



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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Jim Ryan
ATTORNEY GENERAL

I - 95-021

GOVERNMENTAL ETHICS AND
CONFLICT OF INTEREST:
Member of Township Board
as Cemetery Trustee

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Gentlemen:

I have your letters wherein you inquire, respectively, whether a township supervisor or a township trustee may simultaneously serve as a township cemetery trustee. Because of the nature of your inquiries, I do not believe that the issuance of an official opinion is necessary. I will, however, comment informally upon the questions you have raised.

Offices are deemed to be incompatible when a statute or the constitution prohibits the holder of one office from holding the other, or where the duties of either office are such that the holder of the one office cannot fully and faithfully perform all of the duties of the other office. (People ex rel. Myers v. Haas (1908), 145 Ill. App. 283.) One person may not hold two incompatible offices simultaneously.

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Section 2a of the Public Officer Prohibited Activities Act (50 ILCS 105/2a (West 1992)) provides:

"Township supervisors and trustees. 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. A supervisor or trustee may, however, serve as a volunteer fireman and receive compensation for that service. Any appointment in violation of this Section is void."

There are various statutory provisions relating to the appointment of township cemetery trustees, which provide alternative methods for their selection. However, the information which you have provided indicates that the cemetery trustees in question were, in each case, appointed by the township board of trustees.

Section 1 of the Public Graveyards Act (50 ILCS 610/1 (West 1992)) provides for the appointment of three cemetery trustees by the township board of trustees. Such trustees serve staggered six year terms, with one trustee being appointed in each odd numbered year. Section 1c of the Public Graveyards Act (50 ILCS 610/1c (West 1993 Supp.)) authorizes the cemetery trustees, after referendum approval, to levy a tax for cemetery purposes.

Because trustees appointed pursuant to the Public Graveyards Act are appointed by the township board of trustees, section 2a of the Public Officer Prohibited Activities Act will clearly apply to the appointment of a supervisor or township trustee to the cemetery board. Section 2a provides that neither the township supervisor nor a township trustee may accept such an appointment without first resigning from his office. Therefore, in these circumstances, the offices of township cemetery trustee and either township supervisor or township trustee are rendered incompatible by statute, and an appointment made in violation of the section would be void.

Section 2a of the Public Officer Prohibited Activities Act does not, however, address circumstances in which a person

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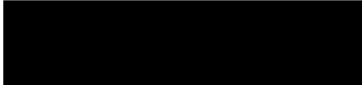
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serving as a cemetery trustee is subsequently elected or appointed to the township board. In those circumstances, unless the duties of the two offices conflict, it may be possible for one person to hold both offices until the end of his or her term as cemetery trustee.

Cemetery trustees are responsible for levying a tax and for receiving and administering funds for the construction, care and maintenance of cemeteries owned by the township. The fiduciary duty of the cemetery trustees, like that of the township board of trustees, is to the people of the township, not to any other entity. Nonetheless, the cemetery board is independent of the township board and does not operate as a subordinate body. The township board does not approve the budget of the cemetery board, and the funds managed by the cemetery board are generally derived from separate sources. Therefore, it appears that the duties of cemetery trustee and township trustee are not necessarily antagonistic, and will not render the two offices incompatible, except when the cemetery trustee is appointed by the township board of which he is a member.

This analysis is limited to instances in which cemetery trustees are appointed by the township board. In townships in which cemetery trustees are otherwise selected, a different conclusion may appertain.

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
Acting Chief, Opinions Bureau

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