



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

**Lisa Madigan**  
ATTORNEY GENERAL

April 13, 2004

I - 04-006

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

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

Dear Mr. Hettel:

I have your letter wherein you inquire whether one person may simultaneously hold the offices of township plan commission member and township zoning board of appeals member. Because of the nature of your inquiry, I do not believe that the issuance of an official opinion is necessary. I will, however, comment informally upon the question you have raised.

The common law doctrine of incompatibility of offices precludes simultaneous tenure in two public offices where the constitution or a statute specifically prohibits the occupant of either office from holding the other, or where the duties of the two offices conflict so that the holder of one cannot, in every instance, properly and faithfully perform all of the duties of the other. *People ex rel. Fitzsimmons v. Swailes*, 101 Ill. 2d 458, 465 (1984); *People ex rel. Myers v. Haas*, 145 Ill. App. 283, 286 (1908). There is no constitutional or statutory provision which prohibits a person from holding both of the offices in question. The issue, therefore, is whether the duties of either office are such that the holder of one cannot fully and faithfully discharge all of the duties of the other.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Honorable Joseph P. Hettel - 4

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

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

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

Very truly yours,



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

LP:LAS:an