



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

**Lisa Madigan**  
ATTORNEY GENERAL

February 5, 2010

I - 10-002

**COMPATIBILITY OF OFFICES:**  
Village Trustee and Community  
Mental Health Board Member

The Honorable Patrick J. Verschoore  
Chairperson, Counties and Townships Committee  
State Representative, 72<sup>nd</sup> District  
County Office Building  
1504 3<sup>rd</sup> Avenue  
Rock Island, Illinois 61201

Dear Representative Verschoore:

I have your letter inquiring whether the office of village trustee is compatible with the office of community mental health board member. For the reasons discussed below, the offices of village trustee and community mental health board member are incompatible. Consequently, one person may not hold both offices simultaneously.

**BACKGROUND**

Your letter indicates that the Hanover Township Community Mental Health Board (the Board) is considering the appointment of a Village of Bartlett trustee to the Board. Your letter also states that the village and the Board have never entered into any contracts, nor does the Board own any real property within the village's corporate limits. Further, your letter notes that the village does not provide any mental health services and suggests that the village has no plans to provide such services.

## 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 simultaneously serving as a village trustee and a community mental health board member. 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 Members of the Community Mental Health Board**

Community mental health boards are 7-member boards<sup>1</sup> authorized by the Community Mental Health Act (the Act) (405 ILCS 20/0.1 (West 2008)) to provide mental health services to residents of their communities. 405 ILCS 20/3a (West 2008). The members of a community mental health board are appointed by the presiding officer of the unit of local government creating the board. Thus, in these circumstances, the Board is appointed by the Hanover Township supervisor with the advice and consent of the Hanover Township Board of Trustees. Members of a community mental health board are required to be residents of the governmental unit creating the board and should be representative of interested groups of the community.<sup>2</sup> Only one member of the board may be a member of the governing body that created the board. No member of a community mental health board may be a full-time or part-time employee of the Illinois Department of Human Services, or be a board member, employee, or any other individual receiving compensation from any facility or service operating under contract with the board.

The principal duties of community mental health board members are set out in section 3e of the Act (405 ILCS 20/3e (West 2008)). Pursuant to section 3e, a community mental health board has the authority to enter into multi-year, joint agreements with other governmental units located within the geographical area of the board for the rendition of mental health services

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<sup>1</sup>The community mental health board may request the appointment of two additional members to the board. 405 ILCS 20/3a (West 2008).

<sup>2</sup>Section 3a of the Act (405 ILCS 20/3a (West 2008)) indicates that community mental health board members should be "representative of interested groups of the community such as local health departments, medical societies, local comprehensive health planning agencies, hospital boards, lay associations concerned with mental health, developmental disabilities and substance abuse, as well as the general public."

and the operation of mental health facilities and educational programs. 405 ILCS 20/3e(2)(a), (h), (i) (West 2008). The board is authorized to arrange through intergovernmental agreements for the rendition of mental health services and operation of mental health facilities by agencies or departments of governmental units<sup>3</sup> subject to the approval of the governmental unit (405 ILCS 20/3e(2)(b) (West 2008)) and to receive Federal, State, and local funds for purposes not inconsistent with the provisions of the Act. 405 ILCS 20/3e(2)(k) (West 2008).

### **Powers and Duties of Village Trustee**

The village board of trustees serves as the corporate authorities for the village (65 ILCS 5/1-1-2(2) (West 2008)), and is authorized to adopt ordinances that carry into effect the statutory powers granted to villages. 65 ILCS 5/1-2-1 (West 2008), as amended by Public Act 96-288, effective August 11, 2009; 65 ILCS 5/3.1-45-5 (West 2008). Just as community mental health boards are authorized to contract with villages, villages are expressly authorized to contract with any community mental health board having jurisdiction within the village for the receipt of mental health services for village residents. In this regard, section 11-29.2-1 of the Illinois Municipal Code (65 ILCS 5/11-29.2-1 (West 2008)) provides:

*Any city, village or incorporated town may enter into contractual agreements with any Community Mental Health Board having jurisdiction within the city, village or incorporated town. Such agreement shall be written and shall provide for the rendition of service by the Community Mental Health Board to the residents of such city, village or incorporated town. For this purpose, the city, village or incorporated town is authorized to expend its funds and any funds made available to it through the Federal State and Local Assistance Act of 1972. (Emphasis added.)*

### **Conflict of Duties**

Based on the foregoing statutory provisions, it is clear that potential conflicts in the duties of the offices of village trustee and community mental health board member could prevent one person from faithfully discharging the duties of each office simultaneously.

A community mental health board member, in implementing the powers granted to the community mental health board, is under a duty to protect and represent the best interests of the board and the mental health resources it oversees. *See generally* 405 ILCS 20/3c (West

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<sup>3</sup>"Governmental unit" is defined in the Act to include, among other units of local government, villages. 405 ILCS 20/1 (West 2008).

2008). Similarly, a village trustee is also under a duty to protect and represent the best interests of the municipality which he or she serves. 65 ILCS 5/3.1-10-25 (West 2008); Ill. Const. 1970, art. XIII, §3.

One potential area of conflict relates to the execution of a contract for the provision and receipt of mental health services. If an individual were to serve as both a community mental health board member and a village trustee, and those bodies were to contract for mental health services, the officer would be required to protect the interests of both the community mental health board and the village. It has long been established, however, that one person cannot adequately represent the interests of two governmental units when those units contract with one another. Ill. Att'y Gen. Op. No. 97-026, issued December 23, 1997; 1976 Ill. Att'y Gen. Op. 219, 220-21.

Your letter references the Illinois Appellate Court's holdings in *People v. Claar*, 293 Ill. App. 3d 211 (1997), *appeal denied*, 177 Ill. 2d 574 (1998) and *People ex rel. Barsanti v. Scarpelli*, 371 Ill. App. 3d 226 (2007), *appeal denied*, 224 Ill. 2d 593 (2007) and suggests that because of the "inconsistent holdings of the Illinois courts" it is unclear whether a village trustee may serve simultaneously as a community mental health board member. In *Claar*, the appellate court determined that the *quo warranto* complaint filed by the State's Attorney failed to set out allegations demonstrating a conflict of duties between the offices of mayor and director of the Illinois Toll Highway Authority to establish incompatibility. The court stated that the "complaint simply contains a recitation of the duties of both offices and conclusory statements that those duties are incompatible." *Claar*, 293 Ill. App. 3d at 217.

Further, in *People v. Brown*, 356 Ill. App. 3d 1096 (2005), a *quo warranto* action addressing the incompatibility of the offices of city alderman and park district board member, the Illinois Appellate Court reviewed its *Claar* decision and indicated that:

We do not view the facts of *Claar* as being analogous to those of this case, since they involve two entirely different offices, and other than its usefulness in setting forth general principles, we find the case to be of limited relevance. *Brown*, 356 Ill. App. 3d at 1100.

Rather, the *Brown* court concluded that where "there are a number of well-defined potential relationships and interactions between the two governmental bodies \* \* \* [and] these interactions are substantially more significant and more likely to occur than the alleged interactions in *Claar*" (*Brown*, 356 Ill. App. 3d at 1101), the offices are incompatible.

In *Scarpelli*, a *quo warranto* complaint was filed alleging that the defendant had a conflict of interests and a conflict of duties by simultaneously holding the offices of township park district commissioner and village trustee. The appellate court concluded that because the defendant was called on to vote on a proposed water agreement between the two governmental bodies, there was a conflict of duties between the two offices. Further, the *Scarpelli* court found that the lack of an actual agreement between the village and the park district was immaterial to whether the offices are incompatible.

Based on our reading of the indicated cases, the court's holdings are not inconsistent. In *Claar*, the State's pleadings were found to be insufficient. Thus, the court did not have the requisite details before it to determine whether there was a conflict of duties. In *Brown*, the State's pleadings set out a number of statutes pursuant to which a park district and a municipality may enter into a contract with one another. In *Scarpelli*, the complaint and the State's motion for summary judgment set forth specific examples of conflicts of duties between the two offices. The *Claar*, *Brown*, and *Scarpelli* cases, therefore, stand for the principle that if it can be demonstrated that the statutory duties of two offices create well-defined potential relationships and interactions between the two governmental bodies, then there is a potential conflict and the offices are incompatible. Our review of the statutory duties of the offices of village trustee and community mental health board member indicates a specific, potential conflict in duties. Consequently, one person may not hold those offices simultaneously.

### CONCLUSION

Because of the potential conflicts in the duties of the offices of village trustee and community mental health board member, 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. Therefore, the offices of village trustee and community mental health board member are incompatible, and one person may not hold both positions 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



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

**Lisa Madigan**  
ATTORNEY GENERAL

May 7, 2014

I - 14-005

COMPATIBILITY OF OFFICES:  
County Board Member and  
Village Trustee

The Honorable Heath H. Hooks  
State's Attorney, Washington County  
101 East St. Louis Street  
Nashville, Illinois 62263

Dear Mr. Hooks:

I have your letter inquiring whether one person may serve simultaneously in the offices of county board member and municipal trustee. In a telephone conversation following the receipt of your letter, you clarified that your question pertains to the Village of Okawville, which is situated within Washington County. For the reasons stated below, the offices of member of the Washington County Board and village trustee of the Village of Okawville are incompatible, and one person may not hold both offices simultaneously.

**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). The provisions of section 1 of the Public Officer Prohibited Activities Act (the

Prohibited Activities Act) (50 ILCS 105/1 (West 2012)) address the ability of county board members to hold other public offices simultaneously. Section 1 provides, in pertinent part:

*No member of a county board, during the term of office for which he or she is elected, may be appointed to, accept, or hold any office other than (i) chairman of the county board or member of the regional planning commission by appointment or election of the board of which he or she is a member, (ii) alderman of a city or member of the board of trustees of a village or incorporated town if the city, village, or incorporated town has fewer than 1,000 inhabitants and is located in a county having fewer than 50,000 inhabitants, or (iii) trustee of a forest preserve district created under Section 18.5 of the Conservation District Act, unless he or she first resigns from the office of county board member or unless the holding of another office is authorized by law. Any such prohibited appointment or election is void. \* \* \* Nothing in this Act shall be construed to prohibit an elected county official from holding elected office in another unit of local government so long as there is no contractual relationship between the county and the other unit of local government. This amendatory Act of 1995 is declarative of existing law and is not a new enactment. (Emphasis added.)*

In *People v. Wilson*, 357 Ill. App. 3d 204 (2005), the Illinois Appellate Court concluded that the offices of county board member and school board member were incompatible under section 1 of the Prohibited Activities Act. The court held that, under the plain language of section 1, and except to the extent expressly authorized by law, a county board member is prohibited from simultaneously holding another public office. *Wilson*, 357 Ill. App. 3d at 206. Accordingly, unless simultaneous tenure in the offices of county board member and village trustee is expressly permitted by statute, the reasoning of the *Wilson* decision prohibits one person from holding both offices at the same time.<sup>1</sup>

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<sup>1</sup>Prior to the court's opinion in *Wilson*, Attorney General Scott determined in opinion No. S-419, issued March 13, 1972 (1972 Ill. Att'y Gen. Op. 45), that the offices of county board member and city alderman were incompatible. This conclusion was based on the possibility of a conflict of interest that could arise when serving in both offices, including the ability of cities and counties to contract with each other on a myriad of issues. Attorney General Scott noted that although "[t]he powers of \* \* \* alderman or councilman vary, depending on the particular organization of the municipality[,] [i]n every case, \* \* \* each of these officers has sufficient power to influence city actions so that a conflict of interest could arise." 1972 Ill. Att'y Gen. Op. at 47.

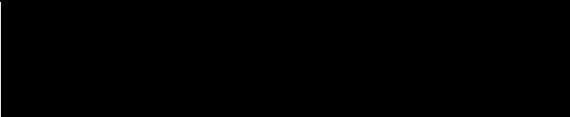
At the time that opinion No. S-419 was issued, section 1 of "AN ACT to prevent fraudulent and corrupt practices in the making or accepting of official appointments and contracts by public officers" (Ill. Rev. Stat. 1971, ch. 102, par. 1), the precursor to section 1 of the Prohibited Activities Act, only prohibited county board members from holding other public offices by appointment or election of the county board itself. See 1980 Ill. Att'y Gen. Op. 123, 124; Ill. Att'y Gen. Inf. Op. No. I-10-006, issued June 10, 2010, at 2 n.1.

Subsection 1(ii) of the Prohibited Activities Act does expressly permit a county board member to hold the office of village trustee "if the \* \* \* village \* \* \* has fewer than 1,000 inhabitants *and* is located in a county having fewer than 50,000 inhabitants[.]" (Emphasis added.) According to the 2010 Federal decennial census, the population of Washington County was 14,716.<sup>2</sup> The population of the Village of Okawville, however, was 1,434 inhabitants.<sup>3</sup> Therefore, although the population of Washington County is fewer than 50,000 inhabitants, the population of Okawville exceeds 1,000, the statutory maximum for the exception found in subsection 1(ii) to apply. Accordingly, that provision does not permit a member of the village board of the Village of Okawville to serve simultaneously as a member of the Washington County Board.

### CONCLUSION

Pursuant to section 1 of the Public Officer Prohibited Activities Act, as construed by the court in *Wilson*, a county board member may not be elected or appointed, during the term of office for which he or she is elected, to any office other than those specified in section 1 or elsewhere in Illinois law. Neither subsection 1(ii) nor any other statute expressly permits one person to serve simultaneously as a county board member and a village trustee in these circumstances. Therefore, pursuant to section 1 of the Prohibited Activities Act, a member of the Washington County Board cannot serve simultaneously as a trustee of the Village of Okawville.

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, Public Access and Opinions Division

LP:KMC:LAS:an

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<sup>2</sup>Illinois Blue Book 450 (2013-2014).

<sup>3</sup>Illinois Blue Book 464 (2013-2014).



NEIL F. HARTIGAN  
ATTORNEY GENERAL  
STATE OF ILLINOIS  
SPRINGFIELD  
62706

February 21, 1989

I - 89-013

COMPATIBILITY OF OFFICES:  
Offices of Trustee of Fire Protection  
District and Village Trustee

Honorable Barbara Adams  
State's Attorney, Montgomery County  
Montgomery County Courthouse  
Hillsboro, Illinois 62049

Dear Ms. Adams:

I have your letter wherein you inquire whether the offices of village trustee and trustee of a fire protection district are incompatible, in circumstances in which the fire protection district is "wholly contained within" the village. Because of the nature of your inquiry, I do not believe that an official opinion of the Attorney General is necessary. I will, therefore, comment informally upon the question you have raised.

Your correspondence discusses opinion No. UP-852, issued February 14, 1963, wherein Attorney General Clark advised that, where a fire protection district and a village could jointly own fire fighting equipment and could contract with each other for fire protection in accordance with sections 10b and 11a of "AN ACT in relation to fire protection districts" (Ill. Rev. Stat. 1987, ch. 127 1/2, pars. 30b, 31a), the offices in question would be incompatible. For the reasons that follow, it appears that the reasoning underlying opinion No. UP-852 is still valid, and that the offices of village

trustee and trustee of a fire protection district are incompatible.

Applying the rule of People ex rel. Myers v. Haas (1908), 145 Ill. App. 283, Attorney General Clark based his opinion upon the principle that offices are incompatible where the duties of the offices are such that a conflict of interest may arise or that the holder of one cannot, in every instance, properly and faithfully perform all the duties of the other.

Section 10b of "AN ACT in relation to fire protection districts" provides:

"Any two or more fire districts or one or more fire protection districts and one or more cities, villages or incorporated towns may provide for joint ownership of fire fighting equipment, communication equipment, rescue and resuscitator equipment and real and personal property necessary for the care and housing of such equipment. In case of joint ownership the terms of the agreement shall be fair, just and equitable to all parties and shall be set forth in a written agreement entered into by the corporate authorities of each participating unit."

Section 11a of that Act provides:

"The Board of Trustees of any fire protection district organized hereunder may contract with any corporation organized to furnish fire protection service or with any association organized to furnish fire protection service or with any city, village, incorporated town, or organized fire protection district lying adjacent to such district for fire protection service to be furnished by such corporation or such association or such municipality or fire protection district for the property within such district or to be furnished by such district for the property within such municipality. The board of trustees may also contract for the installation, rental or use of fire hydrants within the fire protection district and for the furnishing of water to be used within such district for fire protection purposes, and for mutual aid from and to other fire protection districts, and for mutual aid from and to corporations and assoc-

iations organized to furnish fire protection service and for mutual aid from and to municipalities." (Emphasis added.)

Your correspondence suggests that, since the fire protection district in question is "wholly contained within" the village, sections 10b and 11a would not be applicable by virtue of section 11b of "AN ACT in relation to fire protection districts" (Ill. Rev. Stat. 1987, ch. 127 1/2, par. 31b), which provides in pertinent part:

"In case any fire protection district organized hereunder is coterminous with or includes within its corporate limits in whole or in part any city, village or incorporated town authorized to provide protection from fire and to regulate the prevention and control of fire within such city, village or incorporated town and to levy taxes for any such purposes, then such city, village or incorporated town shall not exercise any such powers as necessarily conflict with the powers to be exercised by such district in respect to such fire protection and regulation within the fire protection district from and after the date that it receives written notice from the State Fire Marshal to cease or refrain from the operation of any fire protection facilities and the exercise of such powers, which notice shall be given only after the State Fire Marshal has ascertained that the Fire Protection District has placed its fire protection facilities in operation. Such city, village or incorporated town shall not thereafter own, operate, maintain, manage, control or have an interest in any fire protection facilities located within the corporate limits of the fire protection district, except water mains and hydrants and except as otherwise provided in this Act. \* \* \*" (Emphasis added.)

Since, in this particular case, the district is wholly contained within the village, the village and district must be coterminous or the district must include some part, but not all, of the village. If the latter is true, of course, then section 11b would work to bar the village from exercising its powers only with respect to those parts of its territory within the district; the village would still be able to exercise such powers outside the district, in which case sections 10b and 11a

would still be applicable, and the offices in question incompatible.

Where the district and village are coterminous, the village would not be able to own, operate, maintain, manage, control or have an interest in any fire protection facilities located therein "except water mains and hydrants and except as otherwise provided in this Act". Pursuant to section 11a of "AN ACT in relation to fire protection districts", the board of trustees of the fire district is authorized to contract for the installation, rental or use of fire hydrants within the district and for the furnishing of water to be used within such district for fire protection services. If the city is or could be involved in the provision of hydrants, water, or services under section 11a, then the offices would be incompatible even where the entities are coterminous. Furthermore, the boards of trustees of fire protection districts have, subsequent to the issuance of opinion No. UP-852, been granted the authority to provide emergency ambulance services, to combine or contract with other units of local government for the provision and operation of emergency ambulance services, and to subsidize such services. (Ill. Rev. Stat. 1987, ch. 127 1/2, par. 31, 38.5.) The corporate authorities of municipalities also possess the power to provide or contract for ambulance services as well as the power to license, regulate and establish standards for the operation of ambulances. (Ill. Rev. Stat. 1987, ch. 24, par. 11-5-7.) Therefore, it appears that one who holds the offices of trustee of a fire protection district and village trustee would be placed in a position in which the duties of each office could conflict, and that the offices are therefore incompatible even where the boundaries of the village and district are coterminous.

This is not an official opinion of the Attorney General. Please advise if we may be of further assistance.

Very truly yours,

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



**ROLAND W. BURRIS**

ATTORNEY GENERAL  
STATE OF ILLINOIS



July 9, 1993

I - 93-037

**COMPATIBILITY OF OFFICES:**

Village Trustee and Fire Protection  
District Trustee; Township Clerk  
and School Board Member; Fire Protection  
District Trustee and Community College Trustee

Honorable Jack O'Malley  
State's Attorney, Cook County  
500 Richard J. Daley Center  
Chicago, Illinois 60602

Dear Mr. O'Malley:

I have Assistant State's Attorney Jeanette Sublett's letter wherein she inquired, on your behalf, regarding the potential incompatibility of several local offices. Because of the nature of these inquiries, I do not believe that the issuance of an official opinion of the Attorney General is necessary. I will, however, comment informally upon the questions which have been raised.

Offices are deemed to be incompatible where the constitution or a statute specifically prohibits the occupant of one office from holding the other, or where the duties of the two offices conflict so 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; see generally People ex rel. Teros v. Verbeck (1987), 155 Ill. App. 3d 81.) There are no constitutional or statutory provisions which prohibit simultaneous tenure in the offices which are the

focus of this inquiry. Therefore, the issue is whether a conflict of duties could arise if one person were to occupy the particular offices in question.

Your first question concerns whether the offices of village trustee and fire protection district trustee are incompatible. Sections 10b and 11a of the Fire Protection District Act (Ill. Rev. Stat. 1991, ch. 127 1/2, pars. 30b, 31a; 70 ILCS 705/10b, 11a) respectively provide, in pertinent part:

"Any two or more fire districts or one or more fire protection districts and one or more cities, villages or incorporated towns may provide for joint ownership of fire fighting equipment, communication equipment, rescue and resuscitator equipment and real and personal property necessary for the care and housing of such equipment. In case of joint ownership the term of the agreement shall be fair, just and equitable to all parties and shall be set forth in a written agreement entered into by the corporate authorities of each participating unit.

\* \* \*

"The Board of Trustees of any fire protection district organized hereunder may contract with any corporation organized to furnish fire protection service or with any association organized to furnish fire protection service or with any city, village, incorporated town, or organized fire protection district lying adjacent to such district for fire protection service to be furnished by such corporation or such association or such municipality or fire protection district for the property within such district or to be furnished by such district for the property within such municipality. The board of trustees may also contract for the installation, rental or use of fire hydrants within the fire protection district and for the furnishing of water to be used within such district for fire protection purposes, and for mutual aid from and to other fire protection districts, and for mutual aid from and

to corporations and associations organized to furnish fire protection service and for mutual aid from and to municipalities.

\* \* \*

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(Emphasis added.)

Similarly, section 11-6-1 of the Illinois Municipal Code (Ill. Rev. Stat. 1991, ch. 24, par. 11-6-1; 65 ILCS 5/11-6-1 (West 1992)) provides:

"The corporate authorities of each municipality may provide and operate fire stations, and all material and equipment that is needed for the prevention and extinguishment of fires, and may enter into contracts or agreements with other municipalities and fire protection districts for mutual aid consisting of furnishing equipment and man power from and to such other municipalities and fire protection districts." (Emphasis added.)

Under the statutes quoted above, it is foreseeable that a village and a fire protection district could enter into a contract for the provision of equipment and other materials necessary for the prevention and extinguishment of fires. Moreover, under section 11 of the Act, the board of trustees of a fire protection district is authorized to provide emergency ambulance service. (Ill. Rev. Stat. 1991, ch. 127 1/2, par. 31; 70 ILCS 705/11 (West 1992).) Municipalities possess the authority to provide or contract for ambulance services, as well as the power to license and to regulate the operation of ambulances. (Ill. Rev. Stat. 1991, ch. 24, par. 11-5-7; 65 ILCS 5/11-5-7 (West 1992).)

It is well established that one person cannot adequately represent the interests of two governmental units when those units contract with one another. (Ill. Att'y Gen. Op. No. 91-023, issued June 6, 1991; Ill. Att'y Gen. Op. No. 85-019, issued November 19, 1985.) Because of the potential for conflicts in duties to arise when one governmental unit is authorized to contract with another, an individual serving as both a village trustee and a fire protection district trustee would be unable to represent the units of both entities adequately, fully and faithfully. Therefore, it appears that one person may not simultaneously hold the offices of village trustee and fire protection district trustee.

Honorable Jack O'Malley - 4.

Secondly, you inquire whether the offices of township clerk and board of education member are incompatible. Township clerks are custodians of all records, books and papers of the town (Ill. Rev. Stat. 1991, ch. 139, par. 111; 60 ILCS 5/12-1 (West 1992)) and are authorized to certify to the county clerks the amount of taxes required to be raised for town purposes (Ill. Rev. Stat. 1991, ch. 139, par. 114; 60 ILCS 5/12-4 (West 1992)). Board of education members are responsible for conducting the business affairs of a school district (Ill. Rev. Stat. 1991, ch. 122, pars. 10-22 through 10-23.12; 105 ILCS 5/10-22 - 10-23.12 (West 1992)). The clerk's duties are ministerial in nature and do not require the exercise of discretion. A review of the duties of the two specified offices has failed to disclose any potential conflicts which could prevent one person from faithfully discharging the duties of either office. Consequently, it appears that one person may serve as township clerk and school board member simultaneously.

Lastly, you have asked whether a person may serve as both a fire protection district trustee and a community college board trustee. Section 3-38.2 of the Public Community College Act (Ill. Rev. Stat. 1991, ch. 122, par. 103-38.2; 110 ILCS 805/3-38.2 (West 1992)) authorizes a community college board:

"To enter into contracts with any municipality or fire protection district in which any community college buildings are located for the purpose of reimbursing such fire protection district or municipality for the additional costs of providing fire fighting equipment, apparatus or additional paid personnel occasioned by the presence of community college buildings within the municipality or fire protection district." (Emphasis added.)

Under section 3-38.2 of the Public Community College Act, it appears that the General Assembly specifically contemplated that a fire protection district and a community college could enter into a contract to reimburse the fire protection district for costs associated with the provision of fire fighting services on the community college campus or to the community college's buildings. As noted earlier, one person cannot represent the interests of two governmental units when those units contract with one another. (1991 Ill. Att'y Gen. Op. No. 91-023; 1985 Ill. Att'y Gen. Op. No. 85-019.) Consequently, given the authorization for the two bodies to contract for services, it

Honorable Jack O'Malley - 5.

does not appear that one person may simultaneously hold the positions of fire protection district trustee and community college board trustee.

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:MLP:cj



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

Lisa Madigan  
ATTORNEY GENERAL

October 11, 2012

I - 12-013

COMPATIBILITY OF OFFICES:  
Village Trustee and Joint  
Township Cemetery Manager

The Honorable Randall J. Brinegar  
State's Attorney, Vermilion County  
7 North Vermilion Street  
Vermilion County Courthouse, 2<sup>nd</sup> Floor  
Danville, Illinois 61832

Dear Mr. Brinegar:

I have your letter inquiring whether the offices of village trustee and joint township cemetery manager<sup>1</sup> are incompatible. For the reasons stated below, the offices of village trustee and joint township cemetery manager are incompatible. Consequently, one person may not hold both offices simultaneously.

**BACKGROUND**

Your letter states that a trustee of the Village of Rossville (the village) has been appointed to serve as a manager of the Ross-South Ross Cemetery District (the cemetery district). The territory of the village is located wholly within Ross Township, and both the village and the cemetery district currently levy taxes within their respective territories. It is our understanding that the Ross-South Ross Cemetery District is operated pursuant to the provisions

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<sup>1</sup>Although your letter refers to "an appointed trustee[,]" we will assume, based on a telephone conversation with Assistant State's Attorney William Donahue, that your inquiry concerns a member of a board of managers of a multi-township cemetery district, as is provided for in section 135-10 of the Township Code (60 ILCS 1/135-10 (West 2010)). We will accordingly use the term "manager" rather than "trustee" herein.

of article 135 of the Township Code (60 ILCS 1/135-5 *et seq.* (West 2010)). Your letter expresses concern that a conflict of duties may exist with respect to the offices of village trustee and joint township cemetery manager because of the respective authority of both governmental entities to levy taxes within the boundaries of Ross Township, and further that the village and the cemetery district may consider entering into contracts or agreements in the future.<sup>2</sup>

### 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 simultaneously serving as a village trustee and as a joint township cemetery manager. The issue, therefore, is whether the duties of either office are such that the holder of one office cannot, in every instance, fully and faithfully discharge all of the duties of the other office.

#### Powers and Duties of a Joint Township Cemetery District

Pursuant to sections 135-5 and 135-10 of the Code (60 ILCS 1/135-5, 135-10 (West 2010)), following referendum approval, two or more townships may jointly establish and maintain cemeteries. The joint cemeteries are under the control and management of a board of managers appointed by the supervisors of the participating townships. 60 ILCS 1/135-10, 135-20 (West 2010). The powers and duties of the board of managers are set out in section 135-20 of the Township Code (60 ILCS 1/135-20 (West 2010)) and include controlling and managing the townships' cemeteries and receiving in trust any gift or legacy of money or property for the use and maintenance of the cemeteries. Section 135-50 of the Township Code (60 ILCS 1/135-50 (West 2010)) authorizes the board of managers, pursuant to a successful referendum, to levy, collect, and administer an annual tax to support the joint cemetery district. The tax collected pursuant to section 135-50 must be placed in a separate fund, and may only be used to fund cemetery district operations. 60 ILCS 1/135-50 (West 2010). Further, under section 130-30 of the Township Code (60 ILCS 1/130-30 (West 2010)), "[a]ny 2 or more \* \* \* villages, or townships may jointly unite in establishing and maintaining cemeteries within and without the corporate limits or territory of either or any of them[.]"

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<sup>2</sup>Your letter indicates that the village provides water, gas, and sewer service to the cemetery district, on the same basis that it does for the other residents, businesses, and properties of Rossville. It does not appear that this arrangement requires negotiations between the two entities.

### **Powers and Duties of a Village Trustee**

Villages are governed by a board of trustees, which serves as the corporate authorities of the village (65 ILCS 5/1-1-2(2) (West 2010)). The duties of the village board include, among other things, establishing and regulating cemeteries "within or without the municipal limits" (65 ILCS 5/11-49-1(a) (West 2010)); *see also* 65 ILCS 5/11-52-1, 11-52.1-1 (West 2010)); entering into contracts to purchase existing cemeteries or lands for cemetery purposes (65 ILCS 5/11-49-1(b) (West 2010)); after a successful referendum, levying an annual tax for reconditioning and restoring neglected cemeteries, which are owned by the village, or over which the village exercises management and control (65 ILCS 5/11-50-1 (West 2010)); removing a cemetery (65 ILCS 5/11-51-1 (West 2010)); and accepting the conveyance of a cemetery, in qualifying circumstances (65 ILCS 5/11-52-2 (West 2010)). Further, under section 11-52.1-3 of the Municipal Code (65 ILCS 5/11-52.1-3 (West 2010)), "[t]wo or more \* \* \* villages and townships may jointly unite in establishing and maintaining cemeteries within and without their territory or corporate limits[.]"

### **Conflict of Duties**

Based on the foregoing statutory provisions, it is clear that there are potential conflicts in the duties of the offices of village trustee and joint township cemetery manager which could prevent one person from faithfully discharging the duties of both offices simultaneously.

Villages and townships are expressly authorized to establish and maintain cemeteries jointly. Accordingly, the Village of Rossville and the townships which created the Ross-South Ross Cemetery District could elect to combine their operations with respect to the establishment and maintenance of cemeteries. In such circumstances, it may be assumed that the board of managers would be called upon to advise and assist the townships in determining the advisability of such an agreement and in addressing the relative duties and responsibilities of each entity with respect to any cemeteries so established and operated.

A village trustee is under a duty to protect and represent the best interests of the municipality which he or she serves. 65 ILCS 5/3.1-10-25 (West 2010); Ill. Const. 1970, art. XIII, §3. Similarly, a joint township cemetery manager, in exercising the powers granted to the cemetery district, is under a duty to protect and represent the best interests of the board and the township cemetery resources it oversees. *See generally* 60 ILCS 1/135-45 (West 2010)). It has long been established that one person cannot adequately represent the interests of two governmental units when those units contract with one another. Ill. Att'y Gen. Op. No. 97-026, issued December 23, 1997; 1976 Ill. Att'y Gen. Op. 219, 220-21; Ill. Att'y Gen. Inf. Op. No. I-10-002, issued February 5, 2010. It is not necessary that the dual officeholder be in a position to vote or otherwise act upon such an agreement; it is sufficient if he or she may be called upon to

The Honorable Randall J. Brinegar - 4

advise the governing body with respect to the transaction. See 1976 Ill. Att'y Gen. Op. 232 (the offices of county superintendent of highways and city alderman are incompatible because the superintendent could be called upon to advise the county board regarding contracts between the county and the city involving streets and highways). Because of the likelihood that the members of the board of managers of the joint cemetery district would be called upon to advise their respective townships regarding any proposal for joining with the village to operate and maintain cemeteries, the obligation of a cemetery manager who also serves as a village trustee to represent the best interests of both the township and the village simultaneously results in an untenable position which renders the offices incompatible.<sup>3</sup>

### CONCLUSION

Because of the potential conflict in the duties of the offices of village trustee and cemetery manager, 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. Therefore, the offices of village trustee and joint township cemetery manager are incompatible, and one person may not hold both positions simultaneously.

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

Very truly yours,

LYNNE E. PAYTON  
Senior Assistant Attorney General  
Chief, Public Access & Opinions Division

LEP:KAS:cj

cc: William Donahue, Assistant State's Attorney, Vermilion County

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<sup>3</sup>In your letter, you raise a concern that the duties of the offices might conflict because both the village board of trustees (65 ILCS 5/8-3-1 *et seq.* (West 2010)) and the cemetery district's board of managers (60 ILCS 1/135-50(b) (West 2010)) are required to determine the necessary taxes to be levied within their respective boundaries. The mere fact that both the village board of trustees and the cemetery district board of managers are required to determine the necessary taxes to be levied within their respective jurisdictions and within the limitations established by Illinois law may not create a conflict of duties which would prevent one person from serving in both offices. A determination on the part of one entity to raise or lower a tax levy would, at most, have an indirect effect on the levy of the other. Ill. Att'y Gen. Inf. Op. No. I-00-039, issued September 27, 2000.



NEIL F. HARTIGAN  
ATTORNEY GENERAL  
STATE OF ILLINOIS  
SPRINGFIELD  
62706

July 28, 1989

I - 89-035

COMPATIBILITY:

Village Board Member and Director  
of Not For Profit Corporation  
Promoting Economic Development

Honorable Millard S. Everhart  
State's Attorney, Cumberland County  
Post Office Box 387  
Toledo, Illinois 62468

Dear Mr. Everhart:

I have your letter wherein you inquire whether the office of village board member is compatible with service as a director of a private, not for profit organization engaged in attracting new businesses to the village. Because of the nature of your inquiry, I will respond informally.

Your particular inquiry concerns the Greenup village board and Greenup Industries, a not for profit corporation. In People ex rel. Myers v. Haas (1908), 145 Ill. App. 283, it was held 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 duties of either office a conflict of 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 of the duties of the other.

The doctrine of incompatibility applies only to public offices (1975 Ill. Att'y Gen. Op. 287). A public office is a public position created by the constitution or by law, continuing during the pleasure of the appointing power or for a fixed time, with a successor necessarily being elected or appointed. (Bunn v. Illinois (1867), 45 Ill. 397; Fergus v. Russell (1915), 270 Ill. 304.) An indispensable requirement of a public office is that the duties of the incumbent involve an exercise of some portion of the sovereign power. People v. Brady (1922), 302 Ill. 576; Olson v. Scully (1921), 296 Ill. 418.

It is clear that village trustees are public officers. From the information you have provided, it appears that Greenup Industries is a private, not for profit corporation which exercises no part of the sovereign power, and which was not created by the constitution or by law. Therefore, it is clear that a director of the non-profit organization is not a public office, and, consequently, that the doctrine of incompatibility is not applicable to the positions in question.

Moreover, it appears that section 3-14-4 of the Illinois Municipal Code (Ill. Rev. Stat. 1987, ch. 24, par. 3-14-4), which prohibits a municipal officer from having a pecuniary interest in any contract or work for which payment from the treasury or by special assessment will be made, will not be violated in this circumstance. This provision does not apply to proscribe a public officer from membership in a not for profit association organized for the public welfare, with which the public entity may have dealings. (Furlong v. South Park Commissioners (1930), 340 Ill. 363, 370.) In the Furlong case, the court noted that park commissioners who were also trustees of a not for profit corporation received no compensation for their services to the not for profit corporation, and that the corporation had no capital stock and paid no dividends, implying that the trustees therefore had no pecuniary interest in its receipt of funds from the park commission. Members of the Greenup village board who are also directors of Greenup Industries would appear to be in an analogous position.

I would suggest, however, that there may be instances in which board members holding positions as directors of Greenup Industries might wish to refrain from voting on village matters relating to Greenup Industries or its activities, in order to avoid an appearance of impropriety to the public. Notwithstanding this suggestion, it does not appear that one

Honorable Millard S. Everhart - 3.

person would be prohibited by law from holding these positions simultaneously.

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



**WILLIAM J. SCOTT**

ATTORNEY GENERAL  
STATE OF ILLINOIS  
500 SOUTH SECOND STREET  
SPRINGFIELD

January 13, 1977

FILE NO. NP-1203

COMPATIBILITY OF OFFICES:  
Compatibility Between Offices  
of Village Board Trustee and  
Public Water District Trustee

Honorable Dennis P. Ryan  
State's Attorney  
Lake County  
Waukegan, Illinois 60085

Dear Mr. Ryan:

I have your letter wherein you request an opinion as to whether the offices of village board trustee and public water district trustee are compatible. It is my opinion that the two offices are incompatible.

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 occupants of either one of the

Honorable Dennis P. Ryan - 2.

offices from holding the other, 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.

There are no constitutional or statutory restrictions in simultaneously holding the offices mentioned in your letter. Therefore, the question arises as to whether or not a conflict of duties exists if an individual were to occupy simultaneously the offices of a village board trustee and public water district trustee. The conflict of duties can best be explained by examining the kinds of issues that an individual in both offices must consider and decide or vote upon.

One of the decisions a trustee of the water district might have to make is whether to supply water to a village within a district which does not own a waterworks system when the village has passed an ordinance requesting the district to supply the water pursuant to section 206 of "AN ACT in relation to public water districts" (Ill. Rev. Stat. 1975, ch. 111 2/3, par. 206). In attempting to make

Honorable Dennis P. Ryan - 3.

a decision in the above area, to supply the water and to vote for the requesting ordinance, the dual office holder cannot fully and faithfully represent the interests of both units of government.

Another area of potential conflict arises under section 207 of "AN ACT in relation to public water districts" (Ill. Rev. Stat. 1975, ch. 111 2/3, par. 207) which allows the district to contract to supply water to a village owning a waterworks system within the district. In this case where the service is to be provided pursuant to a contract entered into between the village and the district, the dual officer is clearly representing, and attempting to negotiate a contract most advantageous to the interest of both parties to the bargain. The dual office holder cannot sit on both sides of the bargaining table with undivided loyalty.

Another obvious area of conflict would arise when a village annexes part of the territory of a public water district according to section 11-151-5 of the Illinois Municipal Code (Ill. Rev. Stat. 1975, ch. 24, par. 11-151-5) which provides:

Honorable Dennis P. Ryan - 4.

"\* \* \* [T]he corporate authorities of the municipality and of the district may enter contracts providing for the division and allocation of duplicate and overlapping powers, functions and duties between the 2 entities and for the use, management, control, purchase, conveyance, assumption and disposition of the properties, assets, debts, liabilities and obligations of the district.  
\* \* \*"

It would not be possible for an individual holding the offices of village board trustee and public water district trustee to represent the interests of both the village and the district when they are contracting with each other on these important matters.

From the foregoing, I must conclude that the offices of village board trustee and public water district trustee are incompatible.

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 reorganization, 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. 131.) 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



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

**Lisa Madigan**  
ATTORNEY GENERAL

March 15, 2007

I - 07-008

**COUNTIES:**

Composition of County Emergency  
Telephone System Boards

Mary Stephenson-Schroeder  
General Counsel  
Illinois Commerce Commission  
160 North LaSalle Street, Suite C-800  
Chicago, Illinois 60601-3104

Dear Ms. Stephenson-Schroeder:

I have your office's letter regarding the proper composition of county emergency telephone system boards (CETS boards) appointed by county boards under subsection 15.4(a) of the Emergency Telephone System Act (the Act) (50 ILCS 750/15.4(a) (West 2004)). Specifically, your office asked: (1) in counties with a population of less than 100,000 inhabitants, whether more than one public member and more than one county board member may serve simultaneously on a five-member CETS board; (2) in such counties, whether a second county board member may be appointed to serve on a five-member CETS board as an "elected official," if one county board member has already been appointed to the CETS board; (3) in counties with a population of less than 100,000 inhabitants, whether more than one public member or more than one county board member may serve on a CETS board if the board is comprised of more than five members; and (4) in counties with a population of 100,000 or more, whether a county board member may simultaneously serve as a member of the CETS board.

For the reasons set out below: (1) in counties with a population of less than 100,000, no more than one public member and one county board member may serve simultaneously on a five-member CETS board; (2) in such counties, a second county board member may not be appointed as an "elected official" to serve on a five-member CETS board; (3) if the CETS board is comprised of more than five members, then more than one public member may serve on the board, but only one county board member may serve on the board; and (4) in counties with a population of 100,000 or more, a county board member may not simultaneously serve as a CETS board member.

### BACKGROUND

The General Assembly enacted the Act to provide "a simplified means of procuring emergency services \* \* \* [by] establish[ing] the number '911' as the primary emergency telephone number for use in this State and to encourage units of local government and combinations of such units to develop and improve emergency communication procedures and facilities[.]" Ill. Rev. Stat. 1975, ch. 134, par. 31. As originally enacted, the Act made no provision for the creation of emergency telephone system boards (ETS boards) to administer emergency telephone systems.

In 1987, the General Assembly granted certain units of local government the authority to impose a surcharge on telecommunication subscribers to assist in funding effective emergency telephone systems. Units of local government electing to impose a surcharge were required to create an ETS board to administer the monies derived from the surcharge. Ill. Rev. Stat. 1987, ch. 134, par. 45.4. The ETS board was to "consist of not fewer than 5 members, all of whom shall be appointed on the basis of their ability or experience." Ill. Rev. Stat. 1987, ch. 134, par. 45.4.

Section 15.4 of the Act was subsequently amended to provide that the ETS board should "consist of not fewer than 5 members, all of whom shall be representative of the public safety agency 9-1-1 users and appointed on the basis of their ability or experience" (Ill. Rev. Stat. 1989, ch. 134, par. 45.4), and then to provide that an ETS board:

*shall consist of not fewer than 5 members, one of whom may be a public member who is a resident of the local exchange service territory included in the 9-1-1 coverage area and others who shall be representative of the public safety agency 9-1-1 users and appointed on the basis of their ability or experience. (Emphasis added.)* Ill. Rev. Stat. 1990 Supp., ch. 134, par. 45.4.

In opinion No. 91-028, issued July 26, 1991 (1991 Ill. Att'y Gen. Op. 63), Attorney General Burriss considered the issue of whether one person could simultaneously hold the offices of county board member and member of a CETS board under the provisions of subsection 15.4(a) quoted immediately above. Attorney General Burriss concluded that the provisions of section 1 of the Public Officer Prohibited Activities Act (Prohibited Activities Act) in effect at that time (*see* Ill. Rev. Stat. 1989, ch. 102, par. 1, now codified at 50 ILCS 105/1 (West 2005 Supp.))<sup>1</sup> clearly prohibited a county board member from serving on a CETS board, if the appointment to the CETS board was made by the county board of which he or she was a member. Further, under the common law doctrine of incompatibility of offices, Attorney General Burriss determined that the offices of county board member and CETS board member were incompatible because of a conflict in duties.

Subsequent to the issuance of opinion No. 91-028, the General Assembly amended section 1 of the Prohibited Activities Act (*see* Public Act 87-146, effective August 20, 1991) to provide that "[t]his Section shall not preclude a member of the county board from being selected or from serving \* \* \* as a member of an Emergency Telephone System Board as provided in Section 15.4 of the Emergency Telephone System Act". Subsection 15.4(a) of the Act was concomitantly amended to provide that ETS boards:

shall consist of not fewer than 5 members, one of whom may be a public member \* \* \*, *one of whom (in counties with a population less than 100,000) may be a member of the county board*, and at least 3 of whom shall be representative of the 9-1-1 public safety agencies[.] (Emphasis added.)

Language was later added to provide that "[e]lected officials are also eligible to serve on the board." *See* Ill. Rev. Stat. 1991, ch. 134, par. 45.4.

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<sup>1</sup>At the time of the issuance of opinion No. 91-028, section 1 of the Public Officer Prohibited Activities Act provided:

*No member of a county board, during the term of office for which he is elected, may be appointed to, accept or hold any office other than chairman of the county board or member of the regional planning commission by appointment or election of the board of which he is a member. Any such prohibited appointment or election is void.* This Section shall not preclude a member of the county board from being selected or from serving as a member of the County Personnel Advisory Board as provided in Section 12-17.2 of "The Illinois Public Aid Code", approved April 11, 1967, as amended, or as a member of a County Extension Board as provided in Section 7 of the "County Cooperative Extension Law", approved August 2, 1963, as amended. (Emphasis added.) Ill. Rev. Stat. 1989, ch. 102, par. 1.

Following these statutory changes, Attorney General Ryan was asked to determine the number of county board members who could serve simultaneously on a CETS board in counties with a population of less than 100,000 inhabitants. In opinion No. 96-041, issued December 4, 1996, Attorney General Ryan advised that, in counties with fewer than 100,000 inhabitants, section 15.4 permitted only one county board member to serve on a CETS board. He also concluded that nothing in the plain language of section 15.4 as amended either expressly or impliedly suggested that additional county board members could be appointed to serve on a CETS board if the board was comprised of more than five members.

Subsection 15.4(a) was thereafter amended (*see* Public Act 92-202, effective January 1, 2002) and currently provides:

(a) The corporate authorities of any county or municipality that imposes a surcharge under Section 15.3 shall establish an Emergency Telephone System Board. The corporate authorities shall provide for the manner of appointment and the number of members of the Board, provided that *the board shall consist of not fewer than 5 members, one of whom must be a public member who is a resident of the local exchange service territory included in the 9-1-1 coverage area, one of whom (in counties with a population less than 100,000) must be a member of the county board, and at least 3 of whom shall be representative of the 9-1-1 public safety agencies, including but not limited to police departments, fire departments, emergency medical services providers, and emergency services and disaster agencies, and appointed on the basis of their ability or experience. Elected officials are also eligible to serve on the board. (Emphasis added.)* 50 ILCS 750/15.4 (West 2004).

## ANALYSIS

### **Public Members and County Board Members on a Five-Member CETS Board**

Your office's first question is whether, in counties with a population of less than 100,000, more than one public member and more than one county board member may serve simultaneously on a five-member CETS board.

Under the rules of statutory construction, the use of the words "must" and "shall" is generally regarded as mandatory. *In re Parentage of M.J.*, 203 Ill. 2d 526, 535 (2003); *Andrews v. Foxworthy*, 71 Ill. 2d 13, 21 (1978). Thus, under subsection 15.4(a) of the Act, CETS boards, as well as all other ETS boards, are to consist of a minimum of five members, at least three of whom are required to be representative of public safety agencies such as police departments, fire departments, emergency medical service providers, and emergency services and disaster agencies. The remaining two positions are now required to be filled by one public member and, in counties with less than 100,000 inhabitants, by one county board member. See Remarks of Rep. Myers, May 9, 2001, House Debate on Senate Bill No. 530, at 97-98 (noting that in counties of less than 100,000 population, one member of the ETS board must, rather than may, be a county board member and one must be a public member); Remarks of Sen. Burzynski, March 29, 2001, Senate Debate on Senate Bill No. 530, at 150-51. Clearly, appointing a second public member to the exclusion of a county board member or a public safety agency representative would not be in accord with the plain language of subsection 15.4(a). It must be determined, however, whether a second county board member may be appointed as either a public member or as a public safety agency representative.

As discussed above, in opinion No. 91-028, Attorney General Burriss concluded, on the basis of the provisions of section 1 of the Prohibited Activities Act then in effect, and with due regard for potential conflicts in duties under the common law, that one person could not simultaneously hold the offices of county board member and CETS board member. Subsequently, Public Act 87-146 amended both section 1 of the Prohibited Activities Act and subsection 15.4(a) of the Act to permit *one* county board member to serve simultaneously on an ETS board in counties with fewer than 100,000 inhabitants. Ill. Att'y Gen. Op. No. 96-041, issued December 4, 1996. It is within the power of the General Assembly to permit two offices to be held by the same individual, even though such offices would be incompatible at common law. See Ill. Att'y Gen. Op. No. NP-1099, issued May 28, 1976. The clear intention of the amendment to section 1 of the Prohibited Activities Act was to abrogate the statutory conflict and the common law doctrine insofar as it prohibited simultaneous tenure in the offices of county board member and ETS board member.

The General Assembly's action, however, was limited. The amendment authorized only one county board member to serve on an ETS board and only in those counties with a population of less than 100,000; in all other circumstances the common law doctrine remains in effect and the offices are incompatible.<sup>2</sup> Therefore, not more than one county board member is permitted to serve simultaneously on a five-member CETS board in counties with a

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<sup>2</sup>See generally *People v. Wilson*, 357 Ill. App. 3d 204 (2005) (section 1 of the Prohibited Activities Act prohibits a member of the county board from holding any other office, except for several specifically enumerated circumstances).

population of fewer than 100,000 inhabitants, regardless of whether the county board member is designated as a county board member, a public member, or a public safety agency representative. To conclude otherwise would ignore the obvious intent of the statute. See Ill. Att'y Gen. Op. No. 96-041, issued December 4, 1996.

### **Appointment of a Second County Board Member to a Five-Member CETS Board**

Your office has also asked whether a second county board member may be appointed to serve on a five-member CETS board as an "elected official" if one county board member has already been appointed to the CETS board. The revisions to section 1 of the Prohibited Activities Act and subsection 15.4(a) permitting one county board member to serve on a CETS board were specific, limited responses to opinion No. 91-028. Except to the very limited extent that the common law principle of incompatibility has been abrogated by statute, the offices of county board member and CETS board member remain incompatible. The language added by Public Act 87-146 referring to "elected officials" being eligible to serve on the board was no doubt intended only to clarify that elected officials, other than county board members, may serve on an ETS board as the public member or as representatives of public safety agencies without jeopardizing their positions as such. Consequently, a second county board member may not be appointed to serve on a five-member CETS board by virtue of being an "elected official."

### **Public Members and County Board Members on a CETS Board of More Than Five Members**

Your office's third question is whether more than one public member or more than one county board member may serve on a CETS board, if the board is comprised of more than five members appointed by the county board. The language of subsection 15.4(a) regarding the number of public members and county board members who may serve on a CETS board is clear: *one* member of the CETS board "must be a public member[.]" and *one* member of the board, in counties with a population of less than 100,000, "must be a member of the county board[.]" Nothing in the plain language of subsection 15.4(a) expressly or impliedly suggests, however, that additional public members cannot be appointed to a CETS board if the board consists of more than five members. Consequently, more than one public member may serve on a CETS board that is comprised of more than five members.

Although the language regarding county board members and members of the public serving on a CETS board is identical, as previously discussed, county board members are generally precluded from serving on a CETS board due to the doctrine of incompatibility of offices. The conflict has been abrogated by the General Assembly with regard to one county board member per CETS board. To conclude that more than one county board member may serve simultaneously on a CETS board comprised of more than five members would be

Mary Stephenson-Schroeder - 7

inconsistent with the provisions of section 1 of the Prohibited Activities Act and section 15.4 of the Act. Consequently, in counties with a population of less than 100,000, only one county board member may be appointed by a county board to serve on a CETS board at any one time, regardless of the size of the CETS board.

**County Board Members on a CETS Board  
in Counties With a Population of More Than 100,000**

Your office's last question is whether, in counties with a population of 100,000 or more, one county board member may serve on a CETS board pursuant to subsection 15.4(a). Subsection 15.4(a) requires the appointment of one county board member to ETS boards "in counties with a population less than 100,000[.]" The language is silent with respect to the appointment of county board members in larger counties.

Under section 1 of the Prohibited Activities Act, the offices of county board member and CETS board member are incompatible, except to the extent that the General Assembly has acted to permit simultaneous tenure. It is a well established principle of statutory construction that the enumeration of one exception in a statute implies the exclusion of all other exceptions. *People ex rel. Sherman v. Cryns*, 203 Ill. 2d 264, 286 (2003), *cert. denied*, 540 U.S. 818, 124 S. Ct. 83 (2003). By expressly authorizing one county board member to serve on CETS boards "in counties with a population less than 100,000[.]" the General Assembly has, by implication, continued the exclusion of county board members from service on a CETS board in all other instances. Consequently, under section 1 of the Prohibited Activities Act, it is not permissible for a county board member to serve on a CETS board in counties with a population over 100,000. *See generally Wilson*, 357 Ill. App. 3d 204.

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

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OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

**Lisa Madigan**  
ATTORNEY GENERAL

May 27, 2010

I - 10-005

COMPATIBILITY OF OFFICES:  
Township Assessor and Village Trustee

The Honorable Joseph Bruscato  
State's Attorney, Winnebago County  
400 West State, Suite 619  
Rockford, Illinois 61101

Dear Mr. Bruscato:

I have your letter inquiring whether the offices of township assessor and village trustee are compatible, if the corporate boundaries of the two units of local government overlap. For the reasons discussed below, the offices of township assessor and village trustee 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 a township assessor and a village trustee. 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.

## ANALYSIS

### Powers and Duties of Village Trustee

The operations of villages are governed by the Illinois Municipal Code. 65 ILCS 5/1-1-1 *et seq.* (West 2008). The powers of a village are exercised by its board of trustees, which serves as the corporate authorities of the village (65 ILCS 5/1-1-2(2) (West 2008)). The duties of the village board include, among other things, acquiring and holding land for the use of the village (65 ILCS 5/2-3-8, 11-76.1-1 (West 2008)) and selling and leasing realty owned by the village which is no longer needed for corporate purposes. 65 ILCS 5/11-76-1, 11-76-4.1 (West 2008).

### Powers and Duties of Township Assessor

The office of township assessor is created by the Township Code (60 ILCS 1/50-5, 77-5 (West 2008)), which provides for the election of an assessor for a term of four years. The duties of the office are governed by the Property Tax Code (35 ILCS 200/1-1 *et seq.* (West 2008)) and generally include the assessment of all property not exempted from taxation.

Under sections 15-60, 15-70, 15-75, 15-80, and 15-110 of the Property Tax Code (35 ILCS 200/15-60, 15-70, 15-75, 15-80, 15-110 (West 2008)), municipal real property is generally exempted from taxation. There are circumstances, however, in which such property may be taxed. For example, sections 15-60 and 15-80 provide, respectively:

    Taxing district property. All property belonging to any county or municipality used exclusively for the maintenance of the poor is exempt, as is all property owned by a taxing district that is being held for future expansion or development, except if leased by the taxing district to lessees for use for other than public purposes.

    Installment purchase of property by a governmental body. All property that is being purchased by a governmental body under an installment contract pursuant to statutory authority and used exclusively for the public purposes of the governmental body is exempt, except such property as the governmental body has permitted or may permit to be taxed.

In opinion No. 93-008, Attorney General Burriss construed the foregoing provisions and determined that the office of multi-township assessor is incompatible with that of village trustee for a village located within one of the assessed townships, stating:

Property of a village which is not exempted by the foregoing provisions would be subject to taxation. If a multi-township assessor also served as a trustee of a village within an assessed township, he or she would be in the untenable position of determining whether village property was subject to taxation, and of assessing taxable property which belonged to the village. Under these circumstances, it must be concluded that one person could not, in every instance, properly and faithfully perform all of the duties of each office. Ill. Att'y Gen. Op. No. 93-008, issued March 19, 1993, at 3-4.

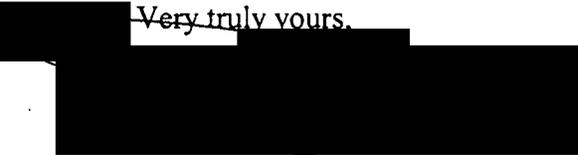
The same analysis is applicable to the offices of township assessor and trustee of a village that have overlapping corporate boundaries. Property of a village which is not exempted by statute would be subject to taxation. If the township assessor also served as trustee of a village which is located in whole or in part within the township which he or she assesses, the dual officeholder would be placed in the position of deciding whether village property was subject to taxation, and of assessing taxable property which belongs to the village. Given these potentially conflicting duties, one person could not, in every instance, properly and faithfully discharge all of the duties of each office. Accordingly, the offices of township assessor and village trustee are incompatible, and one person may not hold both offices simultaneously.

### CONCLUSION

Because of a potential conflict in duties, absent a statutory provision otherwise providing, a township assessor may not serve simultaneously as a village trustee.

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

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OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

Lisa Madigan  
ATTORNEY GENERAL

January 31, 2005

I - 05-002

COMPATIBILITY OF OFFICES:  
Village Trustee and Township  
Highway Commissioner

The Honorable Julia Rietz  
State's Attorney, Champaign County  
101 East Main Street  
P.O. Box 785  
Urbana, Illinois 61801

Dear Ms. Rietz:

I have your predecessor's letter wherein he inquired whether one person may simultaneously hold the offices of township highway commissioner and village trustee, where the village is located entirely within the township. Because of the nature of the inquiry, I do not believe that the issuance of an official opinion is necessary. I will, however, comment informally upon the question that has been 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 office. *People ex rel. Fitzsimmons v. Swailes*, 101 Ill. 2d 458, 465 (1984); *People v. Claar*, 293 Ill. App. 3d 211, 217 (1997), *appeal denied*, 177 Ill. 2d 574 (1998); *People ex rel. Myers v. Haas*, 145 Ill. App. 283, 286 (1908). There is no constitutional or statutory provision which prohibits one person from serving simultaneously as both a township highway commissioner and a village trustee. 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 the duties of the other.

Pursuant to section 73-5 of the Township Code (60 ILCS 1/73-5 (West 2002)), the township highway commissioner in a road district comprised of a single township exercises the powers and duties provided in article 6 of the Illinois Highway Code. 605 ILCS 5/6-101 *et seq.* (West 2002); 605 ILCS 5/6-201 (West 2002). A review of the provisions of article 6 of the Highway Code indicates that it is among the township highway commissioner's duties: (1) to have general charge of the roads of the district (605 ILCS 5/6-201.8 (West 2002)); (2) to construct, maintain and repair roads within the district and let contracts, employ labor and purchase materials and machinery therefor (605 ILCS 5/6-201.7 (West 2003 Supp.)); and (3) to lay out, alter, widen or vacate township roads (605 ILCS 5/6-201.2 (West 2002)).

The township highway commissioner is also authorized, pursuant to the provisions of the Illinois Highway Code, to enter into various types of cooperative relationships with municipal authorities. Specifically, the township highway commissioner may: (1) enter into agreements with the corporate authorities of any municipality for the lease or exchange of idle machinery, equipment or tools belonging to the district, upon such terms and conditions as may be mutually agreed upon (605 ILCS 5/6-201.10 (West 2002)); (2) contract with the corporate authorities of any municipality to furnish or obtain services and materials related to the construction, maintenance or repair of roads (605 ILCS 5/6-201.10-1 (West 2002)); and (3) with the consent of the Illinois Department of Transportation, turn over to any municipality lying wholly within the road district, moneys from the regular road taxes to be used by the municipality for the construction of State and county highways and municipal streets within its corporate limits (605 ILCS 5/6-511 (West 2002)).

Similarly, the village board of trustees serves as the corporate authorities of the village (65 ILCS 5/1-1-2(2) (West 2002)), and is authorized to adopt ordinances that carry into effect the statutory powers granted to villages. 65 ILCS 5/1-2-1, 3.1-45-5 (West 2002). The village board has been granted the general statutory authority to construct, maintain and improve streets and roads within the municipality. 605 ILCS 5/7-101 (West 2002). Moreover, the village board may acquire property by eminent domain, including property outside of, but adjacent and contiguous to, the corporate limits of a municipality where required for street and highway purposes (65 ILCS 5/11-61-1 (West 2002)).

In addition, pursuant to section 6-507 of the Illinois Highway Code (605 ILCS 5/6-507 (West 2002)), the village board may expend certain funds received from a township road district's tax levy to improve roads and streets within or outside the village. Any moneys expended by a village to improve township roads, however, must be expended with the consent of the township highway commissioner. If the village has not appropriated the moneys transferred by the township road district within one year after receipt thereof, then the unappropriated funds are to be returned to the treasurer of the township road district and used for road purposes within that district.

Based upon the foregoing, it is clear that potential conflicts in the duties of these offices could prevent one person from faithfully discharging the duties of each simultaneously. A township highway commissioner, in exercising the duties granted to that office under the Illinois Highway Code, has a duty to protect and represent the best interests of the township road district. A village trustee has a concomitant duty to protect and represent the best interests of the village. The fulfillment of these duties is subject to compromise where the same individual holds both the office of township highway commissioner and that of village trustee, because a person holding both offices could be placed in the position of favoring one governmental entity to the detriment of the other.

In this regard, one potential area of conflict relates to the use of tax moneys for road or highway purposes. As previously noted, a village may use certain road district moneys with the consent of the township highway commissioner. If the funds are not used, the moneys revert to the township road district for its use. A township highway commissioner is also authorized to transfer the proceeds from the regular road tax levy to a village for the construction of highways and streets. Clearly, a person simultaneously holding the offices of village trustee and township highway commissioner could not fairly represent the interests of each unit of government in deciding the appropriate use of tax dollars for highway purposes. *See Ill. Att'y Gen. Op. No. UP-870, issued February 28, 1963 (finding the offices of village trustee and township highway commissioner to be incompatible).*

Additionally, both the township highway commissioner and the village board are expressly authorized to enter into various contractual arrangements with the other for the provision of services and materials, the lease of equipment and machinery, and the construction of road improvements. If an individual were to serve as both a village trustee and a township highway commissioner, and those units of government were to enter into a contract, he or she would be required to protect the interests of both the village and the road district. It has long been established, however, that one person cannot adequately represent the interests of two governmental units when those units contract with one another. 1991 Ill. Att'y Gen. Op. 188, 189; 1975 Ill. Att'y Gen. Op. 37, 43-47; Ill. Att'y Gen. Inf. Op. No. I-01-025, issued May 23, 2001.

Because of the potential conflicts in the duties of these offices, a person who serves simultaneously as both a village trustee and a township highway commissioner would not be able to represent the interests of both entities adequately, fully and faithfully. Therefore, the two offices are incompatible and one person cannot simultaneously hold both.

The Honorable Julia Rietz - 4

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

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NEIL F. HARTIGAN  
ATTORNEY GENERAL  
STATE OF ILLINOIS  
SPRINGFIELD  
62706

February 3, 1989

I - 89-011

COMPATIBILITY OF OFFICES:  
The Offices of Village Trustee and  
Township Library Trustee Are  
Incompatible

Honorable Richard Goff  
State's Attorney, DeWitt County  
County Building  
201 West Washington Street  
Clinton, Illinois 61727

Dear Mr. Goff:

I have your predecessor's letter regarding whether one person may simultaneously hold the offices of village trustee and trustee of a township library located within the village. Because of the nature of the inquiry, I do not believe that the issuance of an official opinion will be necessary. Therefore, I will comment informally on the question that has been 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), 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 village trustee and as a township library board member. Therefore, it must be determined whether the duties of either office are such

Honorable Richard Goff - 2.

that the holder of one cannot fully and faithfully discharge all of the duties of the other.

Although a village could not enact ordinances which would interfere with a township library's statutory powers and duties, a township library located within a village would be subject to local ordinances in general. Where a statutory mandate and local regulation are not irreconcilable, effect must be given to both. (See generally Village of Swansea v. County of St. Clair (1977), 45 Ill. App. 3d 184.) In such situations, the interests of the village and the township library could be divergent and contrary. A person holding office on the governing bodies of both a village and a township library located within the village could be placed in the position of favoring one governmental entity to the detriment of the other.

Another area of potential conflict arises from the statutory authority granted to both villages and township libraries to exercise the power of eminent domain. (Ill. Rev. Stat. 1987, ch. 24, par. 11-61-1; ch. 81, par. 4-7(13).) A village trustee who also serves as a township library trustee would be subject to a conflict of duties if the governing bodies were to oppose each other in the taking of property. Similarly, the purchase or lease of village property by the township library board would make it impossible for a person holding both offices to fairly represent the interests of the library and the village in such a transaction.

Other potential conflicts relate to contracts between the village and the township library. A township library is authorized by statute to contract with any public corporation or entity for specified purposes. (See Ill. Rev. Stat. 1987, ch. 81, par. 4-7(8).) In addition, the Intergovernmental Cooperation provisions of the Illinois Constitution (Ill. Const. 1970, art. VII, § 10) and the Intergovernmental Cooperation Act (Ill. Rev. Stat. 1987, ch. 127, par. 741 et seq.) grant villages and other governmental units, such as public libraries, broad powers to contract or otherwise associate among themselves to obtain or share services, powers or functions. Again, if one person were to hold both of the offices in question, he or she could not fully represent the interests of both governmental units when those units contract with each other.

For the reasons stated above, it appears that the office of village trustee is incompatible with the office of township library trustee, and, therefore, one person cannot simultaneously hold both offices.

Honorable Richard Goff - 3..

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

August 9, 1989

I - 89-043

COMPATIBILITY OF OFFICES:  
Township Trustee and Fire  
Protection District Trustee  
or Village Trustee

Honorable Gordon Lustfeldt  
State's Attorney, Iroquois County  
Iroquois County Courthouse  
Watseka, Illinois 60970

Dear Mr. Lustfeldt:

I have your letter wherein you inquire whether the offices of village trustee and township trustee, and the offices of fire protection district trustee and township trustee, are incompatible. Because of the nature of your inquiry, I do not believe that an official opinion of the Attorney General is required. I will, therefore, comment informally upon the question you have raised.

As laid down in the case of People ex rel. Myers v. Haas (1908), 145 Ill. App. 283, the common law rule is that two offices are incompatible where either the constitution or a statute specifically prohibits the occupant of either office from holding the other, or where, because of the duties of either office, a conflict of interest may arise or the holder

of one office cannot, in every instance, properly and faithfully perform all of the duties of the other. Applying this rule, Attorney General Scott advised in opinion No. NP-962, issued September 24, 1975, that the offices of township supervisor and township auditor (now township trustee) were incompatible with the office of city commissioner because of the conflict of duties that could arise from the exercise of the broad powers of the township board of trustees and the city council to contract with each other for the provision of a wide range of services to their residents. The dual officeholder would not be able to represent both units of government fully and fairly where, for example, a service is to be provided pursuant to a contract between the city and the township.

Like the city council in the commission form of government, the village board of trustees serves as the corporate authorities for the village (Ill. Rev. Stat. 1987, ch. 24, par. 1-1-2(2)). As such, the village board may contract with any township in the county within which the village is located to furnish police protection outside of the village. (Ill. Rev. Stat. 1987, ch. 24, par. 11-1-7.) The village and the township within which the village lies also have the power to contract with each other for the construction of such public improvements as bridges, subways, elevated ways, viaducts and roadway improvements. (Ill. Rev. Stat. 1987, ch. 24, par. 11-85-1.) In addition, the village board may authorize contracts to perform governmental services with townships (Ill. Rev. Stat. 1987, ch. 127, pars. 745, 742) and may exercise its powers jointly with townships and other units of local government (Ill. Rev. Stat. 1987, ch. 24, par. 1-1-5; ch. 127, pars. 743, 742). The board of town trustees is specifically authorized to enter into contracts with municipalities for the establishment or maintenance of youth service bureaus (Ill. Rev. Stat. 1987, ch. 139, par. 126.13) and to contract with any other governmental entity for the provision of a wide range of services, including public safety, environmental prosecution, public transportation, health, recreation, library and social services, to township residents (Ill. Rev. Stat. 1987, ch. 139, par. 126.10). The town board may also be authorized by the town electors to contract with municipalities or the county for the provision of police protection in areas of the township not located within the incorporated area of a municipality having a regular police department (Ill. Rev. Stat. 1987, ch. 139, par. 39.29) or in unincorporated areas of the township (Ill. Rev. Stat. 1987, ch. 139, par. 39.30). Townships are also authorized to construct or purchase and to operate waterworks and sewerage systems and may extend and improve such systems to serve a municipality which is located in the township and which does not own or operate its own waterworks or sewerage system. (Ill. Rev. Stat. 1987, ch. 139, pars. 160.32, 160.40.) A township that

chooses to operate a waterworks system may contract with municipalities for a supply of water for the township's system. (Ill. Rev. Stat. 1987, ch. 135, par. 160.41.)

It appears, therefore, that the reasoning of opinion No. NP-962 is also applicable to the offices of village trustee and township trustee, and that these offices are incompatible. I have enclosed a copy of opinion No. NP-962 for your reference.

In opinion No. UP-946, issued June 6, 1963, Attorney General Clark advised that the offices of fire protection district trustee and township auditor (township trustee) were not incompatible. He found no constitutional or statutory provision declaring the offices to be incompatible, and examination of pertinent statutory provisions revealed no conflict of interest between the duties of these offices. The reasoning of that opinion still appears to be valid. Consequently, it appears that one person would not be prohibited from simultaneously holding the offices of fire protection district trustee and township trustee.

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

Enclosure