



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

**Lisa Madigan**  
ATTORNEY GENERAL

October 11, 2012

I-12-013

COMPATIBILITY OF OFFICES:  
Village Trustee and Joint  
Township Cemetery Manager

The Honorable Randall J. Brinegar  
State's Attorney, Vermilion County  
7 North Vermilion Street  
Vermilion County Courthouse, 2<sup>nd</sup> Floor  
Danville, Illinois 61832

Dear Mr. Brinegar:

I have your letter inquiring whether the offices of village trustee and joint township cemetery manager<sup>1</sup> are incompatible. For the reasons stated below, the offices of village trustee and joint township cemetery manager are incompatible. Consequently, one person may not hold both offices simultaneously.

**BACKGROUND**

Your letter states that a trustee of the Village of Rossville (the village) has been appointed to serve as a manager of the Ross-South Ross Cemetery District (the cemetery district). The territory of the village is located wholly within Ross Township, and both the village and the cemetery district currently levy taxes within their respective territories. It is our understanding that the Ross-South Ross Cemetery District is operated pursuant to the provisions

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<sup>1</sup>Although your letter refers to "an appointed trustee[.]" we will assume, based on a telephone conversation with Assistant State's Attorney William Donahue, that your inquiry concerns a member of a board of managers of a multi-township cemetery district, as is provided for in section 135-10 of the Township Code (60 ILCS 1/135-10 (West 2010)). We will accordingly use the term "manager" rather than "trustee" herein.

of article 135 of the Township Code (60 ILCS 1/135-5 *et seq.* (West 2010)). Your letter expresses concern that a conflict of duties may exist with respect to the offices of village trustee and joint township cemetery manager because of the respective authority of both governmental entities to levy taxes within the boundaries of Ross Township, and further that the village and the cemetery district may consider entering into contracts or agreements in the future.<sup>2</sup>

### 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 that expressly prohibits one person from simultaneously serving as a village trustee and as a joint township cemetery manager. 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.

#### **Powers and Duties of a Joint Township Cemetery District**

Pursuant to sections 135-5 and 135-10 of the Code (60 ILCS 1/135-5, 135-10 (West 2010)), following referendum approval, two or more townships may jointly establish and maintain cemeteries. The joint cemeteries are under the control and management of a board of managers appointed by the supervisors of the participating townships. 60 ILCS 1/135-10, 135-20 (West 2010). The powers and duties of the board of managers are set out in section 135-20 of the Township Code (60 ILCS 1/135-20 (West 2010)) and include controlling and managing the townships' cemeteries and receiving in trust any gift or legacy of money or property for the use and maintenance of the cemeteries. Section 135-50 of the Township Code (60 ILCS 1/135-50 (West 2010)) authorizes the board of managers, pursuant to a successful referendum, to levy, collect, and administer an annual tax to support the joint cemetery district. The tax collected pursuant to section 135-50 must be placed in a separate fund, and may only be used to fund cemetery district operations. 60 ILCS 1/135-50 (West 2010). Further, under section 130-30 of the Township Code (60 ILCS 1/130-30 (West 2010)), "[a]ny 2 or more \* \* \* villages, or townships may jointly unite in establishing and maintaining cemeteries within and without the corporate limits or territory of either or any of them[.]"

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<sup>2</sup>Your letter indicates that the village provides water, gas, and sewer service to the cemetery district, on the same basis that it does for the other residents, businesses, and properties of Rossville. It does not appear that this arrangement requires negotiations between the two entities.

### Powers and Duties of a Village Trustee

Villages are governed by a board of trustees, which serves as the corporate authorities of the village (65 ILCS 5/1-1-2(2) (West 2010)). The duties of the village board include, among other things, establishing and regulating cemeteries "within or without the municipal limits" (65 ILCS 5/11-49-1(a) (West 2010); *see also* 65 ILCS 5/11-52-1, 11-52.1-1 (West 2010)); entering into contracts to purchase existing cemeteries or lands for cemetery purposes (65 ILCS 5/11-49-1(b) (West 2010)); after a successful referendum, levying an annual tax for reconditioning and restoring neglected cemeteries, which are owned by the village, or over which the village exercises management and control (65 ILCS 5/11-50-1 (West 2010)); removing a cemetery (65 ILCS 5/11-51-1 (West 2010)); and accepting the conveyance of a cemetery, in qualifying circumstances (65 ILCS 5/11-52-2 (West 2010)). Further, under section 11-52.1-3 of the Municipal Code (65 ILCS 5/11-52.1-3 (West 2010)), "[t]wo or more \* \* \* villages and townships may jointly unite in establishing and maintaining cemeteries within and without their territory or corporate limits[.]"

### Conflict of Duties

Based on the foregoing statutory provisions, it is clear that there are potential conflicts in the duties of the offices of village trustee and joint township cemetery manager which could prevent one person from faithfully discharging the duties of both offices simultaneously.

Villages and townships are expressly authorized to establish and maintain cemeteries jointly. Accordingly, the Village of Rossville and the townships which created the Ross-South Ross Cemetery District could elect to combine their operations with respect to the establishment and maintenance of cemeteries. In such circumstances, it may be assumed that the board of managers would be called upon to advise and assist the townships in determining the advisability of such an agreement and in addressing the relative duties and responsibilities of each entity with respect to any cemeteries so established and operated.

A village trustee is under a duty to protect and represent the best interests of the municipality which he or she serves. 65 ILCS 5/3.1-10-25 (West 2010); Ill. Const. 1970, art. XIII, §3. Similarly, a joint township cemetery manager, in exercising the powers granted to the cemetery district, is under a duty to protect and represent the best interests of the board and the township cemetery resources it oversees. *See generally* 60 ILCS 1/135-45 (West 2010)). It has long been established that one person cannot adequately represent the interests of two governmental units when those units contract with one another. Ill. Att'y Gen. Op. No. 97-026, issued December 23, 1997; 1976 Ill. Att'y Gen. Op. 219, 220-21; Ill. Att'y Gen. Inf. Op. No. I-10-002, issued February 5, 2010. It is not necessary that the dual officeholder be in a position to vote or otherwise act upon such an agreement; it is sufficient if he or she may be called upon to

advise the governing body with respect to the transaction. See 1976 Ill. Att'y Gen. Op. 232 (the offices of county superintendent of highways and city alderman are incompatible because the superintendent could be called upon to advise the county board regarding contracts between the county and the city involving streets and highways). Because of the likelihood that the members of the board of managers of the joint cemetery district would be called upon to advise their respective townships regarding any proposal for joining with the village to operate and maintain cemeteries, the obligation of a cemetery manager who also serves as a village trustee to represent the best interests of both the township and the village simultaneously results in an untenable position which renders the offices incompatible.<sup>3</sup>

### CONCLUSION

Because of the potential conflict in the duties of the offices of village trustee and cemetery manager, a person who serves in both offices simultaneously would not be able, in every instance, to represent the interests of both entities adequately, fully, and faithfully. Therefore, the offices of village trustee and joint township cemetery manager are incompatible, and one person may not hold both positions 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. PAPTON  
Senior Assistant Attorney General  
Chief, Public Access & Opinions Division

LEP:KAS:cj

cc: William Donahue, Assistant State's Attorney, Vermilion County

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<sup>3</sup>In your letter, you raise a concern that the duties of the offices might conflict because both the village board of trustees (65 ILCS 5/8-3-1 *et seq.* (West 2010)) and the cemetery district's board of managers (60 ILCS 1/135-50(b) (West 2010)) are required to determine the necessary taxes to be levied within their respective boundaries. The mere fact that both the village board of trustees and the cemetery district board of managers are required to determine the necessary taxes to be levied within their respective jurisdictions and within the limitations established by Illinois law may not create a conflict of duties which would prevent one person from serving in both offices. A determination on the part of one entity to raise or lower a tax levy would, at most, have an indirect effect on the levy of the other. Ill. Att'y Gen. Inf. Op. No. I-00-039, issued September 27, 2000.