



ROLAND W. BURRIS

ATTORNEY GENERAL
STATE OF ILLINOIS



October 21, 1993

I - 93-051

COMPATIBILITY OF OFFICES:
Township Assessor and City Alderman

Honorable Greg McClintock
State's Attorney, Warren County
Warren County Courthouse
Monmouth, Illinois 61462

Dear Mr. McClintock:

I have your letter wherein you inquire whether one person may simultaneously hold the offices of township assessor and alderman of a city which is located within the township assessed by the assessor. 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 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 a township assessor and as a city alderman. Therefore, the issue 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.

Honorable Greg McClintock - 2.

Under sections 19.6, 19.8, 19.9, and 19.9a of the Revenue Code of 1939 (Ill. Rev. Stat. 1991, ch. 120, pars. 500.6, 500.8, 500.9, 500.9a; 35 ILCS 205/19.6, 205/19.8, 205/19.9, 205/19.9a (West 1992)), municipal real property is generally exempted from taxation. There are circumstances; however, in which such property may be taxed. For example, sections 19.6 and 19.9a provide, respectively:

"§ 19.6. * * * all property owned by a county, village, taxing district or city which is being held for future expansion or development, except such as heretofore has been leased or may hereafter be leased by such county, village, taxing district or city to lessees for use for other than public purposes; * * * all property owned by any city or village located within the incorporated limits thereof, except such as heretofore has been leased or may hereafter be leased by such city or village to lessees who are bound under the terms of the lease to pay the taxes on such property. * * * and all property owned by any city or village outside of the corporate limits of the same if used exclusively for municipal or public purposes * * *."

"§ 19.9a. All property that is being purchased by a governmental body under an installment contract pursuant to statutory authority and used exclusively for the public purposes of the governmental body, except such property as the governmental body has permitted or may permit to be taxed."

In opinion No. 93-008, issued March 19, 1993, Attorney General Burris construed the foregoing provisions and determined that the office of multi-township assessor is incompatible with that of trustee for a village located within one of the assessed townships, stating:

"* * * Property of a village which is not exempted by the foregoing provisions would be subject to taxation. If a multi-township assessor also served as a trustee of a village within an assessed township, he or she would be in the untenable position of determining whether village

Honorable Greg McClintock - 3.

property was subject to taxation, and of assessing taxable property which belonged to the village. Under these circumstances, it must be concluded that one person could not, in every instance, properly and faithfully perform all of the duties of each office.


* * *

Ill. Att'y Gen. Op. No. 93-008, at 3-4.

The same analysis is applicable to the offices of township assessor and alderman of a city which is located within the township assessed by the assessor. Property of a city which is not exempted by statute would be subject to taxation. If the township assessor also served as an alderman of a city which is within the township which he or she assesses, the dual officeholder would be placed in the position of deciding whether city property was subject to taxation, and of assessing taxable property which belongs to the city. Given these potentially conflicting duties, it appears that one person could not, in every instance, properly and faithfully discharge all of the duties of each office. Accordingly, it appears that the office of township assessor is incompatible with that of alderman for a city which is located within the assessed township. One person, therefore, may not 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

July 11, 1989

I - 89-034

COMPATIBILITY OF OFFICES:
Township Assessor and Member
of City Zoning Board of Appeals

Honorable Brett Irving
State's Attorney, Pike County
Pike County Courthouse
Pittsfield, Illinois 62363

Dear Mr. Irving:

I have your letter of June 16, 1989, wherein you inquire whether the offices of township assessor and member of the city zoning board of appeals are compatible. Because of 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 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 the duties of 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), 148 Ill. App. 283, 286.

There is no constitutional or statutory provision which prohibits one person from simultaneously serving as both township assessor and as a member of the city zoning board of appeals of a city located within the township. The issue,

Honorable Brett Irving - 2.

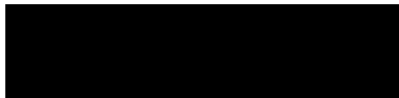
therefore, is whether the duties of either office are such that the holder of one cannot, in every instance, properly and faithfully perform all of the duties of the other.

Tax assessors generally are charged with the duty of evaluating and appraising real property for tax purposes. (See, Ill. Rev. Stat. 1987, ch. 120, par. 482.) Members of a city zoning board of appeals hear and decide and review any orders or decisions made with regard to variances, special and non-conforming uses and zoning decisions in general. (Ill. Rev. Stat. 1987, ch. 24, par. 11-13-3.) From an examination of the statutes and a consideration of the duties of the two offices, it does not appear that any potential conflict exists which would prevent the complete fulfillment of the duties of both offices by one person. Based upon a similar analysis, Attorney General Clark advised, in unpublished opinion No. UP-1922, issued March 20, 1968, that one person could simultaneously hold the offices of township assessor and member of a county zoning board of appeals, the latter office being generally analogous to the office of city board of zoning appeals member.

It appears, therefore, that the offices of member of a city zoning board of appeals and township assessor are not incompatible.

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



WILLIAM J. SCOTT

ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD
62706

July 18, 1974

NP-785

TAXATION:

Compatibility of Offices of
Township Assessor and Deputy
Supervisor of Assessments

Honorable Martin Rudman
State's Attorney, Will County
Courthouse
Joliet, Illinois 60431

Dear Mr. Rudman:

I have your letter in which you state:

"I hereby request your opinion on the following question:

The Supervisor of Assessments Office of Will County employs two men as Deputy Assessors. These men serve as field appraisers. Their job is to ascertain the market price for various categories of real property located within Will County. Each of these men is also the duly elected Township Assessor of one of the townships of Will County. It is the policy of the Supervisor of Assessments Office that neither of the men do any field appraisals in the township in which they are the elected Township Assessor.

NP 785

Honorable Martin Rudman - 2.

I would appreciate your opinion as to whether or not the office of Township Assessor is incompatible with being an employee of the Supervisor of Assessments Office."

The office of Township Assessor is created by section 1 of article 7 of "AN ACT to revise the law in relation to township organization" (Ill. Rev. Stat. 1973, ch. 139, par. 60), which provides in part:

"§ 1. * * *

On the first Tuesday in April in each town, in the year 1957 and every 4 years thereafter, there shall be elected by ballot one township clerk and one township assessor who shall hold office for a term of 4 years, and until their successors are elected and qualified.

* * * "

The office of Supervisor of Assessments is created by sections 2 and 3a of the Revenue Act of 1939 (Ill. Rev. Stat. 1973, ch. 120, pars. 483 and 484a) which provides in part:

"§ 2. In counties under township organization having less than 150,000 inhabitants, and in counties under any township organization in which by the last preceding federal census the population had reached or exceeded 150,000 but less than 1,000,000 and in which no board of assessors has heretofore been elected as provided in Section 4 of this Act,

Honorable Martin Rudman - 3.

or authorized by referendum as provided in Section 10a, there shall be a county supervisor of assessments appointed as provided in Section 3a. * * * "

"§ 3a. In counties containing less than 1,000,000 inhabitants and not having an elected board of assessors, the office of supervisor of assessments or county assessor, shall be filled by appointment by the county board, as herein provided.

* * * "

Section 3b of said Act (Ill. Rev. Stat. 1973, ch. 120, par. 484b) provides for the appointment of Deputy Assessors by stating in regards to the Supervisor of Assessments:

"§ 3b. * * *

Each such officer may, by and with the advice and consent of the county board, appoint necessary deputies and clerks, their compensation to be fixed by the county board and paid by the county.

* * * "

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

Honorable Martin Rudman - 4.

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.

It is my opinion that a person who is simultaneously Township Assessor and Deputy Supervisor of Assessments, due to the relationship between said offices, would have a conflict of interest and be unable to properly and faithfully perform all the duties of each office.

A major conflict of interest involves power to make assessments. Section 17 of the Revenue Act of 1939 (Ill. Rev. Stat. 1973, ch. 120, par. 498), after listing property to be assessed by the Department of Local Government Affairs, states:

"§ 17. * * * The township assessor, county assessor, supervisor of assessments, board of assessors, board of review, or board of appeals, as the case may be, shall assess all other property not exempted from taxation."

Section 43 and 44 of said Act (Ill. Rev. Stat. 1973, ch. 120, pars. 524 and 525) provide:

"§ 43. * * *

On or before June 1 in each quadrennial assessment year in all counties having a

population less than 1,000,000 inhabitants, and as soon as he reasonably can in each quadrennial assessment year in counties having a population of 1,000,000 or more inhabitants, or if any such county is divided into assessment districts as provided above, as soon as he reasonably can in each quadrennial assessment year in such assessment districts, the assessor in person or by his deputy shall actually view and determine as near as practicable the value of each tract or lot of land listed for taxation as of January 1, or as provided in Section 27a of this Act, of such year and assess the same at its fair cash value, setting down the sum in the proper column in the books furnished him.

* * * "

"§ 44. On or before the first day of June in each year other than the year of the quadrennial assessment, in all counties having less than 1,000,000 inhabitants, and as soon as he reasonably can in counties containing 1,000,000 or more inhabitants, the assessor shall list and assess all real property which shall become taxable and which is not upon the general assessment, and also make and return a list of all new or added buildings, structures or other improvements of any kind, the value of which shall not have been previously added to or included in the valuation of the tract or lot on which such improvements have been erected or placed, specifying the tract or lot on which each of said improvements has been erected or placed, the kind of improvement and the value which, in his opinion, has been added to such tract or lot by the erection thereof; * * * "

Honorable Martin Rudman - 6.

Section 95 of said Act (Ill. Rev. Stat. 1973, ch. 120, par. 576) provides:

"§ 95. The supervisor of assessments shall have the same authority as the township assessor to assess and to make changes or alterations in the assessment of property, and shall assess and make such changes or alterations in the assessment of property as though originally made. Such changes by the supervisor of assessments in valuations returned by the township assessor shall be noted in a column provided therefor, and no change shall be made in the original figures.

All changes and alterations in the assessment of real property shall be subject to revision by the board of review in the same manner that original assessments are reviewed."

Under the last quoted section, a Deputy Supervisor of Assessments, pursuant to the instructions of the Supervisor of Assessments, could review evaluations returned by Township Assessors and make changes or alterations therein. If such Deputy Supervisor of Assessments simultaneously held the office of Township Assessor, he would be in the untenable position of being charged with reviewing his own assessments. The fact, as indicated by your letter, that it is the policy of the Supervisor of Assessments' office of Will County that the

Honorable Martin Rudman - 7.

Deputy Supervisor of Assessments are not permitted to do any field appraisals in the Townships in which they are the elected Township Assessors does not change my opinion. Said policy, being without force of law, is subject to change at the discretion of the Supervisor of Assessments, and therefore does not negate the basic incompatibility of the two offices.

Another conflict of interests involves supervisory powers. Section 2 of the Revenue Act of 1939, supra, provides in part:

"§ 2. * * * The township assessors shall allow the appointed Supervisor of Assessments to make a duplicate copy of any or all records compiled and maintained by the township assessor. The Supervisor of Assessments shall make and maintain a complete set of all property record cards. The township assessor shall supply the Supervisor of Assessments with a copy of all new property record cards as they are added to the tax rolls. The Supervisor of Assessments shall, by January 1 of each year, assemble all assessors and their deputies for consultation and shall give such instructions to them as shall tend to a uniformity in the action of the assessors and their deputy assessors in his county. Any assessor or deputy assessor who wilfully refuses or neglects to observe or follow the direction of the supervisor of assessments, which is in accordance with law, shall be guilty of a Class B misdemeanor."

Honorable Martin Rudman - 8.

Under this provision, a Deputy Supervisor of Assessments pursuant to the instructions from the Supervisor of Assessments could instruct and direct Township Assessors. If such Deputy Supervisor of Assessments simultaneously held the office of Township Assessor, he would be placed in a position of supervising himself.

In conclusion, I am of the opinion that the offices of Township Assessor and Deputy Supervisor of Assessments are incompatible.

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**

Lisa Madigan
ATTORNEY GENERAL

September 27, 2007

I - 07-049

COMPATIBILITY OF OFFICES:
Township Assessor and Fire
Protection District Trustee

The Honorable John B. Roe
State's Attorney, Ogle County
106 South 5th Street, Suite 110
Oregon, Illinois 61061

Dear Mr. Roe:

I have your letter wherein you inquire whether the offices of township assessor and fire protection district trustee are incompatible. In the circumstances set out below, the office of township assessor is incompatible with the office of fire protection district trustee, and, therefore, one person may not hold both offices simultaneously.

BACKGROUND

Your letter indicates that the Ogle County Board recently reappointed an individual to the office of fire protection district trustee. The person reappointed as trustee also serves as the township assessor of the township in which the fire protection district is located. Consequently, you have asked whether the offices of township assessor and fire protection district trustee are incompatible in this circumstance.

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 township assessor and fire protection district trustee. 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 operations of fire protection districts are governed by the Fire Protection District Act (70 ILCS 705/0.01 *et seq.* (West 2006)). The powers of a fire protection district are exercised by its board of trustees. 70 ILCS 705/6 (West 2006), as amended by Public Act 95-331, effective August 21, 2007. The duties of a fire protection board include, among other things, acquiring and holding land for the use of the fire protection district (70 ILCS 705/10 (West 2006)); and selling or leasing realty owned by the district and no longer needed for fire protection purposes. 70 ILCS 705/10a (West 2006).

The office of township assessor is created by the Township Code (60 ILCS 1/50-5, 77-5 (West 2006)), which provides for the election of an assessor or a multi-township assessor for a term of four years. The duties of the office are governed by the Property Tax Code (35 ILCS 200/1-1 *et seq.* (West 2006)) and generally include the assessment of all property not exempted from taxation. 35 ILCS 200/9-70 (West 2006).

Under sections 15-60 and 15-80 of the Property Tax Code (35 ILCS 200/15-60, 15-80 (West 2006)), the property of a taxing district,¹ such as a fire protection district, is

¹The term "taxing district" is defined in the Property Tax Code to refer to "[a]ny unit of local government, school district or community college district with the power to levy taxes." 35 ILCS 200/1-150 (West 2006). The term "unit of local government," however, is not defined in the Property Tax Code. In the absence of a specific definition applicable to the Property Tax Code, the term "unit of local government" should be ascribed the meaning established for it in the Illinois Constitution of 1970. 5 ILCS 70/1, 1.28 (West 2006); *see also Du Page Aviation Corporation, Flight Services, Inc. v. Du Page Airport Authority*, 229 Ill. App. 3d 793, 802 (1992), *appeal denied*, 146 Ill. 2d 625 (1992). Under the Illinois Constitution, "units of local government" include, among other things, special districts. Fire protection districts are special districts. Ill. Att'y Gen. Inf. Op. No. I-96-010, issued January 3, 1996.

generally exempted from *ad valorem* property taxes. There are circumstances, however, in which such property may be subject to taxation. For example, sections 15-60 and 15-80 respectively provide:

All property belonging to any county or municipality used exclusively for the maintenance of the poor is exempt, *as is all property owned by a taxing district that is being held for future expansion or development, except if leased by the taxing district to lessees for use for other than public purposes.* (Emphasis added.)

Installment purchase of property by a governmental body. *All property that is being purchased by a governmental body under an installment contract pursuant to statutory authority and used exclusively for the public purposes of the governmental body is exempt, except such property as the governmental body has permitted or may permit to be taxed.* (Emphasis added.)

In opinion No. S-590, issued May 22, 1973, Attorney General Scott concluded that the offices of township assessor and school board member are incompatible because:

[t]he property of a school not exempted by this section 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. I am, therefore, of the opinion that the office of a member of a school board is incompatible with that of township tax assessor. 1973 Ill. Att'y Gen. Op. 83, 85.

Based on the same reasoning, Attorney General Burris concluded that the offices of village trustee and multi-township assessor are incompatible. See Ill. Att'y Gen. Op. No. 93-008, issued March 19, 1993.

Similarly, property owned by the fire protection district that is not exempted by the foregoing provisions would be subject to taxation. For example, a fire protection district may acquire title to real property by bequest or donation. In such circumstances, the property may be an unanticipated acquisition for which the fire protection district has no current fire protection purpose. The fire protection district, however, may choose to lease such property. To the extent that the leased property is income-producing and the purpose which the property serves is non-

governmental in nature, the property would be subject to taxation. If a township assessor also serves as a trustee of a fire protection district located within the township, he or she would be placed in the untenable position of determining whether the fire protection district's property is subject to taxation and, if so, assessing the taxable property that belongs to the fire protection district. A township assessor and a fire protection district trustee are both obligated to represent the interests of the entities they serve with undivided loyalty. In this circumstance, because the interests of the township and the fire protection district with respect to the taxability of district property may be divergent, one person could not, in every instance, fully and faithfully perform all of the duties of each office with the requisite undivided loyalty.

CONCLUSION

The office of township assessor is incompatible with that of fire protection district trustee if the district is located within the township. One person, therefore, may not 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,

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

LEP:MKL:an



OFFICE OF THE ATTORNEY GENERAL

STATE OF ILLINOIS

July 6, 2000

Jim Ryan

ATTORNEY GENERAL

I - 00-027

COMPATIBILITY OF OFFICES:

Township Assessor and Township Clerk

The Honorable Ted J. Hamer
State's Attorney, Henry County
307 West Center Street
Cambridge, Illinois 61238

Dear Mr. Hamer:

I have your letter wherein you inquire whether one person may simultaneously hold the offices of township assessor and township clerk. 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.

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.) There appears to be no constitutional or statutory provision which prohibits simultaneous tenure in the offices of township assessor and township clerk. Therefore, it is necessary to consider whether the duties of the two offices may conflict.

A township assessor is responsible for viewing and determining the value of each property in the township which is listed for taxation (35 ILCS 200/9-155 (West 1998)) and for making return of that information to the county supervisor of

The Honorable Ted J. Hamer - 2.

assessments. (35 ILCS 200/9-230 (West 1998).) The assessor also serves as a member of the board of health for a public health district. (60 ILCS 1/77-5 (West 1998).)

A township clerk keeps the township records (60 ILCS 1/75-5 (West 1998)), keeps minutes of meetings (60 ILCS 1/75-10 (West 1998)), delivers to the supervisor certified copies of entries of votes for raising money (60 ILCS 1/75-15 (West 1998)), certifies to the county clerk the amount of taxes required to be raised for township purposes (60 ILCS 1/75-20 (West 1998)), serves as road district clerk (60 ILCS 1/75-40 (West 1998)), and also serves as a member of the board of health for a public health district (60 ILCS 1/75-35 (West 1998)).

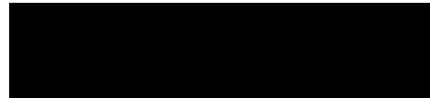
Initially, I note that both the assessor and the clerk are designated to serve on a health district board when such a district is organized pursuant to the Public Health District Act (70 ILCS 905/0.01 et seq. (West 1998)). Because the board of a health district organized within a single township is comprised of only the supervisor, the assessor and the clerk (70 ILCS 905/11 (West 1998)), if one person were serving as both clerk and assessor, the board could not be fully constituted. It appears that in this circumstance, one person would necessarily be precluded from serving in both capacities. Because we have no information regarding whether a public health district has been organized in the township concerning which you inquire, however, it cannot be determined whether the offices are incompatible on this basis.

In all other respects, the duties of the township clerk appear to be entirely ministerial and unrelated to the property valuation functions of the township assessor. The clerk does not advise or vote on matters coming before the town board. The only duty of the clerk which touches upon taxing functions is the certification of the township levy to the county clerk. This is a non-discretionary duty which would not conflict with assessment functions. It appears, therefore, that in a township which is not organized into a public health district, the offices of township clerk and township assessor are not incompatible.

The Honorable Ted J. Hamer - 3.

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

Sincerely,

A black rectangular redaction box covering 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

April 5, 2013

I - 13-002

COMPATIBILITY OF OFFICES:

Township Assessor and
Township Trustee

The Honorable Scott Brinkmeier
State's Attorney, Carroll County
Carroll County Courthouse
Post Office Box 209
Mt. Carroll, Illinois 61053

Dear Mr. Brinkmeier:

I have your letter inquiring whether one person may simultaneously hold the offices of township assessor and township trustee of the same township. For the reasons discussed below, in these circumstances the offices of township assessor and township trustee are incompatible. Consequently, one person may not hold both offices simultaneously.

BACKGROUND

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

simultaneously serving as an elected township assessor and a trustee of the same township.¹ 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.

ANALYSIS

Powers and Duties of Township Assessor

The office of township assessor is created by the Township Code (60 ILCS 1/50-5, 77-5 (West 2010)), which provides for the election of an assessor for a term of four years. The duties of the office, however, are governed by the provisions of the Property Tax Code (35 ILCS 200/1-1 *et seq.* (West 2010)). The principal duty of a township assessor is to determine as nearly as is practicable the value of each property listed for taxation in the township as of January 1 of the year of valuation. 35 ILCS 200/9-155 (West 2010).

Powers and Duties of Township Trustee

Township trustees, as members of the governing board of a township, exercise a number of corporate powers on behalf of the township. *See* 60 ILCS 1/85-10 *et seq.* (West 2011 Supp.). Of particular concern to this analysis, the board of township trustees levies taxes on the taxable property in the township to defray the general township charges (60 ILCS 1/80-40 (West 2010)).

Conflict of Duties

Under section 15-60 of the Property Tax Code (35 ILCS 200/15-60 (West 2010)), the public buildings of a township and the grounds on which they are located, as well as property owned by a township and operated as senior citizen housing, are generally exempt from taxation.

¹Section 2a of the Public Officer Prohibited Activities Act (50 ILCS 105/2a (West 2010)) limits those offices to which a township trustee may be appointed and provides, in part:

No township supervisor or trustee, during the term of office for which he or she is elected, may accept, be appointed to, or hold any office by the appointment of the board of township trustees unless he or she first resigns from the office of supervisor or trustee or unless the appointment is specifically authorized by law.

Township assessors are generally elected. *See* 35 ILCS 200/2-5, 2-45 (West 2010). However, if no candidate for the office of township assessor meets the statutory qualifications, the township board of trustees may appoint a township assessor. *See* 35 ILCS 200/2-45(e) (West 2010). Similarly, if an assessor's office becomes vacant, the township board of trustees is authorized to fill the vacancy. *See* 35 ILCS 200/2-60(a) (West 2010). In such circumstances, section 2a of the Public Officer Prohibited Activities Act would prohibit one person from holding both offices simultaneously. Nothing in the information we have been provided indicates that the township assessor who underlies your inquiry was appointed to office, rather than elected.

Further, all property owned by a taxing district, a term which includes townships,² that is being held for future expansion or development is generally exempt from taxation. 35 ILCS 200/15-60 (West 2010). There are circumstances, however, in which township property may be taxed. For example, pursuant to subsection 30-50(c) of the Township Code (60 ILCS 1/30-50(c) (West 2011 Supp.)), if the township electors determine to lease township property (*see* 60 ILCS 1/30-50(a) (West 2011 Supp.)), then those portions of the improvements devoted to private use are fully taxable. *See also* 35 ILCS 200/15-60 (West 2010).

In opinion No. 93-008, issued March 19, 1993, Attorney General Burris addressed the analogous question of whether the offices of multi-township assessor and village trustee are incompatible. In reaching his conclusion that the offices are incompatible and that one person may not hold both offices simultaneously, Attorney General Burris stated:

Property of a village which is not exempted by the foregoing provisions [35 ILCS 205/19.6, 19.8, 19.9, 19.9a (West 1992), now codified at 35 ILCS 200/15-60, 15-70, 15-75, 15-80, 15-160] would be subject to taxation. If a multi-township assessor also served as a trustee of a village within an assessed township, he or she would be in the untenable position of determining whether village property was subject to taxation, and of assessing taxable property which belonged to the village. Under these circumstances, it must be concluded that one person could not, in every instance, properly and faithfully perform all of the duties of each office. Ill. Att'y Gen. Op. No. 93-008 at 3-4.

The same analysis is applicable to the offices of township assessor and township trustee. If the township assessor also served as a trustee of the township which he or she is charged with assessing, then the dual officeholder could be placed in the untenable position of being required to determine taxability and assess the value of property belonging to the township, while also being obligated to levy taxes on the property and to allocate township funds to pay its share of the taxes, the amount of which is directly derived from the assessment.

²The term "taxing district" is defined in the Property Tax Code as "[a]ny unit of local government, school district or community college district with the power to levy taxes." 35 ILCS 200/1-150 (West 2010). However, the term "unit of local government" is not defined in the Property Tax Code. Accordingly, it must be ascribed the meaning established for it in the Illinois Constitution of 1970. 5 ILCS 70/1.28 (West 2010); *see also Du Page Aviation Corp., Flight Services, Inc. v. Du Page Airport Authority*, 229 Ill. App. 3d 793, 802 (1992), *appeal denied*, 146 Ill. 2d 625 (1992). Under the Constitution, "units of local government" include, among other things, townships. Ill. Const. 1970, art. VII, §1. As noted previously, townships possess the authority to levy taxes for general corporate purposes. 60 ILCS 1/80-40 (West 2010).

Similarly, under section 16-25 of the Property Tax Code (35 ILCS 200/16-25 (West 2010)), "[a]ny taxing body that has an interest in an assessment made by any local assessment officer³ * * * may have the assessment reviewed by the board of review by" filing a written complaint with the board as specified by statute. Section 16-25 authorizes the board of township trustees to file a complaint requesting the review of the township assessor's assessment of the township's property. A township assessor who also served as a township trustee would be required to review and challenge the validity of his or her own assessment in order to support the filing of a complaint.

A township assessor and a township trustee are both obligated to carry out their duties as such with undivided loyalty. *See* 35 ILCS 200/4-30 (West 2010); 60 ILCS 1/55-10 (West 2010); Ill. Const. 1970, art. XIII, §3. Given the potentially conflicting duties referenced above, one person could not, in every instance, properly and faithfully discharge all of the duties of each office. *See generally* 1979 Ill. Att'y Gen. Op. 121 (concluding that the offices of township trustee and county board of review member are incompatible because a board of review member would have to review an assessment of which he, as a township trustee, complained). Therefore, the offices are incompatible.

CONCLUSION

Because of potential conflicts in duties, one person could not properly, fully, and faithfully perform his or her duties as both a township assessor and township trustee of the same township. Consequently, the offices are incompatible and a township assessor may not serve simultaneously as a township trustee.

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

³As used in the Property Tax Code (35 ILCS 200/1-1 *et seq.* (West 2010)), the term "local assessment officer" includes township assessors and multi-township assessors. 35 ILCS 200/1-85 (West 2010).



ROLAND W. BURRIS

ATTORNEY GENERAL
STATE OF ILLINOIS



March 10, 1993

I-93-016

COMPATIBILITY:
Township Assessor and
Village Clerk

~~Honorable~~ Patricia Reid Lindner
State Representative, 65th District
House Post Office
Springfield, Illinois 62706

Dear Representative Lindner:

I have your letter wherein you inquire whether the offices of village clerk and township assessor are incompatible. Because of the nature of your inquiry and your need for an expedited response, I will respond informally thereto.

In opinion No. 92-006, issued April 22, 1992, Attorney General Burris advised:

" * * *

Two public offices are deemed to be incompatible where the written law of the State specifically prohibits the occupant of either one of the offices in question from holding the other, 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 office. (People ex rel.

Myers v. Haas (1908), 145 Ill. App. 283, 386;
Rogers v. Village of Tinley Park (1983), 116 Ill.
App. 3d 437, 440.)

* * *

Because there appears to be no statutory or constitution prohibition against the simultaneous holding of the offices of village clerk and township assessor, it is necessary to determine whether there is any potential conflict in the duties of the two offices.

The duties of the village clerk include, inter alia, keeping the corporate seal and papers of the municipality, attending meetings of the village board of trustees and keeping a full record of the board's proceedings. (Ill. Rev. Stat. 1991, ch. 24, par. 3-10-7; 65 ILCS 5/3-10-7 (West 1992).) Specific documents that are to be filed with the clerk include, for example, warrants and vouchers (Ill. Rev. Stat. 1991, ch. 24, par. 3-10-2; 65 ILCS 5/3-10-2 (West 1992)); ordinances, motions and resolutions (Ill. Rev. Stat. 1991, ch. 24, par. 3-11-18; 65 ILCS 5/3-11-18 (West 1992)); and oaths and bonds of city-officers (Ill. Rev. Stat. 1991, ch. 24, par. 3-14-3; 65 ILCS 5/3-14-3 (West 1992)). The clerk may also administer oaths and affirmations (Ill. Rev. Stat. 1991, ch. 24, par. 3-9-3, 65 ILCS 5/3-9-3 (West 1992)) and countersign warrants (Ill. Rev. Stat. 1991, ch. 24, par. 8-1-8; 65 ILCS 5/8-1-8 (West 1992)).

The function of the township assessor, on the other hand, is to view and determine the assessed valuation of property listed for taxation. (Ill. Rev. Stat. 1991, ch. 120, par. 524; 35 ILCS 205/43 (West 1992).) The assessor's determinations are subject to review by other assessing officials, and the village has authority to be heard with respect to the value placed on particular pieces of property. (See, e.g., Ill. Rev. Stat. 1991, ch. 120, pars. 589 and 589.2; 35 ILCS 205/108 and 205/108.6) Because property owned by the village which is not used exclusively for public purposes may be subject to taxation (Ill. Rev. Stat. 1991, ch. 120, par. 500.9; 35 ILCS 205/19.9), the township assessor could be required to assess village property or a dispute could arise over whether certain property of the village is taxable. In opinion No. S-590, issued May 22, 1973, (1973 Ill. Att'y Gen. Op. 83, 85), Attorney General Scott advised that the offices of township assessor and school board member were incompatible for those reasons.

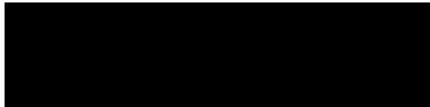
Representative Patricia Reid Lindner -3.

A school board member, however, is a member of the governing board of the school district; the village clerk is not a member of the village board of trustees. (Ill. Rev. Stat. 1991, ch. 24, par. 3-12-5; 65 ILCS 5/3-12-5 (West 1992).) The clerk has no authority to vote or take any other action on behalf of the village with respect to assessment matters. Consequently, there appears to be no conflict between the duties of the two offices, and there is no reason that one person would not be able to discharge the duties of each office fully and faithfully in every instance.

It appears, therefore, that the offices of village clerk and township assessor are not incompatible, and 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:SJR:jp



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

May 27, 2010

I - 10-005

COMPATIBILITY OF OFFICES:
Township Assessor and Village Trustee

The Honorable Joseph Bruscato
State's Attorney, Winnebago County
400 West State, Suite 619
Rockford, Illinois 61101

Dear Mr. Bruscato:

I have your letter inquiring whether the offices of township assessor and village trustee are compatible, if the corporate boundaries of the two units of local government overlap. For the reasons discussed below, the offices of township assessor and village trustee are incompatible. Consequently, one person may not hold both offices simultaneously.

BACKGROUND

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 simultaneously serving as a township assessor and a village trustee. 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.

ANALYSIS

Powers and Duties of Village Trustee

The operations of villages are governed by the Illinois Municipal Code. 65 ILCS 5/1-1-1 *et seq.* (West 2008). The powers of a village are exercised by its board of trustees, which serves as the corporate authorities of the village (65 ILCS 5/1-1-2(2) (West 2008)). The duties of the village board include, among other things, acquiring and holding land for the use of the village (65 ILCS 5/2-3-8, 11-76.1-1 (West 2008)) and selling and leasing realty owned by the village which is no longer needed for corporate purposes. 65 ILCS 5/11-76-1, 11-76-4.1 (West 2008).

Powers and Duties of Township Assessor

The office of township assessor is created by the Township Code (60 ILCS 1/50-5, 77-5 (West 2008)), which provides for the election of an assessor for a term of four years. The duties of the office are governed by the Property Tax Code (35 ILCS 200/1-1 *et seq.* (West 2008)) and generally include the assessment of all property not exempted from taxation.

Under sections 15-60, 15-70, 15-75, 15-80, and 15-110 of the Property Tax Code (35 ILCS 200/15-60, 15-70, 15-75, 15-80, 15-110 (West 2008)), municipal real property is generally exempted from taxation. There are circumstances, however, in which such property may be taxed. For example, sections 15-60 and 15-80 provide, respectively:

 Taxing district property. All property belonging to any county or municipality used exclusively for the maintenance of the poor is exempt, as is all property owned by a taxing district that is being held for future expansion or development, except if leased by the taxing district to lessees for use for other than public purposes.

 Installment purchase of property by a governmental body. All property that is being purchased by a governmental body under an installment contract pursuant to statutory authority and used exclusively for the public purposes of the governmental body is exempt, except such property as the governmental body has permitted or may permit to be taxed.

In opinion No. 93-008, Attorney General Burris construed the foregoing provisions and determined that the office of multi-township assessor is incompatible with that of village trustee for a village located within one of the assessed townships, stating:

Property of a village which is not exempted by the foregoing provisions would be subject to taxation. If a multi-township assessor also served as a trustee of a village within an assessed township, he or she would be in the untenable position of determining whether village property was subject to taxation, and of assessing taxable property which belonged to the village. Under these circumstances, it must be concluded that one person could not, in every instance, properly and faithfully perform all of the duties of each office. Ill. Att'y Gen. Op. No. 93-008, issued March 19, 1993, at 3-4.

The same analysis is applicable to the offices of township assessor and trustee of a village that have overlapping corporate boundaries. Property of a village which is not exempted by statute would be subject to taxation. If the township assessor also served as trustee of a village which is located in whole or in part within the township which he or she assesses, the dual officeholder would be placed in the position of deciding whether village property was subject to taxation, and of assessing taxable property which belongs to the village. Given these potentially conflicting duties, one person could not, in every instance, properly and faithfully discharge all of the duties of each office. Accordingly, the offices of township assessor and village trustee are incompatible, and one person may not hold both offices simultaneously.

CONCLUSION

Because of a potential conflict in duties, absent a statutory provision otherwise providing, a township assessor may not serve simultaneously as a village trustee.

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

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