



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

October 29, 2009.

I - 09-019

COMPATIBILITY OF OFFICES:
Assistant State's Attorney and
Township Supervisor

The Honorable John A. Barsanti
State's Attorney, Kane County
Kane County Judicial Center
37W777 Route 38, Suite 300
St. Charles, Illinois 60175

Dear Mr. Barsanti:

I have your letter inquiring whether the offices of Assistant State's Attorney and township supervisor in the same county are compatible. For the reasons discussed below, the offices of Assistant State's Attorney and township supervisor are incompatible. Consequently, one person may not hold both offices simultaneously.

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, 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 an Assistant State's Attorney and a township supervisor. The issue, therefore, is whether the duties of either office are such that the holder of one cannot, in every instance, fully and faithfully discharge all of the duties of the other.

Powers and Duties of Township Supervisor

The township supervisor is the chief executive officer of the township (60 ILCS 1/70-15 (West 2008)) and is a voting member of the township board (60 ILCS 1/80-5 (West 2008)). Township boards exercise the corporate powers of the townships that they serve. *Evers v. Collinsville Township*, 269 Ill. App. 3d 1069 (1995); Ill. Att'y Gen. Inf. Op. No. I-92-009, issued February 4, 1992. As a result, township boards are authorized to enter into cooperative agreements and contracts with other governmental entities concerning the expenditure of township funds for: ordinary and necessary maintenance and operating expenses for public safety, environmental protection, public transportation, health, recreation, libraries, and social services for the poor and aged; ordinary and necessary capital expenditures authorized by law; and development and retention of business, industrial, manufacturing, and tourist facilities within the township. 60 ILCS 1/85-13(a) (West 2008). Further, township boards are expressly authorized to enter into contractual agreements with counties regarding police protection (60 ILCS 1/30-155 (West 2008)); fire protection (60 ILCS 1/30-165 (West 2008)); mosquito control and abatement (60 ILCS 1/105-20 (West 2008)); and the establishment and maintenance of youth service bureaus. 60 ILCS 1/215-10 (West 2008). The township board may also request that the county board commence specified legal proceedings with respect to the demolition, repair, or enclosure of dangerous and unsafe buildings or uncompleted and abandoned buildings located within the township but outside of a municipality. 60 ILCS 1/85-50 (West 2008); 55 ILCS 5/5-1121 (West 2008).

Powers and Duties of Assistant State's Attorneys

The office of Assistant State's Attorney is provided for in section 4-2003 of the Counties Code (55 ILCS 5/4-2003 (West 2008)).¹ Although the powers and duties of an Assistant State's Attorney are not prescribed by statute, the Illinois Supreme Court has stated that "Assistant State's Attorneys are in essence surrogates for the State's Attorney" and "possess the power [of the State's Attorney] in the same manner and to the same effect as the State's Attorney." (Brackets in original.) *Office of the Cook County State's Attorney v. Illinois Local Labor Relations Board*, 166 Ill. 2d 296, 303 (1995). Section 3-9005 of the Counties Code (55 ILCS 5/3-9005 (West 2008)), as amended by Public Act 96-431, effective August 13, 2009) sets out the powers and duties of the State's Attorney and provides, in pertinent part:

¹The position of Assistant State's Attorney constitutes a public office. See Ill. Att'y Gen. Inf. Op. No. I-08-008, issued March 25, 2008, and the cases cited therein.

(a) The duty of each State's attorney shall be:

(1) To commence and prosecute all actions, suits, indictments and prosecutions, civil and criminal, in the circuit court for his county, in which the people of the State or county may be concerned.

* * *

(3) To commence and prosecute all actions and proceedings brought by any county officer in his official capacity.

(4) To defend all actions and proceedings brought against his county, or against any county or State officer, in his official capacity, within his county.

* * *

(7) To give his opinion, without fee or reward, to any county officer in his county, upon any question or law relating to any criminal or other matter, in which the people or the county may be concerned.

A State's Attorney prosecutes and defends actions on behalf of the county and its officers and acts as the legal advisor to the several county officers. As the attorney for the county and its officers, the State's Attorney (and, as an extension, his or her Assistant State's Attorneys) may be called upon for advice regarding any agreements or contracts that the county or its officers may propose entering into, including contracts or intergovernmental agreements with other units of local government. Ill. Att'y Gen. Inf. Op. No. I-00-043, issued October 16, 2000; *see also* Ill. Const. 1970, art. VII, §10; 5 ILCS 220/5 (West 2008) (authorizing governmental units to contract with each other to obtain or share services and to exercise, combine, or transfer any power or function except where expressly prohibited by law).

ANALYSIS

It is well established that one person cannot adequately represent the interests of two governmental units when those units contract with one another. 1975 Ill. Att'y Gen. Op. 37, 45-46; Ill. Att'y Gen. Inf. Op. No. I-92-002, issued January 21, 1992. Further, even if a public officer is not a party to a contract, the public officer may have a conflict if his or her own official duties include providing advice to the public body or public officer that is a party to a contract. *See generally Peabody v. Sanitary District of Chicago*, 330 Ill. 250 (1928); Ill. Att'y Gen. Inf. Op. No. I-95-012, issued April 7, 1995.

An Assistant State's Attorney may be called upon to render advice or an opinion on, or to assist in the negotiation of, the terms of an agreement between the county and a township. In such a case, the duty of the Assistant State's Attorney to advise the county may conflict with the duty of the township supervisor to act in the best interest of the township. Given the many instances in which counties and townships may contract with each other, a conflict in duties could arise if an individual simultaneously served as an Assistant State's Attorney and a township supervisor. *See generally* 1979 Ill. Att'y Gen. Op. 21.

In addition to the conflict in duties that may arise from a contractual relationship between a county and a township, a conflict of duties could also arise in the area of county zoning. Township boards in counties of less than 1,000,000 population² are expressly authorized to protest proposed county zoning in unincorporated township territory.³ 55 ILCS 5/5-12007 (West 2008). The State's Attorney (and by extension, his or her Assistant State's Attorneys) may be called upon for advice and assistance with reference to actions taken by the county zoning board. Ill. Att'y Gen. Inf. Op. No. I-89-020, issued March 21, 1989. A conflict in duties could therefore arise if an Assistant State's Attorney is called upon to render advice or an opinion on a proposed county zoning ordinance to which the township board is opposed. *See also* Ill. Att'y Gen. Op. No. 94-008, issued March 24, 1994. Similarly, because a State's Attorney controls the legal affairs of the county, an Assistant State's Attorney could be called upon to advise the county board with respect to a request from a township board to raze, repair, or enclose an unsafe or dangerous building. Because of the potential conflicts in the duties of the offices of Assistant State's Attorney and township supervisor, 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. Consequently, one person may not hold both offices simultaneously, unless otherwise permitted under Illinois law.

With regard to other Illinois law that may permit simultaneous tenure in the indicated offices, you have directed our attention to opinion No. I-97-010, issued April 16, 1997. In that opinion, we were asked to determine whether an Assistant State's Attorney could simultaneously serve as park district commissioner. In reaching the conclusion that a State's Attorney may limit the scope of the duties of an Assistant State's Attorney, such that the Assistant State's Attorney could serve simultaneously as a park district commissioner, opinion No. I-97-010 first reviewed opinion No. S-1411, issued March 9, 1979 (1979 Ill. Att'y Gen. Op.

²Based on 2000 Federal decennial census figures, Kane County's population is 404,119. Illinois Blue Book 505 (2007-2008).

³Township electors may authorize the township board to exercise zoning powers, but only if the county in which the township is located does not have a county zoning ordinance or resolution in effect. 60 ILCS 1/30-75, 110-5 (West 2008). Kane County has a county zoning ordinance in effect. It can be accessed on the internet at: http://www.co.kane.il.us/Development/Subdivision_Zoning/zoning_ordinance.pdf.

21), wherein Attorney General Scott concluded that the offices of Assistant State's Attorney and city commissioner were incompatible because an Assistant State's Attorney could be called upon to advise and assist the county with respect to contracts which the county may wish to enter into with the city. Attorney General Scott also noted that the State's Attorney's proposal to limit the duties of the Assistant State's Attorney could not change the inherent power of an Assistant State's Attorney to exercise the general powers of the State's Attorney and to act contrary to the instructions of the State's Attorney.

Opinion No. I-97-010 also reviewed *People v. Fife*, 76 Ill. 2d 418 (1979), a case decided after the issuance of opinion No. S-1411, wherein the Illinois Supreme Court recognized that the Attorney General could limit the duties of a Special Assistant Attorney General and that such limitations could be considered in determining whether potential conflicts of interest warrant disqualification.⁴ The opinion also considered several opinions of the Illinois State Bar Association's Committee on Professional Conduct (ISBA ethics opinions) that recognized a State's Attorney's authority to limit the scope of the duties of an Assistant State's Attorney. Based upon the more recent case law and the ISBA ethics opinions, opinion No. I-97-010 concluded that a State's Attorney may elect to authorize an Assistant State's Attorney to handle only criminal matters involving non-park district defendants and crimes or limit an Assistant State's Attorney's authority to advise a county board or to perform other civil functions. In such circumstances, opinion No. I-97-010 concluded that a conflict of duties could be avoided and an Assistant State's Attorney could simultaneously serve as a park district commissioner.

Subsequent to the issuance of opinion No. I-97-010, we were asked to determine whether a county board member may serve simultaneously as an Assistant State's Attorney in a neighboring county. In opinion No. I-08-008, issued March 25, 2008, we concluded that simultaneous tenure in the offices of county board member and Assistant State's Attorney was prohibited. In reaching this conclusion, we reviewed section 1 of the Public Officer Prohibited Activities Act (50 ILCS 105/1 (West 2008)) and the Illinois Appellate Court's interpretation of that statute in *People v. Wilson*, 357 Ill. App. 3d 204 (2005). Pursuant to section 1 of the Public

⁴In *People v. Fife*, 76 Ill. 2d 418 (1979), the case relied upon by Attorney General Ryan in informal opinion No. I-97-010, the Court addressed whether a conflict of interest existed when a Special Assistant Attorney General (SAAG) who worked on worker's compensation matters also served as defense counsel in a criminal case. The Court noted that the Attorney General's internal code of conduct prohibited SAAGs from representing or defending any person other than the State of Illinois in any criminal action filed in any Illinois court unless the Attorney General or Deputy Attorney General specifically permitted such representation and the SAAG obtained a knowing and intelligent waiver from the client. The Court held that, given the concern for the right to effective assistance of counsel in criminal cases, a *per se* conflict of interest exists irrespective of whether the SAAG's work is related to criminal matters. However, the Court further held that, because SAAGs are engaged in duties of a noncriminal nature and of specifically defined scope wholly unrelated to their work as defense counsel, SAAGs may simultaneously serve as defense counsel if there is a "complete and effective disclosure, by effective, knowledgeable waiver[.]" *Fife*, 76 Ill. 2d at 425.

Officer Prohibited Activities Act, as applied by the court in *Wilson*, we concluded that no county board member may be elected or appointed, during the term of office for which he or she is elected, to any office other than as specified in Illinois law. Because Illinois law did not authorize a county board member to serve as an Assistant State's Attorney, we concluded that one person could not hold both positions simultaneously.

After opinion No. I-08-008 was issued, the General Assembly amended section 3-9006 of the Counties Code (55 ILCS 5/3-9006 (West 2008)) to add the following language:

(b) Simultaneous county board tenure. A duly appointed Assistant State's Attorney may serve as an Assistant State's Attorney and, simultaneously, serve as a county board member for a county located outside of the jurisdiction of the State's Attorney Office that he or she serves. An Assistant State's Attorney serving as a county board member is subject to any internal mechanisms established by the State's Attorney to avoid conflicts of interest in the performance of his or her duties as an Assistant State's Attorney.

The plain and unambiguous language of subsection 3-9006(b) authorizes Assistant State's Attorneys to serve as county board members in a county that is outside the jurisdiction of the State's Attorney's office in which the Assistant State's Attorney serves. Further, the State's Attorney may establish an internal mechanism to prevent conflicts of interest that may arise from the Assistant State's Attorney's simultaneous tenure as a county board member in a neighboring county.

A review of the debates for Senate Bill 2536, which as Public Act 95-1014, effective December 15, 2008, amended section 3-9006 of the Counties Code to include the language quoted immediately above, indicates that the General Assembly was aware of both Attorney General opinion Nos. I-97-010 and I-08-008 when considering Senate Bill 2536. See Remarks of Rep. Black and Rep. Brosnahan, September 10, 2008, House Debate on Senate Bill No. 2536, at 90-92. Further, the debates suggest that the General Assembly members understood that a potential conflict of duties exists if an Assistant State's Attorney simultaneously holds the office of county board member, park district commissioner, or similar public office. Therefore, subsection 3-9006(b) was intended to narrowly address the conflict of duties issue in the context of an Assistant State's Attorney serving as a county board member in another county. Accordingly, the offices of Assistant State's Attorney and township supervisor are incompatible, and one person may not hold both offices simultaneously.

The Honorable John A. Barsanti - 7

CONCLUSION

Because of a potential conflict in duties, absent a statutory provision otherwise providing, an Assistant State's Attorney may not serve simultaneously as a township supervisor.

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:lk:an



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

August 28, 1997

Jim Ryan
ATTORNEY GENERAL

I - 97-027

COMPATIBILITY OF OFFICES:
Township Supervisor and
Board of Review Member

The Honorable Ted J. Hamer
State's Attorney, Henry County
100 South Main Street
Cambridge, Illinois 61238

Dear Mr. Hamer:

I have your letter wherein you inquire whether one person may hold the offices of township supervisor and board of review member simultaneously. 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 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. (Rogers v. Village of Tinley Park (1983), 116 Ill. App. 3d 437, 440-41; People ex rel. Myers v. Haas (1908), 145 Ill. App. 283, 286.) There is no constitutional or statutory provision which prohibits one person from simultaneously serving as a township supervisor and as a member of a board of review. Therefore, the issue 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.

The township supervisor is the chief executive officer of the township (60 ILCS 1/70-15 (West 1996)) and is a voting

member of the township board. (60 ILCS 1/80-5 (West 1996).) Township boards, which provide various programs and services for township residents, are authorized to levy taxes for these services. (60 ILCS 1/235-5 (West 1996).)

Section 16-25 of the Property Tax Code (35 ILCS 200/16-25 (West 1996)) provides, in pertinent part:

"* * * Any taxing body that has an interest in an assessment made by any local assessment officer or officers may have the assessment reviewed by the board of review by filing a complaint in writing with the board within 30 calendar days after publication of the assessment list under Section 12-10. * * *"

A township is a taxing body, for purposes of this provision.

In opinion No. S-1459, issued August 20, 1979 (1979 Ill. Att'y Gen. Op. 121), Attorney General Scott construed the predecessor to this statute and determined that it rendered the offices of township trustee and board of review member incompatible:

" * * *

* * * In examining the duties of these two offices, there is a duty which a member of the board of review has which could prevent the proper performance of his duties as a township trustee. Section 108 of the Revenue Act of 1939 (Ill. Rev. Stat. 1977, ch. 120, par. 589.2) requires the board of review to review any assessment made by any local assessment officer or officers upon written complaint made by any taxing body and filed with the board within 20 calendar days after the assessment books are delivered to the board. By operation of this statute, a member of the board of review would have to review an assessment of which he, as a member of the township board of trustees, a taxing body, complained.

* * *

1979 Ill. Att'y Gen. Op. 121.

This analysis is equally applicable to the offices of township supervisor and board of review member under the current statute. Because the board of review is required under section 16-25 of the Property Tax Code to review assessments upon complaint by any taxing body, a member of the board of review could be placed in the untenable position of having to review an assessment which he or she, as a member of a township board, a taxing body, questioned. Given this potential conflict in duties, a dual office-holder could not properly and faithfully perform his or her duties as both a township supervisor and a member of the board of review.

Furthermore, although township property is generally exempt from taxation, property not used by townships exclusively for public purposes is subject to taxation. (See 35 ILCS 200/15-16(b)(e); 200/15-80 (West 1996).) In opinion No. S-590, issued May 22, 1973, Attorney General Scott construed the exemption provision pertaining to school property (Ill. Rev. Stat 1971, ch. 120, par. 500.1; see now 35 ILCS 200/15-35 (West 1996)) and advised that the offices of township tax assessor and school board member are incompatible because:

"

* * *

* * * The property of a school not exempted by this section would be subject to tax. If a tax assessor were also a member of a school board he could find himself assessing property of a school in his district. He could not in every instance properly and faithfully perform all the duties of each office. A dispute could also arise as to whether certain property of the schools is taxable. * * *

* * *

"

1973 Ill. Att'y Gen. Op. 83, 85.

A similar dispute concerning the tax exempt status of township property could also arise. A township supervisor is under a general duty to protect the best interests of the township. If a township supervisor also served on the board of review, the duty to ensure just assessments of township property may be compromised. The duties of the two offices under such circumstances are divergent and contrary.


Based on the foregoing reasoning, it appears that the office of township supervisor is incompatible with the office of

The Honorable Ted J. Hamer - 4.

board of review member, and therefore, one person cannot simultaneously hold both offices.

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
Chief, Opinions Bureau

MJL:JM:cc



WILLIAM J. SCOTT

ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD
62706



September 24, 1975

FILE NO. NP-962

OFFICERS:

Township Auditor and Township
Supervisor are Incompatible with
City Commissioner

Honorable Daniel Dougherty
Chairman
Committee on Local Government
Room 317 State House
Springfield, Illinois

Dear Senator Dougherty:

I have your letter wherein you state in pertinent
part:

"Can a township auditor or a township supervisor
also serve in the capacity of an elected city
commissioner?"

It is my understanding that your inquiry does not
involve officers of a township organized pursuant to "AN ACT
to authorize county boards in counties under township organi-
zation, to organize certain territory situated therein as a
town, and to provide for annexation of territory to and the
disconnecting of territory from said town". (Ill. Rev. Stat.

NP 962

Honorable Daniel Dougherty - 2.

1973, ch. 139, pars. 127 et seq.) It is my further understanding that none of the townships with which you are concerned are subject to the provisions of "AN ACT concerning townships lying wholly within cities of more than 50,000 population." Ill. Rev. Stat. 1973, ch. 139, pars. 134 et seq.

The common law doctrine of incompatibility of public offices precludes one person from simultaneously holding two incompatible public offices. (Dyer's Case, 1 Dyer Rep. 158.b, 73 Eng. Rep. 344 (K.B. 1557); Milward v. Thatcher, 2 Term Rep. 81, 100 Eng. Rep. 45 (K.B. 1787); Eddy v. County Commissioners of Peoria, 15 Ill.376 (1854); People v. Hanifan, 96 Ill. 420; People ex rel. Myers v. Haas, 145 Ill. App. 283.) In case of common law incompatibility, acceptance of the second office is ipso facto a resignation of the first. (Eddy v. County Commissioners of Peoria, 15 Ill. 376 (1854); People v. Hanifan, 96 Ill. 420; Packingham v. Harper, 66 Ill. App. 96; People ex rel. Myers v. Haas, 145 Ill. App. 283.) This doctrine does not forbid plural office holding per se but applies only to holding incompatible offices.

As indicated above, this doctrine has its roots

Honorable Daniel Dougherty - 3.

in the common law of England, which, unless altered by the General Assembly, is in force in Illinois pursuant to "AN ACT to revise the law in relation to the common law". (Ill. Rev. Stat. 1973, ch. 28, par. 1.) Presently, there are no constitutional or statutory provisions declaring the offices that are the subject of your inquiry to be compatible or incompatible.

The principal public policy consideration that is promoted by the doctrine of incompatibility of public offices is the insurance of the undivided loyalty and impartiality of the incumbent officeholder. (People ex rel. Ryan v. Green, 58 N.Y. 295, 304 (1874); Regell v. Worcester County, (Mass. 1949) 84 N.E. 2d 123, 134; People ex rel. Myers v. Haas, 145 Ill. App. 283.) A conflict in the duties of the offices would cause the incumbent to choose one office over the other. Also, if one office is superior to the other, the incumbent may be in a position of supervising himself. In Reilly v. Ozzard, 166 A. 2d 360 (N.J. 1960) at page 367, the New Jersey Supreme Court described the doctrine of incompatibility as follows:

Honorable Daniel Dougherty - 4.

"* * * Incompatibility is usually understood to mean a conflict or inconsistency in the functions of an office. It is found where in the established governmental scheme one office is subordinate to another, or subject to its supervision or control, or the duties clash, inviting the incumbent to prefer one obligation to another."

Plural office holding in Illinois has a long history. There have been several constitutional provisions restricting plural office holding. (Ill. Const., art. II, secs. 19 and 25 [1818]; Ill. Const., art. III, sec. 29 and art. V, sec. 10 [1848]; Ill. Const., art. IV, sec. 3, art. V, sec. 5, art. VI, sec. 16 [1870]; Ill. Const., art. VI, sec. 13 [1970].) My predecessors and I have published over 250 opinions upon the subject of plural office holding.

The earliest Illinois case applying the doctrine of incompatibility appears to be Eddy v. County Commissioners of Peoria, 15 Ill. 376 (1854). In Eddy, it was held that a precinct justice of the peace impliedly resigned that office when he accepted the incompatible office of township justice of the peace.

Honorable Daniel Dougherty - 5.

In People v. Hanifan, 96 Ill. 420, the common law doctrine of incompatibility operated to effect an implied resignation of an alderman from his office under a special charter when he was elected to and accepted the same office under a general incorporation act.

In People ex rel. Myers v. Haas, 145 Ill. App. 283, it was held that a State senator who was elected to a court clerkship resigned the office of senator when he accepted the court clerkship. In that case the Constitution of 1870 prohibited a judge or court clerk from holding a seat in the General Assembly. (Ill. Const., art. IV, sec. 3 [1870].)

The court stated:

"If there be incompatibility in the holding of the two offices, then Mr. Galpin must be held to have resigned the senatorship. Incompatibility, in this connection, is present when the written law of a state specifically prohibits the occupant of either one of the offices in question from holding the other and, also, where the duties of either office are such that the holder of the office cannot in every instance, properly and fully, faithfully perform all the duties of the other office. This incompatibility may arise

Honorable Daniel Dougherty - 6.

from multiplicity of business in the one office or the other, considerations of public policy or otherwise. Bacon's Abridgement Vol. 7, Tit. 'Officers', K.; Rex v. Tizzard, 9 B. & C., 418; 1 Dillon on Mun. Corp., p. 308-9, secs. 225-7 and note 4; McCrary on Elec., secs. 336 et seq. 4th Ed.; Mechem on Publ. Off., sec. 429; Dickson v. People, 17 Ill. 191, People ex rel v. Hanifan, 96 Ill. 420; Packingham v. Harper, 66 Ill. App. 96." (145 Ill. App. 283, 286-87.)

The mere possibility of a conflict in the duties of offices is sufficient to make them incompatible. It is no answer to say that a conflict in duties does not now exist or may never arise or even that the occurrence of a conflict would only occur on a rare occasion. (McDonough v. Roach, 171 A. 2d 307, 309 (N.J. 1961).) The New Jersey Supreme Court in Jones v. MacDonald, 162 A. 2d 817 (N.J. 1960) eloquently states that it is the existence of the potential for a conflict in duties that renders the offices incompatible. At page 820, the New Jersey Supreme Court states:

"It is no answer to say that the conflict in duties outlined above may never in fact arise. It is enough that it may in the regular operation of the statutory plan. 'If the duties are such that placed in one person they might disserve the public interests, or if the respective offices might or will conflict even on rare occasions, it is sufficient to declare them legally incompati-

Honorable Daniel Dougherty - 7.

ble.' DeFeo, supra (17 N.J. at p. 189, 110 A. 2d at p. 556). See Wescott v. Scull, supra (87 N.J.L. at p. 418, 96 A. at p. 411). Nor is it an answer to say that if a conflict should arise, the incumbent may omit to perform one of the incompatible roles. The doctrine was designed to avoid the necessity for that choice. 'It is immaterial on the question of incompatibility that the party need not and probably will not undertake to act in both offices at the same time. The admitted necessity of such a course is the strongest proof of the incompatibility of the two offices.' 42 Am. Jur., Public Officers, § 70, p. 936."

You inquire as to whether a township supervisor or township auditor may simultaneously serve as a city commissioner. A township supervisor and township auditor are elected pursuant to section 1 of article 7 of "AN ACT to revise the law in relation to township organization". (Ill. Rev. Stat. 1974 Supp., ch. 139, par. 60.) The duties of township supervisor are stated generally in article 11 of "AN ACT to revise the law in relation to township organization". (Ill. Rev. Stat. 1973, ch. 139, par. 100 et seq.) The township supervisor is an ex officio member of the board of town auditors. (Ill. Rev. Stat. 1973, ch. 139, par. 117.) The duties of the board of town auditors are generally set forth

Honorable Daniel Dougherty - 8.

in article 12 of "AN ACT to revise the law in relation to township organization". Ill. Rev. Stat. 1973, ch. 139, pars. 117 et seq.

Article 4 of The Illinois Municipal Code pertains to the commission form of municipal government. Generally speaking, the commission form of municipal government provides for the election of a mayor and four commissioners. (Ill. Rev. Stat. 1973, ch. 24, par. 4-3-1.) Every municipality which has the commission form of government is governed by a council consisting of the mayor and four commissioners. (Ill. Rev. Stat. 1973, ch. 34, par. 4-5-1.) The powers and duties of the council are provided for in section 4-5-2 of the Illinois Municipal Code. (Ill. Rev. Stat. 1973, ch. 24, par. 4-5-2.) Section 4-5-2 reads:

"§ 4-5-2. The council and its members shall possess and exercise all executive, administrative, and legislative powers and duties now possessed and exercised by the executive, legislative, and administrative officers in municipalities which are treated as properly incorporated under this Code or which hereafter incorporate under this Code, except that in municipalities under the commission form of municipal government, the board of local improvements provided

Honorable Daniel Dougherty - 9.

for by Article 9 shall remain a separate and distinct body, with all the rights, powers, and duties contained in Article 9.

The executive and administrative powers and duties in municipalities under the commission form of municipal government shall be distributed among 5 departments, as follows:

1. Department of public affairs.
2. Department of accounts and finances.
3. Department of public health and safety.
4. Department of streets and public improvements.
5. Department of public property.

The council, by ordinance, (1) shall determine the powers of and duties to be performed by each department and shall assign them to the appropriate departments; (2) shall prescribe the powers and duties of officers and employees, and may assign officers and employees to one or more of the departments; (3) may require an officer or employee to perform duties in 2 or more departments; and (4) may make such rules and regulations as may be necessary or proper for the efficient and economical conduct of the business of the municipality."

I am of the opinion that township supervisor, township auditor and city commissioner are all public offices.

The section on Intergovernmental Cooperation in the Illinois Constitution of 1970 (Ill. Const., art. VII, sec. 10) and the Intergovernmental Cooperation Act (Ill. Rev. Stat. 1973, ch. 127, pars. 741 et seq.) greatly expanded the power of the township and the city to contract with each other. Section 2

Honorable Daniel Dougherty - 10.

of that Act (Ill. Rev. Stat. 1973, ch. 127, par. 742) provides:

"For the purpose of this Act:

(1) The term 'public agency' shall mean any unit of local government as defined in the Illinois Constitution of 1970, * * *

Section 3 of the Intergovernmental Cooperation Act (Ill. Rev. Stat. 1973, ch. 127, par. 743) provides:

"Any power or powers, privileges or authority exercised or which may be exercised by a public agency of this State may be exercised and enjoyed jointly with any other public agency of this State and jointly with any public agency of any other state or of the United States to the extent that laws of such other state or of the United States do not prohibit joint exercise or enjoyment."

Section 5 of the same Act (Ill. Rev. Stat. 1973, ch. 127, par. 745) provides:

"Any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity or undertaking which any of the public agencies entering into the contract is authorized by law to perform, provided that such contract shall be authorized by the governing body of each party to the contract. Such contract shall set forth fully the purposes, powers, rights, objectives and responsibilities of the contracting parties."

Prior to the adoption of the new Constitution and the enactment of the Intergovernmental Cooperation Act, the

Honorable Daniel Dougherty - 11.

power of a municipality and a township to enter into contracts was restricted to limited purposes in narrowly specified areas. Now the two units of government may contract in extremely broad areas of activity not permitted prior to July 1, 1971, the effective date of the 1970 Constitution.

The governing body of a city under the commission form of government is the council. (Ill. Rev. Stat. 1973, ch. 24, par. 1-1-2(2).) Thus, the intergovernmental cooperation provisions of the new Constitution and the Intergovernmental Cooperation Act grant broad powers to the council and, therefore, to a council member to vote upon contracts that might be entered into with a township of which he is the supervisor or auditor.

The general corporate powers of the township to make contracts are exercised by the town electors at the town meeting. (Ill. Rev. Stat. 1973, ch. 139, pars. 38 and 39; Gregg v. Town of Bourbonnais, 327 Ill. App. 253.) Since township officers and boards have only those powers which are conferred on them by statute (Ill. Const., art. VII, sec. 8; Anders v. Town of

Honorable Daniel Dougherty - 12.

Danville, 45 Ill. App. 2d 104), it would appear that the board of township auditors do not have the power to enter into intergovernmental agreements pursuant to the Intergovernmental Cooperation Act.

However, recent statutory amendments have granted broad contract powers directly to the board of town auditors. Specifically, Public Act 78-1189, effective September 5, 1974, amended section 20 of article 13 of "AN ACT to revise the law in relation to township organization". (Ill. Rev. Stat. 1974 Supp., ch. 139, par. 126.10.) As amended, that section reads as follows:

"The board of town auditors may enter into any cooperative agreement or contract with any other governmental entity, not-for-profit corporation, or non-profit community service association with respect to the expenditure of township funds, or funds made available to the township under the federal State and Local Fiscal Assistance Act of 1972, to provide any of the following services to the residents of the township:

1. Ordinary and necessary maintenance and operating expenses for:
 - (a) public safety (including law enforcement, fire protection, and building code enforcement),
 - (b) environmental protection (including sewage

disposal, sanitation, and pollution abatement),
(c) public transportation, (including transit
systems and streets and roads),
(d) health,
(e) recreation,
(f) libraries, and
(g) social services for the poor and aged;
and

2. Ordinary and necessary capital expenditures
authorized by law.

In order to be eligible to receive funds from the
township under this Section any private not-for-
profit corporation or community service association
shall have been in existence at least one year
prior to the receipt of the funds."

It should be pointed out that the above amendment
has granted the power to the board of town auditors to expend
not only Federal revenue sharing funds, but also its own
township funds in areas where previously the township had
no such power. (See, Ill. Att'y. Gen. Op. S-693, February
7, 1974; Ill. Att'y. Gen. Op. S-838, November 26, 1974.)
Note also that the board of town auditors rather than the
town electors are given power to enter into the specified
agreements.

Both city and township can each now contract in many
of the same areas. Compare the township contract powers listed

Honorable Daniel Dougherty - 14.

in Public Act 78-1189 above with the following functions of the city:

- (1) Public safety: Police Protection and Public Order (Ill. Rev. Stat. 1973, ch. 24, pars. 11-1-1 et seq.); Fire Protection (Ill. Rev. Stat. 1973, ch. 24, pars. 11-6-1 et seq.)
- (2) Environmental Protection: Disposal of refuse, garbage and ashes (Ill. Rev. Stat. 1973, ch. 24, par. 11-19-1 et seq.); Air Contamination Control (Ill. Rev. Stat. 1973, ch. 24, par. 11-19.1-11); Sewage Treatment and Disposal (Ill. Rev. Stat. 1973, ch. 24, pars. 11-142-1 et seq.; Ill. Rev. Stat. 1973, ch. 24, pars. 11-146-1 and 11-147-1 et seq.)
- (3) Public Transportation: Local Transportation System (Ill. Rev. Stat. 1973, ch. 24, pars. 11-120-1 et seq.)
- (4) Health: Tuberculosis Sanitariums (Ill. Rev. Stat. 1973, ch. 24, pars. 11-29-1 et seq.); Community Mental Health Boards (Ill. Rev. Stat. 1973, ch. 24, pars. 11-29.1 et seq.); Health Boards (Ill. Rev. Stat. 1973, ch. 24, pars. 11-16-1 and 11-17-1 et seq.)
- (5) Recreation: Harbors for recreational use (Ill. Rev. Stat. 1973, ch. 24, par. 11-92-1 et seq.); Swimming Pools, artificial ice skating rinks and golf courses (Ill. Rev. Stat. 1973, ch. 24, par. 11-94-1 et seq.); Playground and Recreation Centers (Ill. Rev. Stat. 1973, ch. 24, par. 11-95-1 et seq.)

Honorable Daniel Dougherty - 15.

- (6) Libraries: (Ill. Rev. Stat. 1973, ch. 81, par. 1-1 et seq.)

In all of the above areas the city council, under the commission form of municipal government, and the board of township auditors may enter into contracts with each other to provide a particular service to the people of the township and the city. In addition, the contractual scheme may allow more township funds, including Federal revenue sharing, to be funneled to city projects, or vice versa. A conflict in duties may arise by the simultaneous holding of the office of member of the board of township auditors and member of the council of a city under the commission form of government. A person holding both offices might have to consider and vote upon: What services shall be provided to the people of the city and the township? Which governmental entity should provide the service? What terms shall be contained in a contract between the city and the township?

In attempting to make decisions in each of the above areas, the dual officeholder cannot fairly represent both units of government. In particular, where the service

Honorable Daniel Dougherty - 16.

is to be provided pursuant to a contract entered into between the city and the township, the dual officer would be called on to negotiate a contract which is most advantageous to both parties to the bargain.

In McDonough v. Roach, (N.J. 1961) 171 A. 2d 307, the Supreme Court of New Jersey held that the offices of mayor of a town and member of a board of chosen freeholders of a county were incompatible. After discussing the various statutory provisions which authorize the county to contract with the town, the court stated at page 309:

"In all of these matters the terms upon which the project is to be pursued are left to the agreement of the public bodies. In the negotiations the county board is bound to consider the interests of all of its citizens while the local governing body has a like obligation to the citizenry of the municipality alone. No man, much less a public fiduciary, can sit on both sides of a bargaining table. He cannot in one capacity pass with undivided loyalty upon proposals he advances in his other role. * * *" (See, also, People ex rel. Kraemer v. Bagshaw, 130 P. 2d 243 (Cal. App. 1942).)

From the foregoing, I must conclude that the offices of township supervisor and township auditor are incompatible with the office of city commissioner.

Honorable Daniel Dougherty - 17.

It is well settled in Illinois that the acceptance of an incompatible office by the incumbent of another office will be regarded as a resignation or vacation of the first office. (People v. Bott, 261 Ill. App. 261; People ex rel. Myers v. Haas, 145 Ill. App. 283.) Formal resignation, or ouster by legal proceeding, is not required. Packingham v. Parker, 66 Ill. App. 96, 100.

As I have stated, my opinion that the offices in question must now be considered incompatible is based upon the cumulative development of the law with regard to townships and cities since 1970. The combination of these developments, particularly the enactment of Public Act 78-1189 granting additional and broader powers and functions to townships in areas which overlap the already existing powers and functions of cities, requires the conclusion that on the effective date of Public Act 78-1189 (September 5, 1974) the offices became incompatible.

Statutes should be construed so as to give them prospective operation unless legislative intention to give them retrospective operation is clear and undoubtable.

Honorable Daniel Dougherty - 18.

(Quincy Training Post, Inc. v. The Dept. of Revenue, 12 Ill. App. 3d 725; Kersten v. Voight, 164 Ill. 314; Capone v. The U.S., 51 F. 2d 609.) It has been held that if a person holding an office is not ineligible for another office at the time he is elected to the latter, he is not rendered ineligible by a subsequent statute which makes the holding of the other office grounds for ineligibility. The statute must not be given the drastic effect of retroactively removing an officer who was competent to serve in an office at the time of the election or appointment under the previous statute. Tucker v. The State, (Miss. 1907) 42 So. 798; accord, Baillie v. The Town of Medley, (Fla. 1972) 262 So. 2d 693, 697; State v. Mucci, (Ohio 1967) 225 N.E. 2d 238, 241.

Therefore, it is my opinion that anyone who performed the duties of township supervisor or township auditor and the duties of city council member in a commission form of government prior to September 5, 1974, may retain both offices until the term of one of the offices expires or until actual vacation of either office, whichever first occurs. It is my further opinion

Honorable Daniel Dougherty - 19.

that any township supervisor or township auditor who has assumed the office of city commissioner, or any city commissioner who has assumed the office of township supervisor or township auditor, by election or appointment, after September 5, 1974, has ipso facto resigned and vacated the prior held office.

Very truly yours,

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



WILLIAM G. CLARK
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

February 17, 1965

FILE NO. UP 1342

OFFICERS:

**Compatibility Between Membership
on the Board of Supervisors and
the City Council**

Honorable J. Claire Shumaker
State's Attorney
Richland County
208 North Walnut
Olney, Illinois

Dear Mr. Shumaker:

I have your letter in which you advise that a member of the County Board of Supervisors is a candidate for City Councilman. You request my opinion whether or not the two offices are compatible.

From the general rules laid down in People v. Haas, 145 Ill. App. 283, it appears that incompatibility between 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

Hon. J. Claire Shumaker

-2-

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.

Where a person holding one office assumes another office incompatible with the first, he thereby inso facto vacates the first. People v. Bott, 261 Ill. App. 261.

Counties are authorized to enter into contracts with cities in regard to matters such as garbage disposal (Illinois Revised Statutes 1963, Chapter 34, Paragraph 418) and water and sewage service (Chapter 34, Paragraph 3111), among others. It is therefore apparent that there could be a conflict in interest between membership upon the City Council and the Board of Supervisors of the county in which the city is located and, therefore, I am of the opinion that such offices are incompatible.

Very truly yours,

ATTORNEY GENERAL



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

May 21, 2004

I-04-008

COMPATIBILITY OF OFFICES:
City Treasurer and
Township Supervisor

The Honorable Vincent Moreth
State's Attorney, Macoupin County
Macoupin County Courthouse
P.O. Box 287
Carlinville, Illinois 62626

Dear Mr. Moreth:

I have your letter wherein you inquire whether one person may simultaneously hold the offices of township supervisor and treasurer of a city which is located within the township. 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 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 the duties of the other.

The powers and duties of a city treasurer are governed by sections 3.1-35-40 through 3.1-35-85 of the Illinois Municipal Code (65 ILCS 5/3.1-35-40 through 3.1-35-85 (West 2002)). Those duties include, *inter alia*, the receipt, deposit and investment of all money belonging to the municipality (65 ILCS 5/3.1-35-50 (West 2002)); the payment of funds upon lawfully drawn warrants (65 ILCS 5/3.1-35-40 (West 2002)); the keeping of accounts and reporting upon them to the corporate authorities (65 ILCS 5/3.1-35-45 (West 2002)); and the filing of certain reports and accounts with the city clerk and the town or county collectors (65 ILCS 5/3.1-35-65, 3.1-35-70 (West 2002)). The duties of the treasurer are ministerial in nature, and would not appear to confer upon the treasurer any discretionary authority with respect to matters of mutual concern between the city and the township. In this regard, the position of city treasurer may be distinguished from that of mayor or city alderman.

The provisions of the Township Code (60 ILCS 1/1-1 *et seq.* (West 2002)) govern the operations of the several townships in Illinois. The duties of the township supervisor are set out in article 70 of the Township Code (60 ILCS 1/70-5 *et seq.* (West 2002)) and in sections 6-205 and 6-206 of the Illinois Highway Code (605 ILCS 5/6-205, 6-206 (West 2002)). The township supervisor is the chief executive officer of the township. 60 ILCS 1/70-15 (West 2002). Among the supervisor's ministerial duties are the receipt and distribution of all moneys raised in the township (60 ILCS 1/70-15 (West 2002)); the keeping of the township's accounts of receipts and expenditures (60 ILCS 1/70-25 (West 2002)); and the preparation and filing of annual reports regarding a township's financial affairs for annual township meetings (60 ILCS 1/70-15 (West 2002)) and for the township board (60 ILCS 1/70-35 (West 2002)). In addition, the township supervisor serves *ex officio* as supervisor of general assistance (60 ILCS 1/70-50 (West 2002)) and as road district treasurer (60 ILCS 1/70-60 (West 2002)). With respect to the latter position, the supervisor receives and has charge of, subject to the order of the highway commissioner, all road district funds and provides annual statements related thereto. 605 ILCS 5/6-205 (West 2002).

The township supervisor also exercises certain discretionary powers. The township supervisor is a member of the township board and serves as its chairman. 60 ILCS 1/80-5 (West 2002). In this capacity, the township supervisor, together with the township's trustees, exercise many of the township's corporate powers. *See, e.g.*, 60 ILCS 1/85-5 *et seq.* (West 2002).

It appears, therefore, that although a township supervisor's duties with respect to the management of funds are primarily ministerial, the supervisor's duties as the chairman and as a member of the township board are discretionary. The township may act, through its board of trustees, to contract or otherwise associate with a city, for example. In doing so, the township supervisor would be in a position to vote upon or influence these actions. As a purely ministerial officer, however, the city treasurer would not be empowered to vote or otherwise act in such

The Honorable Vincent Moreth - 3

matters. Consequently, there is no apparent conflict in duties which would prohibit one person from simultaneously holding the two offices in question. Therefore, the office of city treasurer is not incompatible with the office of township supervisor, and 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,



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

LEP:KJS:sc



NEIL F. HARTIGAN
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD
62706

March 7, 1989

I - 89-019

COMPATIBILITY:

County Board Member and
Township Supervisor

County Board Member and
Township Trustee

Township Trustee and School
Board Member

Honorable Vincent Moreth
State's Attorney, Macoupin County
Macoupin County Courthouse
Post Office Box 480
Carlinville, Illinois 62626

Dear Mr. Moreth:

I have your letter of February 22, 1989, wherein you inquire whether the offices of (1) county board member and member of the township board of trustees, (2) township supervisor and county board member, and (3) township trustee and local school board member are incompatible. Because of the nature of your question, I do not believe that an official opinion of the Attorney General is necessary. I will, therefore, comment informally upon your inquiry.

At common law, incompatibility of offices 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. (People ex rel. Myers v. Haas (1908), 145 Ill. App.

283, 286.) Because of the inability of a person holding both offices to fairly represent the conflicting interests of both the county and township, Attorney General Scott advised in opinion No. S-877, issued March 17, 1975, (1975 Ill. Att'y Gen. Op. 37), that the offices of county board member and township supervisor were incompatible and, in opinion No. NP-1108, (Ill. Att'y Gen. Op. No. NP-1108, issued June 15, 1976), that the offices of county board member and township auditor (trustee) were incompatible. Since the issuance of those opinions, however, the General Assembly has declared it to be lawful for any person to hold simultaneously the offices of county board member and township supervisor and, in counties of less than 100,000 population, the offices of county board member and township trustee. (Ill. Rev. Stat. 1987, ch. 102, par. 4.11.) The offices of township trustee and county board member remain incompatible in counties with a population of 100,000 or more. See People ex rel. Fitzsimmons v. Swailes (1984), 101 Ill. 2d 458 (offices of county board member and township assessor incompatible in counties of over 300,000 population).

Because there is no constitutional or statutory provision prohibiting one person from simultaneously holding the offices of township trustee and school board member, the issue with respect to those offices devolves to whether the duties of either office are such that the holder of one cannot, in every instance, properly and faithfully perform all of the duties of the other.

Section 13-16 of the Township Law of 1874 (Ill. Rev. Stat. 1987, ch. 139, par. 126.6) provides in part as follows:

"To the extent that moneys in the general fund of the township have not been appropriated for other purposes, the board of town trustees may direct that distributions be made from that fund as follows:

(1) either or both to school districts maintaining grades 1 through 8 which are wholly or partly located within the township or to governmental units, as defined in Section 1 of the 'Community Mental Health Act', providing mental health facilities and services, including facilities and services for the mentally retarded, under that Act within the township;

* * *

(Emphasis added.)

Honorable Vincent Moreth - 3.

As a school board member, one has a duty to provide for the revenue necessary to maintain the schools in his or her district. (Ill. Rev. Stat. 1987, ch. 122, par. 10-20.3.) In the instance of a school district which lies partly or wholly within the township and which maintains grades 1 through 8, a conflict could arise between a dual officerholder's duty to determine how township funds should be spent to best serve the needs of the township and his or her duty as a member of the board of education to provide for the revenue necessary to maintain the district's schools.

Accordingly, it appears that the offices of town trustee or township supervisor and school board member of a school district, which lies wholly or partly within the township, and which maintains grades 1 through 8, are incompatible. Our research has disclosed nothing, however, which would render the office of town trustee or township supervisor incompatible with that of a school board member of a school district not eligible for township funds under section 13-16 of the Township Law of 1874. See Informal Opinion No. I-88-003, issued February 16, 1988.

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



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

April 5, 2018

I - 18-003

COMPATIBILITY OF OFFICES:
County Treasurer and Township
Supervisor

County Treasurer and School
Treasurer

The Honorable R. John Alvarez
State's Attorney, Cass County
Cass County Courthouse
P.O. Box 167
100 East Springfield Street
Virginia, Illinois 62691

Dear Mr. Alvarez:

I have your letter inquiring whether a county treasurer may serve simultaneously as either a township supervisor or a school treasurer. For the reasons stated below, the offices of: (1) county treasurer and township supervisor; and (2) county treasurer and school treasurer are not incompatible.

BACKGROUND

According to the information you provided, the current Cass County treasurer submitted her notice of resignation. The deputy county treasurer, who currently holds the offices of township supervisor and school treasurer, is expected to be appointed to serve as the interim county treasurer. You have inquired whether the interim county treasurer may serve simultaneously as either a township supervisor or school treasurer.

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 serving simultaneously as both county treasurer and township supervisor. Similarly, there is no constitutional or statutory provision that expressly prohibits one person from serving simultaneously as county treasurer and school treasurer. The issue, therefore, is whether the duties of the indicated offices are such that the holder of one office cannot, in every instance, fully and faithfully discharge all of the duties of the other office.

County Treasurer and Township Supervisor

Your first question concerns whether a county treasurer may serve simultaneously as a township supervisor. The county treasurer is primarily responsible for the safekeeping and disbursement of county funds. The duties of the county treasurer are generally found in division 3-10 of the Counties Code (55 ILCS 5/3-10001 *et seq.* (West 2016)) and include receiving and safely keeping the revenues and public moneys of the county and all money and funds authorized by law to be paid to the office, and disbursing those moneys and funds pursuant to law (55 ILCS 5/3-10005 (West 2016)), filing monthly financial reports with the county clerk and chairman of the county board (55 ILCS 5/3-10005.2 (West 2016)), and maintaining special funds (55 ILCS 5/3-10005.3 (West 2016)). Additionally, the county treasurer acts as the *ex-officio* county collector (35 ILCS 200/19-35 (West 2016)). As such, the county treasurer is charged with receiving and distributing property tax proceeds and applicable interest to the various taxing districts, including school districts and, in certain circumstances, townships, in accordance with the Property Tax Code (*see* 35 ILCS 200/20-85 through 20-150 (West 2016)). Further, under section 19-27 of the School Code (105 ILCS 5/19-27 (West 2016)), county treasurers are to pay over surplus bond funds to the school treasurer in qualifying circumstances. These duties are ministerial in nature and do not involve the exercise of discretion or judgment.

The township supervisor is the chief executive officer of the township. 60 ILCS 1/70-15 (West 2016). Article 70 of the Township Code (60 ILCS 1/70-5 *et seq.* (West 2016)) outlines the duties of the township supervisor, which include the receipt and distribution of all moneys raised in the township (60 ILCS 1/70-15 (West 2016)), the preparation and filing of annual financial reports for both township meetings and for use by the township board (60 ILCS 1/70-15, 70-30 (West 2016)), maintaining the township's accounts of receipts and expenditures

(60 ILCS 1/70-25 (West 2016)), and acting as *ex officio* supervisor of general assistance.¹ The township supervisor also acts as the chairman of the township board and is a voting member thereof. 60 ILCS 1/80-5(a) (West 2016). In this capacity, the township supervisor, together with the township's trustees, exercises many of the township's corporate powers. See 60 ILCS 1/85-5 *et seq.* (West 2016).

A review of the applicable provisions of the Counties Code, Property Tax Code, and Township Code indicates that there is no relationship between the duties of county treasurer and township supervisor that would give rise to conflicting duties or interests. Township supervisors have discretionary powers with respect to voting upon matters that come before the township board of trustees. The township may act, through its board of trustees, to contract or otherwise associate with the county for law enforcement, fire protection, and other specified services (60 ILCS 1/30-155, 30-165, 105-20, 215-10 (West 2016)). In such instances, the township supervisor would be in a position to vote upon or influence township actions.

The duties of the county treasurer, being purely ministerial, do not include voting or acting on matters affecting the county generally. See, e.g., *Mitchell v. Short*, 251 Ill. App. 357, 359 (1929) (the duties of a county treasurer are ministerial and, as such, they may be performed by an individual appointed as deputy treasurer); Ill. Att'y Gen. Inf. Op. No. I-18-001, issued January 4, 2018, at 2 (duties of a county treasurer are ministerial in nature); Ill. Att'y Gen. Inf. Op. No. I-92-009, issued February 4, 1992, at 2 (county treasurer's duties are ministerial and involve no exercise of discretion, therefore, there is no possibility that a conflict of duties or interests could arise with respect to the offices of county treasurer and township trustee).²

¹As *ex officio* supervisor of general assistance, a township supervisor has the duty to oversee the general assistance program within the township, which includes the distribution of township financial aid to individuals with an illness or disability who cannot afford their medical care or supplies. 305 ILCS 5/6-1 (West 2016), as amended by Public Act 100-538, effective January 1, 2018. The township supervisor must also pay out township moneys upon a claim submitted against the township for medical treatment or supplies provided to those individuals who qualify for financial aid under the general assistance rules of the township. 305 ILCS 5/6-1 (West 2016), as amended by Public Act 100-538, effective January 1, 2018. However, like any other claim made against the township, the township supervisor must be presented with a certificate by the township clerk which states the amount and to whom the funds are owing; only then may the claim be paid, thereby eliminating any individual judgment or discretion by the supervisor. 60 ILCS 1/70-15, 80-50(a) (West 2016).

²See also Ill. Att'y Gen. Op. No. 82-039(NP), issued November 10, 1982, at 3 (concluding that although county treasurers are required by law to pay over a portion of real property tax revenue to various taxing districts, the offices of county treasurer and park district commissioner are not incompatible because the treasurer's duties are ministerial and do not involve an exercise of discretion that could give rise to conflicting duties or interests); Ill. Att'y Gen. Inf. Op. No. I-04-008, issued May 21, 2004, at 2-3 (examining the compatibility of the offices of city treasurer and township supervisor, and concluding that although some duties of a township supervisor, such as the ability of the supervisor to vote upon or influence actions of the township board of trustees to contract or otherwise associate with another governmental unit, were discretionary, the duties of the office of city treasurer were wholly ministerial, involved no individual discretion, and therefore were incapable of giving rise to any conflicts of duties with respect to these offices).

Further, there are no statutory provisions authorizing townships or township supervisors to take any action with respect to the office of county treasurer. Accordingly, the offices of county treasurer and township supervisor are not incompatible, and one individual may serve simultaneously in both offices.

County Treasurer and School Treasurer

Your second question is whether a county treasurer may serve simultaneously as a school treasurer. The school treasurer is responsible for the financial activities of the school district. The duties of a school treasurer are governed by article 8 of the School Code (105 ILCS 5/8-1 *et seq.* (West 2016)) and include acting as the only lawful custodian of school funds (105 ILCS 5/8-6, 8-7 (West 2016)), maintaining all school district accounts and their balances (105 ILCS 5/8-6, 8-7 (West 2016)), and producing a monthly reconciliation of the district's accounts, including verifying any account balance if called upon to do so by the school board (105 ILCS 5/8-15 (West 2016)). A school treasurer is authorized to pay out school district funds upon order of the school board.³ 105 ILCS 5/8-16 (West 2016). A school treasurer is also authorized to designate one or more banks or savings and loan associations in which to keep school funds and moneys and may enter into agreements regarding the deposit, redeposit, investment, reinvestment, or withdrawal of such funds. 105 ILCS 5/8-7 (West 2016). As noted above, the duties of a county treasurer are purely ministerial.

A review of the applicable provisions of the Counties Code and School Code indicates that there is no conflict between the duties of county treasurer and school treasurer. Although there may be circumstances in which there are transactions between the offices, those transactions are required by, and governed by, statute. Neither a county treasurer nor a school treasurer has been granted the authority to exercise discretion with respect to their statutory duties. Therefore, there is no potential benefit to the county or the school district, or disadvantage to any other school district within the county, that could arise from an office holder's performance of these ministerial duties. Accordingly, the offices of county treasurer and school treasurer are not incompatible and one individual may serve simultaneously in these offices.

³In Class I county school units (school units with less than 2,000,000 inhabitants (105 ILCS 5/5-1(a) (West 2016), as amended by Public Act 100-374, effective August 25, 2017), the school board either elects one of its members to serve as school treasurer, or appoints an individual who is not a member of the board to serve as school treasurer. 105 ILCS 5/8-1(b) (West 2016). Your letter does not indicate that the individual in question also serves as a school board member. Accordingly, we will assume for purposes of your inquiry that the individual at issue was appointed to the office of school treasurer by the school board, and is not a member of the school board. See Ill. Att'y Gen. Inf. Op. No. 1-18-001 (concluding that the offices of school board member and county treasurer are not incompatible).

CONCLUSION

Because the duties of the county treasurer are purely ministerial, a county treasurer may serve simultaneously as either a township supervisor or school treasurer.

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

Very truly yours,

LYNN E. PATTON
Senior Assistant Attorney General
Chief, Public Access and Opinions Division

LEP:KMC:KAS:MAD:lh



WILLIAM J. SCOTT

ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD

May 28, 1976

FILE NO. NP-1099

COMPATIBILITY OF OFFICES:
Township Supervisor and
Commissioner of County
Forest Preserve District.

Honorable Jack Hoogasian
State's Attorney
Lake County
Waukegan, Illinois 60085

Dear Mr. Hoogasian:

I have your letter wherein you ask whether a township supervisor may serve as a commissioner of the county forest preserve district. This inquiry is occasioned by the concern that a township supervisor serving as a commissioner of the county forest preserve district would be in a position to vote as commissioner for the purchase of land which is located within his township and refuse to vote for the purchase of land in other townships.

NP 1099

Honorable Jack Hoogasian - 2.

The enactment of Public Act 79-457 created "An Act in relation to the simultaneous tenure of certain public offices". (Ill. Rev. Stat. 1975, ch. 102, pars. 4.10 et seq.) This Act provides that the offices of county board member and township supervisor are compatible but adds that simultaneously holding both offices is lawful only for a county board member who may be elected to the office of township supervisor in or before 1977. Such a person may hold the two offices simultaneously until the expiration of his term as county board member; thereafter the simultaneous holding of both offices is unlawful. Section 2 of the Act (Ill. Rev. Stat. 1975, ch. 102, par. 4.11) reads as follows:

"§ 2. It is lawful for any county board member who may be elected in 1977 or before 1977 to the office of township supervisor to hold the office of county board member and township supervisor simultaneously until the expiration of his term of office as county board member; thereafter it is unlawful for the same individual to hold both such offices simultaneously."

In Opinion No. S-1016, issued December 11, 1975, I explained that a person who is elected to the county board in November of 1976 may lawfully hold that position simultaneously with the office of township supervisor should he be elected to the latter office in 1977.

Honorable Jack Hoogasian - 3.

In counties such as Lake County where the boundaries of the forest preserve district are coextensive with the boundaries of the county, the county board members serve as ex officio forest preserve district commissioners. (Ill. Rev. Stat. 1975, ch. 57 1/2, par. 3a.) It must be presumed that the General Assembly enacts legislation with an awareness of existing statutes. (Theodosia v. Kaeshin Motor Express Co., 341 Ill. App. 8.) It must, therefore, be presumed that when the General Assembly enacted Public Act 79-457, it was aware of the fact that some county board members are ex officio commissioners of the county forest preserve district. Public Act 79-457 applies to all county board members; the county board members who are ex officio forest preserve commissioners are not excluded from the Act's provisions. It is my opinion that Public Act 79-457 answers your inquiry. Since a township supervisor may lawfully serve as a county board member, the supervisor may also serve as ex officio commissioner of the county forest preserve district. However, the same time limitations that Public Act 79-457 imposes upon simultaneously holding the offices of county board member and township super-

Honorable Jack Hoogasian - 4.

visor necessarily apply to the holding of the offices of county forest preserve district commissioner and township supervisor.

Incompatibility between offices arises when the duties of the offices are such that the holder of one cannot in every instance properly and faithfully perform all the duties of the other. (People v. Haas, 145 Ill. App. 283.)

As you point out in your letter, it can be argued that a township supervisor cannot simultaneously serve as a county forest preserve district commissioner since the supervisor would be in a position to favor his township in purchasing land for the forest preserve district. It is within the power of the legislature to provide that two offices may be held by the same individual even though such offices might be held to be incompatible at common law. (Atho v. Weaver, 39 N.J. 418; 189 A. 2d 27; 3 McQuillon Mun. Corp. 3rd Ed. Rev., sec. 12.67, p. 296.) Public Act 79-457 has settled the question of the compatibility between the offices of township supervisor and commissioner of the county forest preserve district. A person may simultaneously perform the duties of both offices in accordance with the Act's provisions.

Very truly yours,

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



WILLIAM J. SCOTT

ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD
62706



November 3, 1972

FILE NO. NP-529

OFFICERS:

Compatibility
Regional Planning Commission

Honorable Robert S. Calkins
State's Attorney
Peoria County
Peoria County Court House
Peoria, Illinois 61602

Dear Mr. Calkins:

I have your recent letter wherein you state in part:

"Considering the facts set forth below and your
Opinion S-419 of March 13, 1972, to the Hon. William
J. Cowlin, State's Attorney of McHenry County, your
opinion is requested on the following questions:

1. May each or any of the following office holders
serve on a regional planning commission; township
supervisor, county board member under board reorgan-
ization, city manager, mayor or village president,
city councilman, city commissioner, village trustee?

NP 529

Honorable Robert S. Calkins -2

2. May those members of the County Board (of Supervisors) appointed to a regional planning commission before the April, 1972 election, who were not elected to the new County Board, continue to serve as commission members? * * * "

You first ask whether various office holders may serve on a regional planning commission. I enclose a copy of my Opinion No. S-500, issued July 24, 1972. In that Opinion, I held that a county board member, a mayor or village president, and a member of a city council or village board could simultaneously serve as a member of a regional planning commission. While I did not specifically discuss a township supervisor, a city manager or a city commissioner, the reasoning in that Opinion is equally applicable to these offices.

You also ask whether members of the County Board of Supervisors appointed to the Tri-County Regional Planning Commission before the April, 1972 election may continue to serve on the Commission if they were not elected to the new County Board. You note that the appointments were made to the individuals without reference to their elective offices at the time of the appointment.

Honorable Robert S. Calkins -3

Section 3(a)2(1) of the resolution creating the Commission provides that elected officials who are appointed to the Commission shall serve on the Commission until the end of their term of office, but not more than three years. If this section is to have any effect, then those individuals who were not reelected to the County Board should not be serving on the Commission after the end of their term on the County Board. It is necessary that statutes be so construed as to give effect to each word, clause and sentence in order that no such word, clause or sentence may be deemed superfluous or void. (Consumers Co. v. Industrial Commission, 364 Ill. 145. Haberer and Co. v. Smerling, 307 Ill. 191.) Therefore, effect should be given to this section and those not reelected to the County Board, should no longer serve on the Commission.

Furthermore, with regard to statutory construction, the court in Petterson v. City of Naperville, 9 Ill. 2d 233, has stated:

" * * * But the primary object of statutory construction is to ascertain and give effect to

Honorable Robert S. Calkins -4

legislative intent. In ascertaining legislative intent, the courts should consider the reason or necessity for the enactment and the meaning of the words, enlarged or restricted, according to their real intent. Likewise the court will always have regard to existing circumstances, contemporaneous conditions, and the object sought to be obtained by the statute. * * *

From the facts you state in your letter, it is apparent that the amendment to the resolution creating the Tri-County Regional Planning Commission was intended to make it possible for the Commission to qualify for federal grants. The federal requirements that you quote provide that at least 2/3 of the Commission shall be comprised of elected officials. These circumstances substantiate the contention that these individuals were appointed in their official capacity, even though the appointment was made without specific reference to their elective offices. Therefore, in my opinion, your second question must be answered in the negative.

Very truly yours,

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



NEIL F. HARTIGAN
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD
62706

March 7, 1989

I - 89-019

COMPATIBILITY:

County Board Member and
Township Supervisor

County Board Member and
Township Trustee

Township Trustee and School
Board Member

Honorable Vincent Moreth
State's Attorney, Macoupin County
Macoupin County Courthouse
Post Office Box 480
Carlinville, Illinois 62626

Dear Mr. Moreth:

I have your letter of February 22, 1989, wherein you inquire whether the offices of (1) county board member and member of the township board of trustees, (2) township supervisor and county board member, and (3) township trustee and local school board member are incompatible. Because of the nature of your question, I do not believe that an official opinion of the Attorney General is necessary. I will, therefore, comment informally upon your inquiry.

At common law, incompatibility of offices 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. (People ex rel. Myers v. Haas (1908), 145 Ill. App.

283, 286.) Because of the inability of a person holding both offices to fairly represent the conflicting interests of both the county and township, Attorney General Scott advised in opinion No. S-877, issued March 17, 1975, (1975 Ill. Att'y Gen. Op. 37), that the offices of county board member and township supervisor were incompatible and, in opinion No. NP-1108, (Ill. Att'y Gen. Op. No. NP-1108, issued June 15, 1976), that the offices of county board member and township auditor (trustee) were incompatible. Since the issuance of those opinions, however, the General Assembly has declared it to be lawful for any person to hold simultaneously the offices of county board member and township supervisor and, in counties of less than 100,000 population, the offices of county board member and township trustee. (Ill. Rev. Stat. 1987, ch. 102, par. 4.11.) The offices of township trustee and county board member remain incompatible in counties with a population of 100,000 or more. See People ex rel. Fitzsimmons v. Swailes (1984), 101 Ill. 2d 458 (offices of county board member and township assessor incompatible in counties of over 300,000 population).

Because there is no constitutional or statutory provision prohibiting one person from simultaneously holding the offices of township trustee and school board member, the issue with respect to those offices devolves to whether the duties of either office are such that the holder of one cannot, in every instance, properly and faithfully perform all of the duties of the other.

Section 13-16 of the Township Law of 1874 (Ill. Rev. Stat. 1987, ch. 139, par. 126.6) provides in part as follows:

"To the extent that moneys in the general fund of the township have not been appropriated for other purposes, the board of town trustees may direct that distributions be made from that fund as follows:

(1) either or both to school districts maintaining grades 1 through 8 which are wholly or partly located within the township or to governmental units, as defined in Section 1 of the 'Community Mental Health Act', providing mental health facilities and services, including facilities and services for the mentally retarded, under that Act within the township;

* * *

(Emphasis added.)

Honorable Vincent Moreth - 3.

As a school board member, one has a duty to provide for the revenue necessary to maintain the schools in his or her district. (Ill. Rev. Stat. 1987, ch. 122, par. 10-20.3.) In the instance of a school district which lies partly or wholly within the township and which maintains grades 1 through 8, a conflict could arise between a dual officerholder's duty to determine how township funds should be spent to best serve the needs of the township and his or her duty as a member of the board of education to provide for the revenue necessary to maintain the district's schools.

Accordingly, it appears that the offices of town trustee or township supervisor and school board member of a school district, which lies wholly or partly within the township, and which maintains grades 1 through 8, are incompatible. Our research has disclosed nothing, however, which would render the office of town trustee or township supervisor incompatible with that of a school board member of a school district not eligible for township funds under section 13-16 of the Township Law of 1874. See Informal Opinion No. I-88-003, issued February 16, 1988.

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



NEIL F. HARTIGAN
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD
62706

February 16, 1988

I - 88-003

COMPATIBILITY OF OFFICES:
The Offices of Town Trustee and
School Board Member

Honorable Dennis Schumacher
State's Attorney, Ogle County
County Court House
Oregon, Illinois 61061-0395

Dear Mr. Schumacher:

I have your letter wherein you inquire whether the offices of town trustee and school board member are compatible. Due to the nature of your question, I do not believe that an official opinion of the Attorney General is necessary. I will, however, comment informally upon the issue you have posed.

Incompatibility between offices exists 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 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 is no constitutional or statutory provision prohibiting one person from simultaneously serving as a town trustee or township supervisor, who pursuant to statute is a member of the town board of trustees (Ill. Rev. Stat. 1985, ch. 139, par. 117), and as a member of a board of

education. The issue devolves, therefore, to whether the duties of either office are such that the holder of one cannot, in every instance, properly and faithfully perform all of the duties of the other.

Section 13-16 of the Township Law of 1874 (Ill. Rev. Stat. 1985, ch. 139, par. 126.6) provides in part as follows:

"To the extent that moneys in the general fund of the township have not been appropriated for other purposes, the board of town trustees may direct that distributions be made from that fund as follows:

(1) either or both to school districts maintaining grades 1 through 8 which are wholly or partly located within the township or to governmental units, as defined in Section 1 of the 'Community Mental Health Act', providing mental health facilities and services, including facilities and services for the mentally retarded, under that Act within the township;

* * *

(Emphasis added.)

As a school board member, one has a duty to provide for the revenue necessary to maintain the schools in his or her district. (Ill. Rev. Stat. 1985, ch. 122, par. 10-20-3.) In the instance of a school district which lies partly or wholly within the township and which maintains grades 1 through 8, a conflict could arise between a dual officerholder's duty to determine how township funds should be spent to best serve the needs of the township and his or her duty as a member of the board of education to provide for the revenue necessary to maintain the district's schools.

Accordingly, it appears that the offices of town trustee or township supervisor and school board member of a school district, which lies wholly or partly within the township, and which maintains grades 1 through 8, are incompatible. Our research has disclosed nothing, however, which would render the office of town trustee or township supervisor incompatible with that of a school board member of a school district not eligible for township funds under section 13-16 of the Township Law of 1874.

Honorable Dennis Schumacher - 3.

This is not an official opinion of the Attorney General. If I can be of further service, please advise.

Very truly yours,

SHAWN W. DENNEY
Solicitor General



ROLAND W. BURRIS

ATTORNEY GENERAL
STATE OF ILLINOIS



October 21, 1993

I - 93-050

COMPATIBILITY OF OFFICES:
Township Supervisor and School
Board Member of District
Maintaining Grades 9 through 12

Honorable Michael J. Waller
State's Attorney, Lake County
18 North County Street
Waukegan, Illinois 60085

Dear Mr. Waller:

I have your letter wherein you inquire whether one person may simultaneously hold the offices of township supervisor and school board member of a school district which maintains grades 9 through 12, and which lies partly within the township. 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 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. (Rogers v. Village of Tinley Park (1983), 116 Ill. App. 3d 437, 440-41; People ex rel. Myers v. Haas (1908), 145 Ill. App. 283, 286.) There is no constitutional or statutory provision which prohibits one person from simultaneously serving as both a township supervisor and as a member of a board of

Honorable Michael J. Waller - 2.

education. 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.

I note, initially, that section 13-16 of the Township Law of 1874 (Ill. Rev. Stat. 1991, ch. 139, par. 126.6; 60 ILCS 5/13-16 (West 1992)), authorizes a township board of trustees, of which the township supervisor is a member (Ill. Rev. Stat. 1991, ch. 139, par. 117; 60 ILCS 5/13-1 (West 1992)), to distribute surplus town funds to certain school districts:

"To the extent that moneys in the general fund of the township have not been appropriated for other purposes, the board of town trustees may direct that distributions be made from that fund as follows:

(1) either or both to school districts maintaining grades 1 through 8 which are wholly or partly located within the township or to governmental units, as defined in Section 1 of the 'Community Mental Health Act', providing mental health facilities and services * * *;

* * *

"

(Emphasis added.)

Because a school board member has a duty to provide for the revenue necessary to maintain the schools in the district (Ill. Rev. Stat. 1991, ch. 122, par. 10-20.3; 105 ILCS 5/10-20.3 (West 1992)), it is clear that in districts which lie wholly or partly within the township and which maintain grades 1 through 8, a conflict could arise between the township supervisor's duty to determine how township funds should be spent to best serve the township, and his or her duty as a member of the school board to provide for necessary school revenue. While such a conflict would render the office of township supervisor incompatible with that of a school board member in a school district which is eligible for township funds under section 13-16 of the Township Law of 1874, the conflict in duties would not exist in a school district which maintains only grades 9 through 12 and thus does not qualify for township funds under section 13-16.

Moreover, there appears to be no conflict between the other duties of a township supervisor and the duties of a school board member of a school district which maintains grades 9 through 12 and lies partly within the township. As a member of


Honorable Michael J. Waller - 3.

the governing board of a township, a township supervisor exercises the corporate powers of the township. (See Ill. Rev. Stat. 1991, ch. 139, pars. 126.1 through 126.28; 60 ILCS 5/13-11 through 13-38 (West 1992).) In addition, township supervisors serve ex officio as supervisor of general assistance (Ill. Rev. Stat. 1991, ch. 23, par. 12-21.2; 305 ILCS 5/12-21.2 (West 1992)) and as treasurer of the road district. (Ill. Rev. Stat. 1991, ch. 121, par. 6-114; 605 ILCS 5/6-114 (West 1992).) As a member of a board of education, a school board member exercises the corporate powers of the school district. (Ill. Rev. Stat. 1991, ch. 122, par. 10-20.1 through 10-23.12; 105 ILCS 5/10-20.1 through 10-23.12 (West 1992).) There is no relationship between the various duties of the township supervisor and the duties of a school board member of the school district in question which would conflict and render the offices incompatible.

Accordingly, it appears that the offices of township supervisor and school board member of a school district, which lies partly within the township, and which maintains only grades 9 through 12, are not incompatible, and, therefore, 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,


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

MJL:JM:cj



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

June 21, 1995

Jim Ryan
ATTORNEY GENERAL

I - 95-021

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

Mr. A. L. Zimmer
General Counsel
State Board of Elections
1020 South Spring
Post Office Box 4187
Springfield, Illinois 62708

Honorable Ted J. Hamer
State's Attorney, Henry County
100 South Main Street
Cambridge, Illinois 61238

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.

Mr. A. L. Zimmer
Honorable Ted J. Hamer - 2.

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

Mr. A. L. Zimmer
Honorable Ted J. Hamer - 3.


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

MJL:KJS:cj