



WILLIAM J. SCOTT

ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD

April 2, 1974

FILE NO. NP-731

COUNTIES:

Compatibility of Office of County
Board Member and Director of Soil
and Water Conservation District

Honorable Jack Hoogasian
State's Attorney
Lake County
County Building
Waukegan, Illinois 60085

Dear Mr. Hoogasian:

I have your letter wherein you inquire whether the offices of county board member and director of a soil and water conservation district are compatible.

From the general rule announced in People v. Haas, 145 Ill. App. 283, it appears that incompatibility between offices arises where the constitution or a statute specifically prohibits the occupants of either one of the offices from holding the other, or where because of the duties of either office a conflict in

NP 731

Honorable Jack Hoogasian - 2.

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.

There are many areas where, because of the nature of powers given to both soil and water conservation districts and counties, a person who simultaneously holds the office of director of a soil and water conservation district and county board member will have, in my opinion, a conflict of interest and be unable to properly and faithfully perform the duties of both offices.

The general policy behind the Soil and Water Conservation Districts Law is set forth in section 2 of said Act (Ill. Rev. Stat. 1973, ch. 5, par. 107), which provides:

"It is hereby declared to be the policy of the legislature to provide for the conservation of the soil, soil resources, water and water resources of this State, and for the control and prevention of soil erosion, and for the prevention of erosion, floodwater and sediment damages, and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wild life and forests, protect the tax base, protect public lands, and protect and promote the health, safety and general welfare of the people of this State."

Honorable Jack Hoogasian - 3.

To enable a soil and water conservation district to realize these objectives, said Act empowers soil and water conservation districts to cooperate and effectuate agreements with individuals or agencies of government (Ill. Rev. Stat. 1973, ch. 5, par. 127.7a) and to make and execute contracts and other instruments, necessary or convenient to the exercise of their powers. Ill. Rev. Stat. 1973, ch. 5, par. 127.8.

In the area of county government, the powers of a county are exercised by its county board. (Ill. Rev. Stat. 1973, ch. 34, par. 302.) A county board is empowered to manage the county business (Ill. Rev. Stat. 1973, ch. 34, par. 403) and make, on behalf of the county, all contracts in relation to the property and concerns of the county necessary to the exercise of its corporate powers. Ill. Rev. Stat. 1973, ch. 34, par. 303.

Because both soil and water conservation districts and counties possess similar powers, and because they are both empowered to enter into agreements with each other, it is conceivable that a soil and water conservation district and a county might wish to contract as to some matter within the scope of their powers. In such an instance, a person who simultaneously is a director of a soil and water conservation district and a

Honorable Jack Hoogasian - 4.

county board member would be in the untenable position of being a party to both sides of a contract. Since the interest of both parties would not necessarily be identical, and since they would both be attempting to negotiate a contract most advantageous to their side, it is my opinion that such a person would have a conflict of interest and be unable to properly and faithfully perform the duties of both offices.

There are many substantive areas in relation to which both soil and water conservation districts and counties possess powers which could be the subject matter of such cooperative agreements and contract. Soil and water conservation districts are empowered to survey, investigate, research and develop plans (Ill. Rev. Stat. 1973, ch. 5, par. 127.1), and carry out preventive and control measures relating thereto (Ill. Rev. Stat. 1973, ch. 5, par. 127.2) by constructing, improving, operating and maintaining structures (Ill. Rev. Stat. 1973, ch. 5, par. 127.6) programs and projects relating to the conservation of the renewable natural resources of soil, water, forests, fish, wild life and air (Ill. Rev. Stat. 1973, ch. 5, par. 127.7a), and for the control and prevention of soil erosion, floods, floodwater and sediment

Honorable Jack Hoogasian - 5.

damages (Ill. Rev. Stat. 1973, ch. 5, pars. 127.1 and 127.7a) and impairment of dams and reservoirs. (Ill. Rev. Stat. 1973, ch. 5, par. 127.7a.) They can also assist in maintaining the navigability of rivers and harbors and cooperate with local interests and agencies of government in providing domestic and industrial, municipal and agricultural water supplies and recreational project developments and improvements. (Ill. Rev. Stat. 1973, ch. 5, par. 127.7a.) Furthermore, they can make available, on such terms as they prescribe, the use of agricultural and engineering machinery and equipment to assist land owners or occupiers carry on operations for conservation of soil and water resources, and for the prevention of soil erosion and erosion floodwater and sediment damages. Ill. Rev. Stat. 1973, ch. 5, par. 127.5.

Counties, such as yours, which operate under "AN ACT in relation to water supply, drainage, sewage, pollution and flood control in certain counties" (Ill. Rev. Stat. 1973, ch. 34, pars. 3101 et seq.), in order to effect the protection, reclamation or irrigation of the land in the county, are empowered to perform work relating to ditches, drains, sewers, rivers, water courses, ponds, canals, lakes, creeks, natural streams, levees, dikes, dams,

Honorable Jack Hoogasian - 6.

sluices, revetments, reservoirs, holding basins and floodways.

(Ill. Rev. Stat. 1973, ch. 34, par. 3106.) They can, under said Act, perform work required for the production, development, and delivery of adequate, pure and wholesome water supplies.

(Ill. Rev. Stat. 1973, ch. 34, par. 3110.) They can also: Purchase and hold real estate for the preservation of forests and maintain and regulate the use thereof (Ill. Rev. Stat. 1973, ch. 34, par. 303); take all necessary measures to prevent forest fires and encourage the maintenance and planting of trees and the preservation of forests (Ill. Rev. Stat. 1973, ch. 34, par. 303); provide for the conservation, preservation and propagation of insectivorous birds (Ill. Rev. Stat. 1973, ch. 34, par. 303); acquire title to real estate for parks and recreational purposes (Ill. Rev. Stat. 1973, ch. 34, par. 303) and maintain such lands (Ill. Rev. Stat. 1973, ch. 34, par. 418.1); remove obstructions from natural and other water courses (Ill. Rev. Stat. 1973, ch. 34, par. 430); and lease equipment and machinery required for corporate purposes. Ill. Rev. Stat. 1973, ch. 34, par. 418.3.

In addition to conflicts that can arise due to the contractual and cooperative powers possessed by both soil and water conservation districts and counties, conflicts of interest

Honorable Jack Hoogasian - 7.

can also arise due to potential competition between said bodies which would prevent a person who is simultaneously a director of a soil and water conservation district and a county board member from properly and faithfully discharging duties of both offices. Soil and water conservation districts and counties may find themselves competing for the same funds. Soil and water conservation districts are empowered to receive money from the United States or from the State or any of its agencies and to use such monies in carrying out their operations. (Ill. Rev. Stat. 1973, ch. 5, par. 127.7.) County boards are empowered to create within their respective counties an office of Coordinator of Federal and State aid to report to and assist them with development programs for which State and Federal funds are or may be available, and assist in the application for such funds. (Ill. Rev. Stat. 1973, ch. 34, par. 403-1.) Soil and water conservation districts and counties may also find themselves competing in the acquisition of property. Soil and water conservation districts are empowered to acquire property necessary for the purposes of the district. (Ill. Rev. Stat. 1973, ch. 5, par. 127.4.) Counties are also empowered to acquire property for the benefit of the county. Ill. Rev. Stat. 1973, ch. 34, par. 303.

Honorable Jack Hoogasian - 8.

A third area in which conflicts of interest can arise involves the power of soil and water conservation districts to furnish financial aid to governmental agencies in carrying on erosion - control and flood prevention operations within the districts. (Ill. Rev. Stat. 1973, ch. 5, par. 127.3.) For the purposes of illustration, assume that a soil and water conservation district lying within more than one county has as a director a person who is also a county board member of one of the counties in which the district lies. Where two counties, one being the county in which the director is a county board member, are competing for limited available financial assistance from said district, the ability of said director to act impartially would be open to question.

Finally, a fourth area in which conflicts of interest can arise involves the powers possessed by both soil and water conservation districts and counties in relation to land use control. Soil and water conservation districts are empowered to adopt (Ill. Rev. Stat. 1973, ch. 5, par. 128) and enforce (Ill. Rev. Stat. 1973, ch. 5, par. 129) land use regulations. Counties are also empowered to regulate the use of land. (Ill. Rev. Stat. 1973, ch. 34, par. 3151.) The interests of soil and

Honorable Jack Hoogasian - 9.

water conservation districts in regulating land use relate to conservation, and although counties in regulating land use are also concerned with conservation, there are other interests, such as business and industrial development, which can influence their decisions. Once again, a person who is simultaneously a director of a soil and water conservation district and a county board member would have a conflict of interest and would be unable to properly and faithfully perform the duties of both offices.

Very truly yours,

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