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COMPATIBILITY OF OFFICES:  
Township Land Commissioner  
and School Board Member

Honorable Tony Lee  
State's Attorney, Ford County  
Ford County Courthouse  
Paxton, Illinois 60957

Dear Mr. Lee:

I have your letter wherein you inquire whether a person may simultaneously hold the offices of township land commissioner and school board member, when all or part of the school district is located in the same county in which the township land commissioner serves. Because of the nature of your question, I do not believe that the issuance of an official opinion of the Attorney General is necessary. I will, however, comment informally upon the question you pose.

Incompatibility arises where the constitution or a statute specifically prohibits the occupant of one office from holding another, or where the duties of the two offices are such that the holder of one cannot, in every instance, fully and faithfully discharge the duties of the other. Rogers v. Village of Tinley Park et al. (1983), 116 Ill. App. 3d 347, 440-441; People ex rel. Myers v. Haas (1908), 145 Ill. App. 283, 286.

Section 15-24 of The School Code (Ill. Rev. Stat. 1987, ch. 122, par. 15-24), which establishes the office of township land commissioner and sets forth its duties, provides:

"Management of permanent funds. The common school lands and township loanable funds in Class I counties shall be managed and operated by township land commissioners who shall receive no salary.

In counties of fewer than 220,000 inhabitants, there shall be 3 land commissioners, who shall be elected in the same manner as provided for the election of school directors, who shall serve the same terms as school directors and shall be organized in the same manner as school directors. In counties having 220,000 inhabitants or more but fewer than 1,000,000 inhabitants, the members of the regional board of school trustees shall be the township land commissioners, except that township land commissioners elected in any such county prior to the effective date of this amendatory Act of 1963 shall continue to serve until the end of the term for which they were elected. The township land commissioners shall hold title to, manage and operate all common school lands and township loanable funds of such township and receive the rents, issues and profits therefrom. Elections shall be conducted in accordance with the general election law. The land commissioners shall appoint a treasurer for a term of 2 years and fix his salary which shall not be changed during such term. The proceeds of the rents, issues and profits from such land and fund shall be promptly deposited with him upon its receipt by the land commissioners. After the payment of the necessary expenses incidental to the operation of such land and fund by orders drawn on the treasurer and signed by the president and secretary of the land commissioners, including actual expenses of the land commissioners, the net income from such land and fund including accumulated income undistributed at the effective date of this Act shall, upon an order drawn by such treasurer and signed by the president and secretary of such township land commissioners be distributed annually on or before February 1 as provided in this Act."

Members of the regional board of school trustees are expressly prohibited from serving as school board members by section 6-3 of The School Code (Ill. Rev. Stat. 1987, ch. 122, par. 6-3). In addition, trustees are ineligible to serve as school board members under section 10-3 of The School Code (Ill. Rev. Stat. 1987, ch. 122, par. 10-3). Consequently, in more populous counties where the members of the regional board of school trustees serve as the township land commissioners, a township land commissioner is statutorily prohibited from serving simultaneously as a school board member.

In regard to less populous counties, however, no express statutory or constitutional language prohibits a township land commissioner from also serving on a school board. Therefore, it

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is necessary to examine the duties, functions and powers of these positions to determine whether a conflict of duties exists.

The powers of a school board are specifically enumerated by statute. These powers include: supervising the education of children within the district, the raising of revenue by tax levy, the hiring of teachers, and the maintaining of schools. (Ill. Rev. Stat. 1987, ch. 122, par. 10-20 et seq.) A school board may also exercise those implicit powers which are necessary to carry into effect the powers expressly granted by the General Assembly. (Spinelli v. Immanuel Lutheran Evangelical Congregation, Inc. (1987), 118 Ill. 2d 389, 403; Wesclin Education Association v. Board of Education (1975), 30 Ill. App. 3d 43, 44.) A school board is a supervisory body which makes decisions that directly impact upon the education of children with the district.

The duties performed by a township land commissioner are ministerial in nature. The land commissioners are responsible for management of all common school lands and additional duties incidental to this function. The land commissioners have no authority to advise, to supervise or to interfere, in any manner, with the education of children within the district. A land commissioner would have no pecuniary interests, by virtue of his office, which could affect his or her decisions as a school board member. The office is uncompensated and custody of all profits, rents and issues from the land are the responsibility of the treasurer, who is to be appointed by the land commissioner. (Ill. Rev. Stat. 1987, ch. 122, par. 15-24.) Distribution of the income from the common school lands and township loanable funds is to be made in accordance with the provisions of The School Code.

Based upon the responsibilities of the offices of township land commissioner and school board member, it does not appear that the duties of the two offices are such that the holder of one office could not fully and faithfully discharge the duties of the other. Consequently, it appears that the offices of township land commissioner and school board member, when all or part of the school district is located in the same county for which the land commissioner serves, are not incompatible.

Very truly yours,



MICHAEL J. LUKE  
Senior Assistant Attorney General  
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