



ROLAND W. BURRIS

ATTORNEY GENERAL
STATE OF ILLINOIS



March 5, 1992

I - 92-015

COMPATIBILITY OF OFFICES:
Township Planning Commission
and County Board Member

Honorable Thomas J. McCracken, Jr.
State Representative, 81st District
5757 South Cass Avenue
Westmont, Illinois 60559

Dear Representative McCracken:

I have your letter wherein you inquire whether one person may serve simultaneously as the chairman of a township plan commission and a member of the county board of the county in which the township is located. Because the Attorney General is authorized to advise officers and spokesmen of the General Assembly only in matters which relate to their duties as such (Ill. Rev. Stat. 1989, ch. 14, par. 4), we cannot issue an official opinion in response to your request. I will, however, comment informally upon the question you have raised.

It is my understanding that the township in question lies within Will County, and that Will County has adopted a county zoning ordinance in accordance with the provisions of Division 5-12 of the Counties Code. (Ill. Rev. Stat. 1989, ch. 34, par. 5-12001 et seq.) Therefore, the provisions of the Township Zoning Act (Ill. Rev. Stat. 1989, ch. 139, par. 301 et seq.) are inapplicable in this situation. The plan commission is organized pursuant to section 13-37 of the Township Law (Ill. Rev. Stat. 1989, ch. 139, par. 126.27).

Section 13-37 of the Township Law authorizes a township with a population of more than 12,000 which is located within a county with a population of less than 600,000 to create a plan commission. The powers of the plan commission include preparing and recommending to the township board a comprehensive plan for the development of unincorporated areas of the township, and thereafter recommending changes to the plan and promoting, generally, realization of the plan. Subsection 13-37(c) of the Township Law (Ill. Rev. Stat. 1989, ch. 139, par. 126.27(c)), however, provides:

" * * *

(c) If a county in which a township is located has adopted a county zoning ordinance pursuant to 'An Act in relation to county zoning', approved June 28, 1935, as amended [now Division 5-12 of the Counties Code], the recommendations of the township plan commission may be presented by the township board of trustees to the county board of the county where the township is located."

Therefore, because Will County has adopted a county zoning ordinance, the township plan commission in this circumstance makes recommendations to the township board of trustees, which in turn may present the recommendations to the county board of Will County.

The doctrine of incompatibility is applicable where the constitution or a statute specifically prohibits the occupant of one office from holding another, or where the duties of either office are such that the holder of one cannot, in every instance, properly and faithfully perform the duties of the other. (People ex rel. Myers v. Haas (1908), 145 Ill. App. 283, 286.) One person may not simultaneously hold two incompatible offices.

There appear to be no constitutional or statutory provisions which prohibit a county board member from simultaneously serving on a township plan commission. Moreover, it appears that no conflict of duties would arise from such simultaneous service. The plan commission cannot implement its own plan in a county which has adopted a county zoning ordinance, but rather presents its recommendations to the township board, which may present them to the county board. In this respect, the plan commission indirectly advises the county board. In opinion No. S-500, issued July 24, 1972, Attorney General Scott concluded that a member of a county

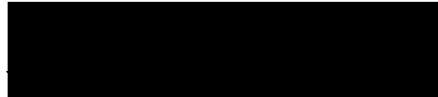
Honorable Thomas J. McCracken, Jr. - 3.

board may serve as a member of a regional planning commission, reasoning that the regional planning commission serves to advise the county board, and that there would be no conflict of duties if a member of a county board serves on a commission that advises the county board. The position of the township plan commission appears to be analogous to that of a regional planning commission in these circumstances.

Therefore, it appears that the offices of county board member and township plan commission chairman 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,

A solid black rectangular redaction box covering the signature of Michael J. Luke.

MICHAEL J. LUKE
Senior Assistant Attorney General
Chief, Opinions Division



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 9, 2006

I - 06-041

COMPATIBILITY OF OFFICES:
County Zoning Board of Appeals Member
and Township Plan Commission Member

The Honorable Melissa S. Barnhart
State's Attorney, Kendall County
Kendall County Courthouse
807 West John Street
Yorkville, Illinois 60560

Dear Ms. Barnhart:

I have your letter inquiring whether a county zoning board of appeals member may simultaneously serve as township plan commission member. For the reasons stated below, the office of county zoning board of appeals member is not incompatible with the office of township plan commission member.

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, properly and faithfully perform 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 prohibiting one person from simultaneously holding the offices of county zoning board of appeals member and township plan commission member. 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.

ANALYSIS

Powers and Duties of County Zoning Board of Appeals

Kendall County has adopted a county zoning ordinance pursuant to division 5-12 of the Counties Code (the Code) (55 ILCS 5/5-12001 *et seq.* (West 2004)).¹ Members of the county zoning board of appeals are appointed by the presiding officer of the county board, with the county board's advice and consent. 55 ILCS 5/5-12010 (West 2004). The powers and duties of the zoning board of appeals are set out in division 5-12 of the Code. Specifically, section 5-12009 of the Code (55 ILCS 5/5-12009 (West 2004)) provides, in pertinent part:

The regulations by this Division authorized may provide that a board of appeals may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein contained in cases where there are practical difficulties or particular hardship in the way of carrying out the strict letter of any of such regulations relating to the use, construction or alteration of buildings or structures or the use of land * * *.

* * *

Where a variation is to be made by ordinance or resolution, upon the report of the board of appeals such county board may by ordinance or resolution without further public hearing adopt any proposed variation or may refer it back to the board of appeals for further consideration and any proposed variation which fails to receive the approval of the board of appeals shall not be passed except by the favorable vote of 3/4 of all the members of the county board, but in counties in which the county board consists of 3 members only a 2/3 vote is required.

Section 5-12011 of the Code (55 ILCS 5/5-12011 (West 2004)) provides, in pertinent part:

The board of appeals shall also hear and decide appeals from and review any order, requirement, decision or determination

¹The Kendall County zoning ordinance may be accessed on the Internet at <<http://www.co.kendall.il.us/zoning/ordinance.htm>>. Because Kendall County has adopted a county zoning ordinance, article 110 of the Township Code (60 ILCS 1/110-5 *et seq.* (West 2004)) is inapplicable.

made by an administrative official charged with the enforcement of any ordinance or resolution adopted pursuant to this Division.

It shall also hear and decide all matters referred to it or upon which it is required to pass under any such ordinance or resolution or under the terms of this Division.

Further, section 5-12014 of the Code (55 ILCS 5/5-12014 (West 2004)) provides, in pertinent part:

The regulations imposed and the districts created under the authority of this Division may be amended from time to time by ordinance or resolution, after the ordinance or resolution establishing same has gone into effect, but no such amendments shall be made without a hearing before the board of appeals.

Under the foregoing statutory provisions, the county zoning board of appeals votes on any proposal submitted to the county board which creates a variation to the zoning regulations. If any proposed variation fails to receive the approval of the board of appeals, a three-fourths vote of all members of the county board is required to pass the resolution, except in counties in which the county board consists of three members, where only a two-thirds vote is required. The county zoning board of appeals also hears and decides: (1) all appeals from the zoning administrator; (2) all matters referred to it; and (3) all matters upon which it is required to pass under ordinance. Finally, it hears all matters relating to the amendment of zoning regulations.

Powers and Duties of Township Plan Commissions

Section 105-35 of the Township Code (60 ILCS 1/105-35 (West 2004)) authorizes townships located in counties with a population of less than 600,000 to create township plan commissions.² Commissions are comprised of five members who are appointed by the township supervisor with the advice and consent of the township board. 60 ILCS 1/105-35 (West 2004). The powers and duties of township plan commissions include preparing and recommending to the township board a comprehensive plan for the development of unincorporated areas of the township, and thereafter recommending changes to the plan and promoting, generally, realization of the plan. 60 ILCS 1/105-35 (West 2004). Additionally, subsection 105-35(c) of the Township Code provides:

²According to the 2000 Census, Kendall County had a population of 54,544. Illinois Blue Book 422 (2003-2004).

If the county in which the township is located has adopted a county zoning ordinance under Division 5-12 of the Counties Code, the recommendations of the township plan commission may be presented by the township board to the county board of that county.

Because Kendall County has adopted a county zoning ordinance, the township plan commission in this circumstance makes recommendations to the township board of trustees, which in turn may present the recommendations to the county board of Kendall County.

Moreover, section 5-12009 of the Code (55 ILCS 5/5-12009 (West 2004)) provides, in pertinent part:

If a township located within a county with a population of less than 600,000 * * * has a plan commission, and the plan commission objects to a zoning variation which affects unincorporated areas of the township, the township board of trustees within 15 days after the public hearing before the board of appeals on such zoning variation, may submit its written objections to the county board of the county where the unincorporated areas of the township are located. In such case, the county board shall not approve the zoning variation, except by the favorable vote of 3/4 of all members of the county board.

Similarly, section 5-12014 of the Code (55 ILCS 5/5-12014 (West 2004)) provides, in pertinent part:

(c) If a township located within a county with a population of less than 600,000 has a plan commission and the plan commission objects to a text amendment or a map amendment affecting an unincorporated area of the township, then the township board of trustees may submit its written objections to the county board within 30 days after the hearing before the board of appeals, in which case the county board may not adopt the text amendment or the map amendment affecting an unincorporated area of the township except by the favorable vote of at least three-fourths of all the members of the county board.

In addition to submitting recommendations to the township board regarding general development plans within the unincorporated areas of the township, the township plan commission may present objections to the township board regarding zoning variances or

amendments to zoning ordinances after a hearing before the county zoning board of appeals. The township board may, in its discretion, present the objections to the county board, in which case the zoning variance or amendment cannot be approved or adopted unless three-fourths of all members of the county board vote in favor of such variance or amendment.

Conflict of Duties

In opinion No. S-500, issued July 24, 1972 (1972 Ill. Att'y Gen. Op. 195), Attorney General Scott was asked to determine whether a county board member could simultaneously serve as a member of a regional planning commission. In reaching his conclusion that a county board member may simultaneously serve as a member of the regional planning commission, Attorney General Scott stated that there is no conflict of interest in a member of the county board serving on a commission that advises the county board. The regional planning commission cannot implement its own plan; it has no ordinance powers.

In informal opinion No. I-92-015, issued March 5, 1992, we were asked whether one person may simultaneously serve as the chairman of the township plan commission and county board member. Relying on subsection 13-27(c) of the Township Law (Ill. Rev. Stat. 1989, ch. 139, par. 126.27(c)), the precursor to current section 105-35(c) of the Township Code and opinion No. S-500, we concluded that no conflict of duties would arise from the simultaneous service in both offices because the township plan commission cannot implement its own plan in a county which has adopted a county zoning ordinance. Rather, the commission merely makes recommendations to the township board, which then may present the recommendations to the county board.

A similar analysis applies to the offices of county zoning board of appeals member and township plan commission member. A township plan commission essentially serves as an advisory body to the township board. The commission's plans for the township are merely recommendations that are submitted to the township board for adoption. Similarly, its objections to variances affecting the township or amendments to ordinances affecting the township are merely recommendations that are submitted to the township board for referral to the county board. Although the county zoning board of appeals hears these matters, it is the county board that makes the final determination as to whether to approve a variance affecting the township or to adopt an amendment to a zoning ordinance. The township plan commission thus serves as an indirect advisor to the county board and an indirect objector to hearings held before the county zoning board of appeals which are ultimately decided by the county board. As such, the functions of the offices of county zoning board of appeals member and township plan commission member do not appear to be inconsistent, and an individual holding both offices may fully and faithfully discharge all of the duties of the other.

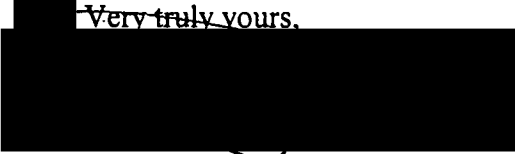
The Honorable Melissa S. Barnhart - 6.

CONCLUSION

Based on the duties of county zoning board of appeals members and township plan commission members, there is no apparent conflict in duties which would prohibit a member of one body from properly and faithfully performing all of the duties of a member of the other. Therefore, the office of county zoning board of appeals member is not incompatible with the office of township plan commission member, 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,


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

LEP:KMC:ljk



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

April 13, 2004

I - 04-006

COMPATIBILITY OF OFFICES:
Township Plan Commission
Member and Township Zoning
Board of Appeals Member

The Honorable Joseph P. Hettel
State's Attorney, LaSalle County
707 Etna Road, Room 251
Ottawa, Illinois 61350

Dear Mr. Hettel:

I have your letter wherein you inquire whether one person may simultaneously hold the offices of township plan commission member and township zoning board of appeals member. 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 public 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 ex rel. Fitzsimmons v. Swailes*, 101 Ill. 2d 458, 465 (1984); *People ex rel. Myers v. Haas*, 145 Ill. App. 283, 286 (1908). There is no constitutional or statutory provision which prohibits a person from holding both of the offices in question. 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.

Section 30-75 of the Township Code (60 ILCS 1/30-75 (West 2002)) provides that the electors of a township may authorize the township board to exercise the zoning powers conferred by article 110 of the Township Code (60 ILCS 1/110-5 *et seq.* (West 2002)). Section 110-40 of the Code (60 ILCS 1/110-40 (West 2002)) provides that when a zoning ordinance or resolution has been adopted:

(a) The township board shall provide for the appointment of a board of appeals of 5 members to serve respectively for the following terms: One for one year, one for 2 years, one for 3 years, one for 4 years, and one for 5 years. The successor to each member shall serve for a term of 5 years.

Section 110-35 of the Code (60 ILCS 1/110-35 (West 2002)) provides:

(a) The regulations authorized by this Article may provide that a board of appeals may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules contained in the regulations in cases where there are practical difficulties or there is particular hardship in carrying out the strict letter of regulations relating to the use, construction, or alteration of buildings or structures or the use of land.

Further, section 110-45 of the Code (60 ILCS 1/110-45 (West 2002)) provides:

(a) The board of appeals shall hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official charged with the enforcement of any ordinance or resolution adopted under this Article. The board of appeals shall also hear and decide all matters referred to it or upon which it is required to pass under any ordinance or resolution or under the terms of this Article.

Pursuant to section 110-35 of the Township Code, the township zoning board of appeals votes on any proposal submitted to the township board which creates a variation to the zoning regulations. If any proposed variation fails to receive the approval of the board of appeals, a three-fourths vote of all the members of the township board is required to adopt the variation. 60 ILCS 1/110-35 (West 2002). Further, under section 110-60 of the Code (60 ILCS 1/110-60 (West 2002)), a hearing must be held before the township board of appeals prior to the township board voting to amend its zoning regulations.

With respect to township plan commissions, section 105-35 of the Township Code (60 ILCS 1/105-35 (West 2002)) authorizes the creation of such plan commissions in townships located in counties with a population of less than 600,000, and also in townships with a population of more than 500 located in counties with a population of more than 3,000,000. The commission is comprised of 5 members appointed by the township supervisor with the advice and consent of the township board. 60 ILCS 1/105-35 (West 2002). Section 105-35 sets out the powers and duties of township plan commissions and provides, in pertinent part:

(1) The commission *may prepare and recommend to the township board* a comprehensive plan for the present and future development or redevelopment of the unincorporated areas of the township. The plan may be adopted in whole or in separate geographical or functional parts, each of which, when adopted, shall be the official plan, or part of the official plan, of that township. * * *

(2) The commission *may* from time to time *recommend changes* in the official comprehensive plan.

(3) The commission *may* from time to time *prepare and recommend to the township authorities* plans for specific improvements in pursuance of the official comprehensive plan.

(4) The commission may give aid to the officials charged with the direction of projects for improvements embraced within the official plan to further the making of these projects and, generally, may promote the realization of the official comprehensive plan.

(5) The commission *may prepare and recommend to the township board* schemes for regulating or forbidding structures or activities in unincorporated areas that may hinder access to solar energy necessary for the proper functioning of solar energy systems, as defined in Section 1.2 of the Comprehensive Solar Energy Act of 1977, or may recommend changes in those schemes.

(6) The commission may exercise other powers germane to the powers granted by this Section that are conferred by the township board. (Emphasis added.)

The Honorable Joseph P. Hettel - 4

The township plan commission essentially serves as an advisory board to the township board. Plans for the township made by the commission are merely recommendations that are submitted to the township board for adoption.

Based upon a review of the respective duties of township zoning board of appeals members and township plan commission members, there is no apparent conflict in duties which would prohibit a member of either body from properly and faithfully performing all of the duties of a member of the other. The functions of the two bodies are not inconsistent. The township plan commission makes recommendations regarding general development plans within unincorporated areas of the township; the township zoning board of appeals addresses specific zoning issues regarding particular parcels of property. There is no inherent conflict between these two functions. It appears, therefore, that the office of member of a township plan commission is not incompatible with the office of member of the township zoning board of appeals, and that one person may hold both offices simultaneously.

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

Very truly yours,

A large black rectangular redaction box covers the signature of Lynn E. Patton.

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

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