



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

May 15, 2008

I - 08-015

COMPATIBILITY OF OFFICES:

Deputy Sheriff and
Village Police Chief

The Honorable David Nelson
State's Attorney, Saline County
Saline County Courthouse
Harrisburg, Illinois 62946

Dear Mr. Nelson:

I have your letter inquiring whether the offices of deputy sheriff and village police chief are incompatible. Under the circumstances and for the reasons stated below, the office of deputy sheriff is not incompatible with the office of village police chief, and, therefore, one person may hold both offices simultaneously.

BACKGROUND

The information you have provided indicates that a deputy sheriff for Saline County has been appointed police chief for the Village of Carrier Mills, a municipality located in Saline County. The village police department which is the focus of your inquiry consists of three or four police officers in addition to the police chief. There is no contractual arrangement between the village and the county for police protection services. You have asked whether the offices of deputy sheriff and police chief are incompatible in these circumstances.

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 expressly prohibiting one person from simultaneously serving as deputy sheriff and village police chief. The issue, therefore, is whether the duties of either position are such that the holder of one cannot fully and faithfully discharge all of the duties of the other.

As a preliminary matter, it must be determined whether the position of police chief of the Village of Carrier Mills constitutes a public office. In *Midwest Television, Inc. v. Champaign-Urbana Communications, Inc.*, 37 Ill. App. 3d 926, 931 (1976), the appellate court specifically delineated the criteria to be used in determining whether a position constitutes a public office, stating:

The characteristics of a public office are generally agreed upon, although the distinction between an office and employment may be vague in particular fact situations. The characteristics of a public office include: (1) creation by statute or constitution; (2) exercise of some portion of the sovereign power; (3) a continuing position not occasional or contractual; (4) fixed tenure; (5) an oath is required; (6) liability for misfeasance or nonfeasance; and (7) the official has an independence beyond that of employees.

See also Wargo v. Industrial Comm'n, 58 Ill. 2d 234, 237 (1974); *People ex rel. Brundage v. Brady*, 302 Ill. 576, 582 (1922); Ill. Att'y Gen. Inf. Op. No. I-06-021, issued March 13, 2006; Ill. Att'y Gen. Inf. Op. No. I-05-007, issued September 23, 2005. The court further indicated that "[n]ot all [of] these factors are required in order to determine that a position is an office." *Midwest Television, Inc.*, 37 Ill. App. 3d at 932. The most important of the factors, however, is the exercise of some portion of the sovereignty of the State. *Hall v. County of Cook*, 359 Ill. 528, 539-40 (1935); *Brady*, 302 Ill. at 582.

Applying the several indicia of public office to the position of police chief in the Village of Carrier Mills, the position qualifies as a public office. Although the position of municipal police officer is created by statute (65 ILCS 5/11-1-2 (West 2006)), the position of village police chief is created by ordinance. *See Village of Carrier Mills Ordinance*, art. VII, §2-

67 (effective May 4, 1977) (Ordinance). The position appears to be one of continuing existence; it does not appear occasional or contractual. The police chief is required to file a \$1,000 bond with the village clerk, as well as an oath of office. See Ordinance, art. VII, §2-68. Further, the police chief has an independence beyond that of an employee. The chief is responsible for the performance of the police department, and all persons who serve as members of the police department serve subject to the orders of the police chief. Ordinance, art. VII, §§2-69, 2-74, 2-75. Thus, the police chief bears the responsibility and direction for all functions and personnel of the village police department. See generally *Fabiano v. City of Palos Hills*, 336 Ill. App. 3d 635, 657 (2002), *appeal denied*, 204 Ill. 2d 658 (2003). Significantly, the police chief is a member of the police department. Ordinance, art. VII, §2-66. As such, it is among his duties to preserve order and prevent infractions of the law. Ordinance, art. VII, §2-70. Inherent in this is the responsibility to protect the public and maintain an efficient and effective police force. See *Buege v. Lee*, 56 Ill. App. 3d 793, 796 (1978); Ordinance, art. VII, §2-69. In this regard, the police chief exercises a portion of the sovereign power. Ill. Att'y Gen. Inf. Op. No. I-06-021, issued March 13, 2006.

Based on the foregoing, the position of police chief as created by the Village of Carrier Mills is a public office. See *Village of Round Lake Beach v. Brenner*, 107 Ill. App. 3d 1, 4 (1982) (chief of police is a public office); Ill. Att'y Gen. Inf. Op. No. I-01-025, issued May 23, 2001 (fire chief is a public office); Ill. Att'y Gen. Inf. Op. No. I-94-030, issued June 8, 1994 (fire chief may be either an officer or an employee); 65 ILCS 5/10-2.1-4 (West 2006) (a full-time member of a police department in a municipality that has appointed a board of fire and police commissioners is a "city officer").¹ Accordingly, 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 office of deputy sheriff (1971 Ill. Att'y Gen. Op. 93; Ill. Att'y Gen. Inf. Op. No. I-96-028, issued May 28, 1996) is provided for in section 3-6008 of the Counties Code (55 ILCS 5/3-6008 (West 2006)): Deputy sheriffs may perform any and all of the duties of the sheriff, in the name of the sheriff, and the acts of such deputies are held to be acts of the sheriff for which the sheriff is liable (55 ILCS 5/3-6015, 3-6016 (West 2006)). Accordingly, deputy sheriffs are conservators of the peace (55 ILCS 5/3-6021 (West 2006)). As such, they are

¹In *Rogers v. Village of Tinley Park*, 116 Ill. App. 3d 437 (1983), the appellate court considered whether the doctrine of incompatibility of offices precluded a village police officer from simultaneously serving as a village trustee. Without specifically discussing whether the position of police officer is an office, the court held that the doctrine of incompatibility of offices precludes a village police officer from simultaneously serving as village trustee because of a conflict of duties between the two offices. *Tinley Park*, 116 Ill. App. 3d at 445. Because the common law doctrine of incompatibility of offices traditionally has been applied only to offices, and not to positions of employment (1975 Ill. Att'y Gen. Op. 278, 280), it must be assumed that the court concluded that the position of police officer was, in fact, a public office. If the position of village police officer is a public office, it then follows that the position of village police chief must similarly be considered a public office.

authorized to prevent crime, maintain the safety and order of the citizens throughout the county, and arrest offenders and cause them to be brought before the proper court. Moreover, deputy sheriffs are authorized to serve and execute warrants, process, orders, and judgments legally directed to the sheriff's office (55 ILCS 5/3-6019 (West 2006)). Further, it is within a deputy sheriff's duties to attend the sessions of the court and to provide security in the courthouse. 55 ILCS 5/3-6023 (West 2006).

In addition to those duties prescribed by ordinance, as a police officer, the police chief's duties and powers generally include acting as a conservator of the peace. As such, the police chief has the power to arrest all persons who breach the peace or are found violating any municipal ordinance or any criminal law of the State. 65 ILCS 5/11-1-2(a) (West 2006). Further, the police chief may serve and execute within the municipality's corporate limits all warrants for the violation of municipal ordinances or the State's criminal laws. Ordinance, art. VII, §2-71. In this regard, a police chief has all of the common law and statutory powers of the sheriff. 65 ILCS 5/11-1-2(b) (West 2006).

As officers responsible for enforcing the law in their respective jurisdictions, the duties of a deputy sheriff and a police chief are substantially similar and complement one another, rather than conflict. Moreover, you have stated that Saline County and the Village of Carrier Mills do not contract for police protection services.² Based on these facts, it does not appear that a deputy sheriff's ability to perform his or her duties fully and faithfully would be compromised by simultaneous service as a village police chief.

The only remaining question is whether the deputy sheriff has sufficient time to faithfully and properly perform the duties of the offices of deputy sheriff and village police chief simultaneously. Whether a person has the time to perform the duties of both deputy sheriff and police chief is a factual question that the sheriff and the village president and board of trustees must decide.

CONCLUSION

Based on the duties of deputy sheriff and village police chief, there is no apparent conflict in duties which would prohibit one person from properly and faithfully performing all of the duties of each office. Therefore, in these circumstances, the office of deputy sheriff is not incompatible with the office of village police chief, and one person may hold both offices simultaneously.

²Thus, the circumstances which form the basis of your inquiry are distinguishable from those in informal opinion No. I-07-006, issued March 2, 2007, wherein it was determined that the offices of village commissioner and county sheriff were incompatible because of a police protection services contract then in effect.

The Honorable David Nelson - 5

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

[REDACTED]
Very truly yours,
[REDACTED]

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

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