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COMPATIBILITY OF OFFICES:
The Offices of Sanitary District
Trustee and Mayor of Village Located
Within the Sanitary District
Are Incompatible

Honorable Donald M. Cadagin
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Dear Mr. Cadagin:

I have your letter of October 21, 1988, wherein you inquire whether one person may simultaneously hold the offices of sanitary district trustee and mayor of a village located within the sanitary district. Because of the nature of your question, I do not believe that the issuance of an official opinion will be necessary. I will, however, comment informally upon the question you have raised.

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), 148 Ill. App. 283, 286; see generally People ex rel. Teros v. Verbeck (1987), 155 Ill. App. 3d.

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There are no constitutional or statutory provisions prohibiting simultaneous tenure in the offices mentioned in your letter. Therefore, it must be determined whether a conflict of duties would exist if one individual were to occupy both the offices of village mayor and sanitary district trustee.

The interests of the village and sanitary district are often divergent and contrary. The possibilities of a conflict of interest in serving both village and sanitary district are numerous. The powers of the sanitary district are exercised through its board of trustees (Ill. Rev. Stat. 1987, ch. 42, par. 303). Therefore, a sanitary district trustee would influence all actions of the district directly by his or her vote as a board member. The powers of mayor vary depending on the particular organization of the municipality. In every case, however, the mayor has sufficient power to influence village actions so that a conflict of interest could arise.

One potential area of conflict relates to contracts between the village and the sanitary district. There are numerous instances in which such contracts are authorized. For example, a village is authorized by statute to contract with a sanitary district for collecting and disposing of sewage (Ill. Rev. Stat. 1987, ch. 24, 11-119-1). A sanitary district is authorized by statute to contract with a village for the collection or disposition of garbage refuse and ashes, for the acquisition and maintenance of sanitary facilities owned by a village and for the leasing of space in a village building. (Ill. Rev. Stat. 1987, ch. 42, pars. 319.11a, 306.1, 308.1) Furthermore, section 10 of article VII of the 1970 Illinois Constitution broadens the contracting powers of local governments by granting general power to associate between cities or villages and other units of local government. Section 10 provides, in part:

"(a) Units of local government and school districts may contract or otherwise associate among themselves, with the State, with other states and their units of local government and school districts, and with the United States to obtain or share services and to exercise, combine, or transfer any power or function, in any manner not prohibited by law or by ordinance. Units of local government and school districts may contract and otherwise associate with individuals, associations, and corporations in any manner not prohibited by law or by ordinance. Participating units of government may use their credit, revenues, and other resources

to pay costs and to service debt related to intergovernmental activities.

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Section 1 of the same article defines units of local government to include special districts, a category encompassing sanitary districts. A person holding offices on the governing bodies of both a municipality and sanitary district could not fully represent the interest of both governments when they contract with each other.

Another area of potential conflict concerns a municipalities' exercise of authority outside its boundaries. Cities and villages are granted statutory authority to exercise many powers outside their corporate boundaries. A village may, for example, operate a tuberculosis sanitarium, a cemetery, a stadium, an athletic field, recreational systems and airports and waterworks outside its corporate boundaries. (Ill. Rev. Stat. 1987, ch. 24, pars. 11-29-6, 11-52.1-1, 11-68-1, 11-95-1, 11-101-1, 11-125-2, 11-138-1.) Furthermore, both a municipality and a sanitary district can exercise the power of eminent domain. A village can exercise its power in adjacent unincorporated areas and its planning commissions have authority up to 1 1/2 miles outside the city in unincorporated areas. (Ill. Rev. Stat. 1987, ch. 24, pars. 11-2-5, 11-61-1.) A sanitary district has the right to acquire property necessary to improve any sewerage system. (Ill. Rev. Stat. 1987, ch. 42, par. 319.10.) The exercise of any of these powers may work to the advantage or disadvantage of the sanitary district or village. A person holding office on the governing bodies of both a municipality and a sanitary district could be placed in the position of aiding one governmental unit to the detriment of the other.

The potential for conflicts of duties is exacerbated by the statutory authority granted to sanitary districts to take possession of public property. Section 16 of the Sanitary District Act of 1917 (Ill. Rev. Stat. 1987, ch. 42, par. 315) provides as follows:

"When, in making any improvements which any district is authorized by this Act to make, it shall be necessary to enter upon and take possession of any existing drains, sewers, sewer outlets, plants for the purification of sewage or water, or any other public property, or property held for public use, the board of trustees of such district shall have the power to do and may

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acquire the necessary right of way over any other property held for public use in the same manner as is herein provided for acquiring private property, and may enter upon, and use the same for the purposes aforesaid: Provided, the public use thereof shall not be unnecessarily interrupted or interfered with, and that the same shall be restored to its former usefulness as soon as possible."

A mayor of a village who also serves as a sanitary district trustee would be subject to a conflict of duties if efforts were made to oppose the sanitary district in the taking of village property.

For the reasons stated above, it appears that the office of village mayor is incompatible with the office of sanitary district trustee, 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.

Very truly yours,

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