



**WILLIAM J. SCOTT**

ATTORNEY GENERAL  
STATE OF ILLINOIS  
500 SOUTH SECOND STREET  
SPRINGFIELD  
62706

September 6, 1973

FILE NO. NP-618

COUNTIES:  
Compatibility -  
President of Village  
Board and Township Clerk

Honorable Douglas Marti  
State's Attorney  
Bond County  
Greenville, Illinois 62246

Dear Mr. Marti:

I have your recent letter wherein you state:

"On April 17, 1973 a person holding the office of Township Clerk was elected President of a Village Board. I am aware of your Opinion in 1915, page 350 where you held that the office of Town Clerk is compatible with that of President of a Village Board. I wish to inquire whether the office of Township Clerk is compatible with that of President of a Village Board at the present time. Thank you for your attention to this matter."

From the general rules laid down in People v. Haas,

145 Ill. App. 283 it appears that incompatibility between

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NP 618

offices arises 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 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.

I find no provision of the Illinois Constitution or of any statute which would prohibit a township clerk from also serving as president of a village. I have examined the statutory powers of a president of a village, particularly sections 3-12-1 and 3-12-2 of Article 3 of the "Illinois Municipal Code." (Ill. Rev. Stat. 1971, ch. 24, pars. 3-12-1 and 3-12-2.) Also, I have examined the statutory powers of a township clerk, particularly sections 1 through 5 of Article XII, Section 2 of Article VIII and Sections 1 and 10 of Article XIII of "An Act to revise the law in relation to township organization," (Ill. Rev. Stat. 1971, ch. 139, pars. 111-115, 74, 117 and 126 respectively.) I find nothing in the duties of these offices from which a conflict of interest could arise or which would prevent the proper performance of

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the duties of each office. The fact that a township clerk now acts as a clerk of the board of auditors does not, in my opinion, give rise to a conflict of interest since in his capacity as clerk of the board of auditors, a township clerk's duties are purely administrative. Since the 20th day after the 1973 township election he has no longer been a voting member of said board. (Ill. Rev. Stat. 1971, ch. 139, par. 117. Amended by P.A. 77-1610, section 1, eff. Sept. 21, 1971.) I am, therefore, of the opinion that the office of president of a village is compatible with that of township clerk.

Very truly yours,

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



**ROLAND W. BURRIS**

ATTORNEY GENERAL  
STATE OF ILLINOIS



July 9, 1993

I - 93-037

COMPATIBILITY OF OFFICES:  
Village Trustee and Fire Protection  
District Trustee; Township Clerk  
and School Board Member; Fire Protection  
District Trustee and Community College Trustee

Honorable Jack O'Malley  
State's Attorney, Cook County  
500 Richard J. Daley Center  
Chicago, Illinois 60602

Dear Mr. O'Malley:

I have Assistant State's Attorney Jeanette Sublett's letter wherein she inquired, on your behalf, regarding the potential incompatibility of several local offices. Because of the nature of these inquiries, I do not believe that the issuance of an official opinion of the Attorney General is necessary. I will, however, comment informally upon the questions which have been 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 which are the

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focus of this inquiry. Therefore, the issue is whether a conflict of duties could arise if one person were to occupy the particular offices in question.

Your first question concerns whether the offices of village trustee and fire protection district trustee are incompatible. Sections 10b and 11a of the Fire Protection District Act (Ill. Rev. Stat. 1991, ch. 127 1/2, pars. 30b, 31a; 70 ILCS 705/10b, 11a) respectively provide, in pertinent part:

"Any two or more fire districts or one or more fire protection districts and one or more cities, villages or incorporated towns may provide for joint ownership of fire fighting equipment, communication equipment, rescue and resuscitator equipment and real and personal property necessary for the care and housing of such equipment. In case of joint ownership the term of the agreement shall be fair, just and equitable to all parties and shall be set forth in a written agreement entered into by the corporate authorities of each participating unit.

\* \* \*

"The Board of Trustees of any fire protection district organized hereunder may contract with any corporation organized to furnish fire protection service or with any association organized to furnish fire protection service or with any city, village, incorporated town, or organized fire protection district lying adjacent to such district for fire protection service to be furnished by such corporation or such association or such municipality or fire protection district for the property within such district or to be furnished by such district for the property within such municipality. The board of trustees may also contract for the installation, rental or use of fire hydrants within the fire protection district and for the furnishing of water to be used within such district for fire protection purposes, and for mutual aid from and to other fire protection districts, and for mutual aid from and

to corporations and associations organized to furnish fire protection service and for mutual aid from and to municipalities.

\* \* \*

"

(Emphasis added.)

Similarly, section 11-6-1 of the Illinois Municipal Code (Ill. Rev. Stat. 1991, ch. 24, par. 11-6-1; 65 ILCS 5/11-6-1 (West 1992)) provides:

"The corporate authorities of each municipality may provide and operate fire stations, and all material and equipment that is needed for the prevention and extinguishment of fires, and may enter into contracts or agreements with other municipalities and fire protection districts for mutual aid consisting of furnishing equipment and man power from and to such other municipalities and fire protection districts." (Emphasis added.)

Under the statutes quoted above, it is foreseeable that a village and a fire protection district could enter into a contract for the provision of equipment and other materials necessary for the prevention and extinguishment of fires. Moreover, under section 11 of the Act, the board of trustees of a fire protection district is authorized to provide emergency ambulance service. (Ill. Rev. Stat. 1991, ch. 127 1/2, par. 31; 70 ILCS 705/11 (West 1992).) Municipalities possess the authority to provide or contract for ambulance services, as well as the power to license and to regulate the operation of ambulances. (Ill. Rev. Stat. 1991, ch. 24, par. 11-5-7; 65 ILCS 5/11-5-7 (West 1992).)

It is well 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. 91-023, issued June 6, 1991; Ill. Att'y Gen. Op. No. 85-019, issued November 19, 1985.) Because of the potential for conflicts in duties to arise when one governmental unit is authorized to contract with another, an individual serving as both a village trustee and a fire protection district trustee would be unable to represent the units of both entities adequately, fully and faithfully. Therefore, it appears that one person may not simultaneously hold the offices of village trustee and fire protection district trustee.

Secondly, you inquire whether the offices of township clerk and board of education member are incompatible. Township clerks are custodians of all records, books and papers of the town (Ill. Rev. Stat. 1991, ch. 139, par. 111; 60 ILCS 5/12-1 (West 1992)) and are authorized to certify to the county clerks the amount of taxes required to be raised for town purposes (Ill. Rev. Stat. 1991, ch. 139, par. 114; 60 ILCS 5/12-4 (West 1992)). Board of education members are responsible for conducting the business affairs of a school district (Ill. Rev. Stat. 1991, ch. 122, pars. 10-22 through 10-23.12; 105 ILCS 5/10-22 - 10-23.12 (West 1992)). The clerk's duties are ministerial in nature and do not require the exercise of discretion. A review of the duties of the two specified offices has failed to disclose any potential conflicts which could prevent one person from faithfully discharging the duties of either office. Consequently, it appears that one person may serve as township clerk and school board member simultaneously.

Lastly, you have asked whether a person may serve as both a fire protection district trustee and a community college board trustee. Section 3-38.2 of the Public Community College Act (Ill. Rev. Stat. 1991, ch. 122, par. 103-38.2; 110 ILCS 805/3-38.2 (West 1992)) authorizes a community college board:

"To enter into contracts with any municipality or fire protection district in which any community college buildings are located for the purpose of reimbursing such fire protection district or municipality for the additional costs of providing fire fighting equipment, apparatus or additional paid personnel occasioned by the presence of community college buildings within the municipality or fire protection district." (Emphasis added.)

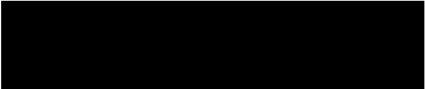
Under section 3-38.2 of the Public Community College Act, it appears that the General Assembly specifically contemplated that a fire protection district and a community college could enter into a contract to reimburse the fire protection district for costs associated with the provision of fire fighting services on the community college campus or to the community college's buildings. As noted earlier, one person cannot represent the interests of two governmental units when those units contract with one another. (1991 Ill. Att'y Gen. Op. No. 91-023; 1985 Ill. Att'y Gen. Op. No. 85-019.) Consequently, given the authorization for the two bodies to contract for services, it

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does not appear that one person may simultaneously hold the positions of fire protection district trustee and community college board trustee.

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:LP:cj