protection district trustee, however, does not reveal any potential conflict of duties that would prevent one person from faithfully discharging the duties of both offices simultaneously. Further, nothing in the relevant statutory provisions contemplates the creation of specific contractual relationships between the county sheriff and a fire protection district, nor is a county sheriff required by statute to advise the county board regarding any agreements that the county may enter into with a fire protection district. Based on the foregoing, the offices of county sheriff and fire protection district trustee are not incompatible, and one person may hold both offices simultaneously.

The only remaining question is whether the county sheriff has sufficient time to faithfully and properly perform the duties of the offices of sheriff and fire protection district trustee simultaneously. This presents a factual question that cannot be resolved in a legal opinion of the Attorney General. See Statement of Policy of the Attorney General Relating to Furnishing Written Opinions, <http://www.illinoisattorneygeneral.gov/opinions/opinionpolicy.pdf>.

CONCLUSION

Based on the duties of the county sheriff and a fire protection district trustee, there is no apparent conflict in duties which would prohibit one person from properly and faithfully performing all of the duties of each office. Therefore, assuming that the incumbent has adequate time to execute the duties of both offices, the office of county sheriff is not incompatible with the office of fire protection district trustee, and one person may hold both offices simultaneously.

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

 Very truly yours,


LYNN E. PATTON
Senior Assistant Attorney General
Chief, Public Access and Opinions Division

LEP:LAS:lk



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.

Honorable David R. Cherry - 2.

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 box used to redact the signature of Michael J. Luke.

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

MJL:KJS:cj



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

March 2, 2007

I - 07-006

COMPATIBILITY OF OFFICES:
Village Commissioner and County Sheriff

The Honorable Sheldon Sobol
State's Attorney, Grundy County
111 East Washington Street
Morris, Illinois 60450

Dear Mr. Sobol:

I have your letter wherein you inquire whether the offices of village commissioner and county sheriff are incompatible. For the reasons stated below, the office of village commissioner is incompatible with the office of county sheriff.

BACKGROUND

Your letter indicates that the current county sheriff was elected to office in November 2006. Prior to being elected to that position, the county sheriff was previously elected to the office of village commissioner for the Village of Gardner, a municipality that operates under the commission form of government. The Village of Gardner has no police force and contracts with Grundy County and the Grundy County Sheriff's office to provide its police protection services. Although the contract for police protection services was entered into prior to the county sheriff's election as such, the village council must annually approve the expenditure of village moneys to satisfy its contractual obligations to Grundy County. Consequently, you have asked whether the offices of village commissioner and county sheriff are incompatible.

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 (1908). There is no constitutional or statutory provision expressly prohibiting one person from simultaneously holding the offices of village commissioner and county sheriff. 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.

Police Protection Services

Pursuant to section 1-1-2 of the Illinois Municipal Code (65 ILCS 5/1-1-2 (West 2004)), the village council serves as the corporate authorities for a village operating under the commission form of government. A village council is authorized to exercise all executive, administrative, and legislative powers granted to the village. 65 ILCS 5/4-5-2 (West 2004). In this regard, it is among the duties of the corporate authorities to pass an annual appropriation ordinance or budget that sets apart the moneys necessary to defray all necessary expenses and liabilities of the municipality for the fiscal year. 65 ILCS 5/8-1-2, 8-2-9, 8-2-9.3 (West 2004).

The duties of the county sheriff are set out in division 3-6 of the Counties Code (the Code) (55 ILCS 5/3-6001 *et seq.* (West 2004)), and include taking custody of the courthouse and the jail (55 ILCS 5/3-6018 (West 2004)) and acting as conservator of the peace throughout the county (55 ILCS 5/3-6023 (West 2004)). In addition, section 5-1103.1 of the Code (55 ILCS 5/5-1103.1 (West 2004)) specifically authorizes municipalities and counties to contract for the provision of police protection services and provides:

In counties having fewer than 1,000,000 inhabitants,^[1] the county board may contract, *with advice and consent of the sheriff in the county in which the request for contract services is made*, based upon a determination of law enforcement needs of the area in which contract services are sought, with one or more incorporated municipalities lying wholly or partly within the county to furnish police protection in the area of the county that is not within the incorporated area of any municipality having a regular police department. (Emphasis added.)

¹Based on 2000 census figures, the population of Grundy County is 37,535. See Illinois Blue Book 421 (2003-2004).

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-06-031, issued June 21, 2006. Although a county sheriff may not ordinarily be a party to a contract or intergovernmental agreement between the county and the village for police protection or county jail services, he may nonetheless influence the making of the contracts. 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. 232, 233-34.

As quoted above, under section 5-1103.1 of the Code, it is among the county sheriff's statutory duties to advise the county board and consent, if appropriate, to any proposed contract for the provision of police protection services to a municipality. In contrast to the situation discussed in opinion No. S-1120, where the county superintendent of highways possessed a *potential* conflict because he might be called on for advice on a contract that could be entered into by the county, the county sheriff has an *actual* conflict regarding a county contract for police protection services. The county may not enter into such an agreement without the county sheriff's "advice and consent."

Grundy County currently has in effect a contract with the Village of Gardner specifically for police protection services. The county sheriff possesses an ongoing statutory duty to advise the county board at any time with regard to the Village of Gardner contract. Further, it is among the statutory duties of a Village of Gardner commissioner to vote on the appropriation of money to satisfy the village's obligation under the police protection services contract. If one person were to serve as both a village commissioner and county sheriff, he or she would be placed in the untenable position of ensuring that the best interests of both the village and the county would be served with regard to the agreement relating to the provision of police protection services.

County Jail Facilities

In addition to contracting for police protection services, section 11-3-2 of the Illinois Municipal Code (65 ILCS 5/11-3-2 (West 2004)) specifically authorizes the corporate authorities of a municipality to use the county jail, with the consent of the county board, for the confinement or punishment of its offenders. It is foreseeable that a municipality desiring to utilize the county's jail facilities would do so through the execution of an intergovernmental cooperation agreement (*see generally* 5 ILCS 220/5 (West 2004)), the terms of which may include the municipality tendering payment to the county for such services.

As in *Peabody*, it is foreseeable that the county sheriff might be called on by the county board for advice in those instances in which the village wishes to use the county's jail facilities and the county board is contemplating an intergovernmental agreement to that effect. In such circumstances, there is a potential conflict if the county sheriff also serves as a village commissioner.

CONCLUSION

Because of the actual and potential conflicts in the duties of these offices, a person who serves simultaneously as both a village commissioner and a county sheriff 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.

The Honorable Sheldon Sobol - 5

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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