ROLAND W. BURRIS
ATTORNEY GENERAL
STATE OF ILLINOIS

January 21, 1992

I-92-002

COMPATIBILITY OF OFFICES:
Hospital District Director
and State's Attorney; City
Attorney and State's Attorney

Honorable Stephen G. Sawyer
State's Attorney, Wabash County
Wabash County Courthouse
401 Market Streets
Mt. Carmel, Illinois 62863

Dear Mr. Sawyer:

I have your letters wherein you inquire, firstly, whether the offices of hospital district director and State's Attorney are incompatible, and, secondly, whether the offices of city attorney and State's Attorney are incompatible. Because of your need for an expedited response, I will comment informally upon the questions 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 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 of hospital district director and State's Attorney. Therefore, the issue is whether a conflict of duties could arise if one person were to occupy both offices.

Section 5-1005 of the Counties Code (Ill. Rev. Stat. 1989, ch. 34, par. 5-1005) authorizes a county, inter alia:

> "6. To cause to be erected, or otherwise provided, suitable buildings for, and maintain a county hospital and necessary branch hospitals and/or a county sheltered care home * * * for the care of such sick, chronically ill or infirm persons as may by law be proper charges upon the county, or upon other governmental units, and to provide for the management of the same. * * *
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> * * * "

While a county is granted the authority to maintain a county hospital, this authority is limited by the language of section 23 of the Hospital District Law (Ill. Rev. Stat. 1989, ch. 23, par. 1273), which provides, in pertinent part:

> "In case any Hospital District organized hereunder shall be coterminous with or shall include within its corporate limits in whole or in part any pre-existing public agency authorized to own, operate and maintain a public hospital and to levy taxes for any such purpose, then such public agency shall cease to exercise any power in respect to hospitals within such Hospital District from and after the date that it receives written notice from the Director of Public Health to cease operation of its hospital, * * * such public agency shall not thereafter own, operate, maintain, manage, control or have an interest in any public hospital within the corporate limits of said Hospital District. * * * Where in any case any pre-existing public agency is in fact owning, operating and maintaining a public hospital located within the corporate limits of a Hospital District organized under this Act, such public agency shall be paid and reimbursed, upon such terms as may be agreed upon by its corporate authorities and the Board of Directors of such Hospital District, its actual expenditures theretofore made in acquiring the land for any such hospital and in acquiring, constructing, improving or developing any existing hospital facilities, not including funds advanced for that purpose or otherwise paid or expended either directly or indirectly by State or Federal governments. The terms of payment shall provide for reimbursement in full within not less than twenty years from the date of such agreement.

> In case the amount and terms of reimbursement cannot be determined or agreed upon between the corporate authorities of any existing public agency and the Board of Directors of the Hospital District, the Board of Directors of such Hospital District shall cause a description of the existing hospital facilities to be made, together with an estimate of all actual expenditures made by the public agency therefor and shall tender payment of the total amount so estimated in writing to the corporate authorities of such public agency. * * * In case such a tender is not accepted in writing by the corporate authorities of such public agency within thirty days after the same is made, the Hospital District by its Board of Directors shall file a petition in the Circuit Court of the county in which the Hospital District and such public agency or the major portions thereof are situated, making such public agency a party defendant thereto, setting forth a description of the hospital facilities, the estimated amount of expenditures made by the defendants thereon, the fact that a tender had been made for the payment of the actual expenditures in accordance with the estimate, and praying that it be determined by the Circuit Court the true amount of such expenditures by said public agency.
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> * * * "

(Emphasis added.)

For purposes of the Hospital District Law, the term "public agency" is defined as follows:

> " * * *
>
> (g) 'Public Agency' means any municipality, county, township, tuberculosis sanitarium district, or political subdivision that maintains a public hospital."

(Emphasis added.)

(Ill. Rev. Stat. 1989, ch. 23, par. 1252(g).)

Under the statutes quoted above, it is foreseeable that a hospital district and a county could enter into a contract whereby the hospital district would reimburse the county for its actual expenditures in acquiring, constructing and maintaining hospital facilities. Moreover, in the event that the amount and terms of reimbursement cannot be agreed upon between a hospital district and a county which is operating a hospital, the Board of Directors of the Hospital District is authorized to file a petition in the appropriate circuit court naming the county as party defendant.

A State's Attorney is the legal advisor and attorney for county officers. (Ill. Rev. Stat. 1989, ch. 34, par. 3-9005.) Therefore, as part of his or her official duties, a State's Attorney may be called upon to render advice or an opinion on, or to assist in the negotiation of, the terms of a reimbursement contract between a county and a hospital district. Similarly, it appears that a hospital district director, in implementing the powers granted to the board under the Hospital District Law, would be called upon to vote on the terms of a reimbursement contract entered into between the board and a county. It is well established that one person cannot adequately represent the interest of two governmental units when those units contract with one another. (Ill. Att'y. Gen. Op. No. 91-031, issued July 26, 1991; Ill. Att'y. Gen. Op. No. 91-923, issued June 6, 1991; Ill. Att'y. Gen. Op. No. 91-015, issued March 14, 1991). Therefore, it appears that one person would have a conflict of duties if he or she were to serve in both offices simultaneously.

I would also note that a hospital district is authorized to file a petition naming a county which operates a hospital facility within its district as a party defendant, if a reimbursement agreement cannot be reached. Because the State's Attorney must defend all actions brought against his or her county (Ill. Rev. Stat. 1989, ch. 34, par. 3-9005), a hospital district director who is also a State's Attorney would find himself or herself in the position of having divided loyalty and a conflict of interests. Consequently, because of the potential conflict in the duties of the offices in question, it does not appear that the same person may hold the offices of hospital district director and State's Attorney simultaneously.

You further inquire whether, in addition to serving as State's Attorney, a person could also serve as city attorney for Mt. Carmel, a city wholly situated in Wabash County. As indicated above, offices are deemed to be incompatible where the holder of one office cannot, in every instance fully and

faithfully discharge the duties of the other. In reviewing the duties of both a State's Attorney and a city attorney, this office has long held that there are instances when the duties of the two offices conflict, thus preventing one person from holding both offices simultaneously. 1910 Ill. Att'y. Gen. Op. 484; 1925 Ill. Att'y. Gen. Op. 159; 1927 Ill. Att'y. Gen. Op. 150; 1933 Ill. Att'y. Gen. Op. 85; 1977 Ill. Att'y. Gen. Op. 81.

By way of illustration, provisions in the Counties Code (Ill. Rev. Stat. 1989, ch. 34, par. 1-1001 et seq.) specifically contemplate that a county and a municipality may enter into a contract for the collection and disposition of garbage (Ill. Rev. Stat. 1989, ch. 34, par. 5-1048) or for the provision of police protection (Ill. Rev. Stat. 1989, ch. 34, par. 5-1103.1). Because both the State's Attorney and the city attorney are the legal advisors for their respective governing authorities, it is foreseeable that during the negotiations over a contract's terms, the attorney for either or both of these units of government could be contacted for an opinion or advice on an issue. If the same individual were to serve in both positions simultaneously, he or she would be unable to represent the interests of both units of government fully and faithfully.

While the offices of State's Attorney and city attorney are incompatible, a State's Attorney may properly serve as legal consultant to a city. Attorney General Scott determined that the doctrine of incompatibility of offices does not apply to municipal legal consultants. Thus, in opinion S-1254 (1977 Ill. Att'y. Gen. Op. 81), he concluded that a State's Attorney could act as a village's legal consultant, because a consultant advises the village on only a case by case basis. Thus, a consultant can refrain from rendering advice on those matters which relate to his or her duties as State's Attorney.

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

Very truly yours,

[redacted]

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

MJL:LP:jp

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

October 16, 2000

Jim Ryan
ATTORNEY GENERAL

I - 00-043

COMPATIBILITY OF OFFICES:
State's Attorney and
Community College Trustee

The Honorable John C. Piland
State's Attorney, Champaign County
County Courthouse, Room 301
101 East Main Street
Urbana, Illinois 61803-0785

Dear Mr. Piland:

I have your letter wherein you inquire whether one person may serve simultaneously in the offices of community college trustee and State's Attorney of a county lying wholly within the territory of the community college 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.

You have stated that a candidate for election to the office of State's Attorney in a neighboring county is currently an elected member of the board of trustees of Parkland Community College. The community college district includes all or part of 12 counties, with its main campus in Champaign County. Although Parkland owns no property and operates no facilities in the county in which the board member is a candidate, it does offer one or two classes in that county each year, using the facilities of a local school district. You have inquired whether the candidate, if elected, may properly continue to serve on the board of trustees after assuming office as State's Attorney.

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 prohibits one person from serving simultaneously in the offices of State's Attorney and community college trustee. It must be determined, therefore, whether the duties of the two offices may conflict.

The duties of State's Attorneys are set out in Division 3-9 of the Counties Code (55 ILCS 5/3-9001 et seq. (West 1998)). In addition to prosecuting criminal matters, State's Attorneys prosecute and defend actions on behalf of their counties, county officers and the State, act as legal advisor to the several county officers and assist in the collection of taxes and other debts owed to public entities in their counties. As the attorney for the county and its officers, the State's Attorney may be called upon to advise the county regarding any agreements or contracts it may propose to enter into, including contracts or intergovernmental agreements with other units of government.

A community college board of trustees is generally responsible for administering the academic and business affairs of the college. (110 ILCS 805/3-1 et seq. (West 1998).) The operation of a community college may involve entering into contracts on behalf of the district (110 ILCS 805/3-27.1 (West 1998)), including contracts with other local entities regarding the use of buildings (110 ILCS 805/3-35 (West 1998)) and the enforcement of traffic and parking regulations (110 ILCS 805/3-42.2 (West 1998)).

A community college may well have one or more contractual relationships with the county or counties in which the district owns or maintains property and facilities. In those circumstances, the State's Attorney may be called upon to advise and represent the county with respect to contracts for the shared use of property or the enforcement of regulations by sheriff's personnel, for example. The duty of the State's Attorney to advise the county could potentially conflict with the duty of a trustee to represent the interests of the community college with undivided fidelity.

Although it may be assumed, for purposes of this analysis, that a community college district would be less likely to have a contractual relationship with a county in which the district does not own or maintain property or facilities requiring maintenance, regulation or security, such a relationship cannot be discounted completely. The community college district can acquire or establish facilities and offer programs in any county within the district. Each trustee has a fiduciary duty to the district to avoid relationships which would give rise to divided loyalties with respect to such matters.

In opinion No. 94-021, issued October 25, 1994, Attorney General Burris concluded that the offices of community college trustee and county board member are incompatible because the community college district and the county can contract pursuant to the statutes cited above, as well as the provisions of the Intergovernmental Cooperation Act (5 ILCS 220/1 et seq. (West 1998)), and because counties are required to enter into agreements with community college districts with respect to the payment of certain economic development project costs pursuant to the County Economic Development Project Area Tax Increment Allocation Act of 1991 (55 ILCS 90/10(d)(11) (West 1998)). Given the State's Attorney's duties as the legal advisor of the county board with respect to any matter upon which it may act, similar conflicts between the duties of the offices of State's Attorney and community college trustee may arise. It is the existence of the potential for a conflict in duties, whether that conflict ever arises, that renders two offices incompatible. (See 1976 Ill. Att'y Gen. Op. 232.) Therefore, it appears that the offices of State's Attorney and community college trustee are incompatible, and one person cannot hold both simultaneously.

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

Sincerely,

[redacted]

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

MJL:KJS:ab

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

April 16, 1997

Jim Ryan
ATTORNEY GENERAL

I - 97-010

COMPATIBILITY OF OFFICES:
Assistant State's Attorney and
Park District Commissioner

Honorable David R. Akemann
State's Attorney, Kane County
37W777 Route 38, Suite 300
St. Charles, Illinois 60175-7535

Dear Mr. Akemann:

I have Assistant State's Attorney Pat Lord's letter wherein she inquires, on your behalf, whether an Assistant State's Attorney may serve simultaneously in the office of park district commissioner. Because you have requested informal advice, I will respond accordingly.

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 are no constitutional or statutory provisions which expressly prohibit simultaneous tenure in the offices of Assistant State's Attorney and park district commissioner. Therefore, the issue is whether a conflict in duties could arise if one person were to occupy both offices simultaneously.

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The office of park district commissioner is created by, and the duties thereof are set forth in, the Park District Code (70 ILCS 1205/1-1 et seq. (West 1994)). In reviewing the provisions of the Code, it appears that park districts are expressly authorized to enter into lease agreements with other units of local government for the provision of swimming pools and ice skating rinks (70 ILCS 1205/9-1d (West 1994)), golf course facilities (70 ILCS 1205/9.1-5 (West 1994)), tennis, handball, racquetball or squash courts (70 ILCS 1205/9.2-5 (West 1994) and zoo facilities (70 ILCS 1205/9.2-5 (West 1994)). Although the term "unit of local government" is not defined in the Park District Code, under article VII, section 1 of the Illinois Constitution of 1970 the phrase includes, inter alia, counties.

In addition to the provisions of the Park District Code, section 6 of the Joint Airports Act (620 ILCS 20/6 (West 1994)) authorizes park districts and counties to enter into agreements for the joint establishment and operation of airports and airport facilities.

The office of Assistant State's Attorney is provided for in section 4-2003 of the Counties Code (55 ILCS 5/4-2003 (West 1994)). Although the powers and duties of an Assistant State's Attorney are not prescribed by statute, the supreme court has stated that "Assistant State's Attorneys are in essence surrogates for the State's Attorney * * *" and "'* * * possess the power [of the State's Attorney] in the same manner and to the same effect as the State's Attorney.'" (Cook County State's Attorney v. Illinois Local Labor Relations Board (1995), 166 Ill. 2d 296, 303.) Section 3-9005 of the Counties Code (55 ILCS 5/3-9005 (West 1995 Supp.)) sets forth the powers and duties of the State's Attorney, providing, in pertinent part:

> "(a) The duty of each State's attorney shall be:
>
> (1) To commence and prosecute all actions, suits, indictments and prosecutions, civil and criminal, in the circuit court for his county, in which the people of the State or county may be concerned.
>
> * * *
>
> (3) To commence and prosecute all actions and proceedings brought by any county officer in his official capacity.

> (4) To defend all actions and proceedings brought against his county, or against any county or State officer, in his official capacity, within his county.
>
> * * *
>
> (7) To give his opinion, without fee or reward, to any county officer in his county, upon any question or law relating to any criminal or other matter, in which the people or the county may be concerned.
>
> * * * "

Under the provisions of the Park District Code and the Joint Airports Act, it is foreseeable that counties and park districts may enter into agreements regarding certain park and airport functions. The county board, however, not the State's Attorney, is responsible for entering into intergovernmental agreements in relation to the property and concerns of the county. (55 ILCS 5/5-1005 (West 1994).) Therefore, the State's Attorney would not be a party to any contract which may be entered into between the county and a park district.

Although the State's Attorney would not be a party to a contract between the county and the park district, he or she may nonetheless influence that contract. As noted above, the State's Attorney is the legal advisor of and attorney for county officers. Therefore, as part of his or her official duties, a State's Attorney may be called upon to render advice or an opinion on, or to assist in the negotiation of, the terms of an agreement between a county and a park district. In that case, the duty of the State's Attorney to advise the county board might conflict with the duty of a park district commissioner to act in the best interests of the park district. That a State's Attorney would have a conflict of duties in the circumstances which are the focus of this inquiry, however, does not necessarily mean that an Assistant State's Attorney must be deemed to have the same conflict.

In opinion No. S-1411, issued March 9, 1979 (1979 Ill. Att'y Gen. Op. 21), Attorney General Scott was asked to determine whether an Assistant State's Attorney could simultaneously serve as a city commissioner. In reaching his conclusion that the offices were incompatible, Attorney General Scott noted that a State's Attorney might be called upon for advice and assistance with reference to a contract which the county may wish to enter into with the city, and that an Assistant State's Attorney may

perform any of the general duties of a State's Attorney. He further stated that a "* * * proposed limitation of [the Assistant State's Attorney's] duties cannot change the inherent power of an Assistant State's Attorney to exercise the general powers of the State's Attorney. * * *" (1979 Ill. Att'y Gen. Op. 21, 23.) Attorney General Scott based his statements on the decision in United States v. Smyth (N.D. Cal. 1952), 104 F. Supp. 283, a case in which an Assistant United State's Attorney acted contrary to the interests of the government and directly contrary to the instructions of the United States Attorney to bind the United States in open court.

Subsequent to the issuance of that opinion, however, administratively-imposed limitations upon the duties of Assistant State's Attorneys and other prosecutors have been recognized. For example, in People v. Fife (1979), 76 Ill. 2d 418, the Illinois Supreme Court was presented with the issue of whether a criminal defendant's court appointed defense counsel, who also served as a Special Assistant Attorney General, had a conflict of interest. In reaching its conclusion that a conflict of interest exists where defense counsel is also a Special Assistant Attorney General, the court nonetheless accepted that the Attorney General could limit the duties of an Assistant Attorney General to a specifically defined scope (People v. Fife (1979), 76 Ill. 2d at 424-25), and that such limitations could be considered in determining whether potential conflicts warrant disqualification. Similarly, several opinions of the Illinois State Bar Association's Committee on Professional Conduct have acknowledged and given effect to a State's Attorney's authority to limit the scope of the duties of an Assistant State's Attorney. See, e.g., ISBA Opinion No. 407, issued February 13, 1974; No. 86-2, issued July 7, 1986; and No. 90-29, issued March 9, 1991.

Based upon the foregoing, it now appears to be accepted generally that a State's Attorney may limit the scope of the duties of any of his or her Assistant State's Attorneys, and that such limitations will be recognized in accordance with their terms. Therefore, if you, as State's Attorney, elect to authorize the Assistant State's Attorney in question to handle only criminal matters involving non-park district defendants and crimes, for example, or if you determine that the Assistant will be given no authority to advise the county board or to perform any other civil functions with regard to the park district, then it does not appear that a conflict in duties or divided loyalties would necessarily arise. In those circumstances, an Assistant State's Attorney could simultaneously serve as a park board commissioner. In the absence of such a limitation of authority, however, it appears that the potential conflict in duties would

preclude an Assistant State's Attorney from simultaneously serving as a park board commissioner.

I would further suggest that in order to avoid appearances of impropriety and any potential violation of the Illinois Rules of Professional Conduct, specific institutional mechanisms should be implemented in the State's Attorney's office to screen the Assistant State's Attorney from any matters involving the park district. Specifically, I would recommend that you consider policies: that prohibit the Assistant from consulting with or discussing issues involving the park district with other Assistant State's Attorneys; that prohibit discussions regarding the park district in the Assistant's presence; that deny the Assistant access to files and documents relating to the park district; and that insure that the Assistant does not have access to matters involving the park district or use any knowledge gained in the course of carrying out his or her official duties as such to benefit the park district. Similarly, in his capacity as park board commissioner, the Assistant State's Attorney should refrain from voting on or participating in any matters involving the county.

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:cj