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Ms. Amanda Koch  
County Board Member  
County of Will



Veteran's Assistance Commission  
C/O Paul O'Grady  
Peterson, Johnson & Murray  
200 West Adams Street, Suite 2125  
Chicago, Illinois 60606-5213

Re: Simultaneous service as County Board Member and Veterans Assistance Commission Delegate

Dear Member Koch:

As you are aware, questions have been raised as to whether you may serve as a Member of the Will County Board and simultaneously as a Delegate of the Veterans Assistance Commission, (herein, "Delegate"). In response, I have researched the following: the Public Officer Prohibited Activities Act, 50 ILCS 105, et seq., (herein, "Act") and the common law Doctrine of Compatibility of Offices. I will first address the Act, the relevant portion of which states:

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) alderperson 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. This Section shall not preclude a member of the county board from being appointed or selected to serve as (i) a member of a County Extension Board as provided in Section 7 of the County Cooperative Extension Law, (ii) a member of an Emergency Telephone System Board as provided in

Section 15.4 of the Emergency Telephone System Act, (iii) a member of the board of review as provided in Section 6-30 of the Property Tax Code, or (iv) a public administrator or public guardian as provided in Section 13-1 of the Probate Act of 1975. 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.

To be in violation of the Act you would have to be a County Board Member and you would have to hold another office that is not exempt from the Act. There is no question that you are a member of the Will County Board. You also appear to hold a position as a Delegate.<sup>1</sup> As you can see from reading the relevant portion above, there is no specific exemption within the Act itself that allows a person to hold both positions simultaneously. Furthermore, I have reviewed both the Counties Code, Chapter 55 of the Illinois Compiled Statutes and the Military Veterans Assistance Act, 330 ILCS 45/1 and I found nothing specifically authorizing a county board member to simultaneously serve as a Delegate. That being said, the inquiry cannot end there. Two questions still remain...1 - Does the position of "Delegate" fall within the definition of "office" as intended by the General Assembly? 2 - Is the Veterans Assistance Commission a unit of local government and if so, is there a contractual relationship between the VAC and the County of Will?

There is no definition of the term "office" in the Act, nor is there a definition of the term "office" in the Statute on Statutes, 5 ILCS 70 et seq. As such, I turned to the common meaning of the term "office" and then to case law. *Funk & Wagnalls New International Dictionary of the English Language* defines "office" as, "A particular duty, charge, or trust; an employment undertaken by commission or authority; a post or position held by an official or functionary; specifically, a position of trust or authority under a government..." In my review of various court decisions, I found that the courts ascribe to a similar definition.

In *People of the State of Illinois by Edward J. Brundage, Attorney General v. Francis P. Brady*, 223 Ill.App. 95 (herein, *People v. Brady*) the court considered in the context of a quo warranto action, whether the position of county central committeeman was an "office." In examining the question, the Court found that the term "office" necessarily implied a "public office" involving in its "performance the exercise of some portion of the sovereign power, whether great or small, and in whose proper performance all citizens, irrespective of party, are interested, either as members of the entire body politic, or of some duly established division of it." Acknowledging that the position of county central committeeman was created by law and the election thereto regulated by statute, the Court nevertheless found that the position was not public in nature. Rather the court found that the position represented a purely voluntary association that represented neither the State, nor any of the branches of government, judicial, legislative nor executive.

Although the position of Delegate has some similarities with the position of county central committeeman, the similarities are not enough to designate the position as that of a private body. It is true that the position of Delegate is filled by the various veteran service

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<sup>1</sup> Questions have been raised as to whether you were properly appointed as a Delegate. For purposes of this opinion, I will assume that you were properly appointed.



organizations, (herein, "VSO") within the geographic border of a specific unit of local government and that VSOs are private voluntary organizations, holding no governmental authority or function of government. On the other hand, both the VAC and the position of Delegate are created by legislation enacted by the General Assembly. The position of county central committeeman was not created by legislation, rather legislation merely regulated the manner in which the committeeman was elected. The Court in *People v. Brady* found that the duties of a county central committeeman related entirely to the interests of the non-governmental volunteer organization. That is not the case with the position of Delegate. The duties of a Veterans Assistance Commission to which Delegates are appointed include:

- To recommend such sums as may be just and necessary for the assistance of military veterans and their families. (Sec. 9 & Sec. 2)
- If the county board fails to provide such sums, apply to the circuit court for relief by mandamus. (Sec. 9 & Sec. 2)
- The adoption of procedures and regulations for the superintendent of the Veterans Assistance Commission to follow. (Sec. 9)
- To publish notice to each post, camp, unit, chapter, ship, or detachment of a military veterans organization within their respective county calling on them to select Delegates and alternates for that county's Veterans Assistance Commission.

These are duties that fall squarely within the ambit of executive functions of the government. In the case of *People v. Drish*, 24 Ill.App.3d 225(1974), the court was presented with the question of whether a member of a city planning commission was a public office. In that case, the court opined that "the most important characteristic distinguishing public employees from others was that the creation of the office involves a delegation of some of the sovereign functions of the government." Even though the planning commission was merely an advisory body, the court found that a member of the planning commission was a public office. Using the same criteria that the court applied in *Drish*: 1-The position is created by the legislature; 2 – The position is continuous; 3- The position exercises some portion of the sovereign power; the same conclusion should be reached here. Most persuasive is the case of *Makowicz v. County of Macon*, 78 Ill.2d 1302, 32 Ill.Dec. 774 (1980), in which the Illinois Supreme Court, while stopping short of finding the VAC a unit of local government, nonetheless found that it was not a private body or group and in so doing found that the statutorily prescribed procedure for the appointment of the superintendent by the commission is constitutional. Interpreting the cases together, we can clearly come to the conclusion that the VAC is a public body exercising executive functions and therefore the position of Delegate is an office.

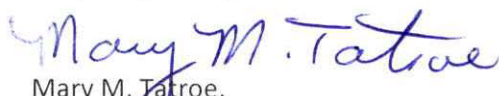
In reviewing the issue of whether the VAC is a unit of local government, I was unable to find any definitive caselaw. As indicated above the Illinois Supreme Court in *Makowicz* declined to decide the specific issue but did find that it was not a private body or group. The remaining issue relative to the Act is whether there is a contractual relationship between the VAC and the County. As you are undoubtedly aware, the County provides a variety of services to the VAC including but not limited to payroll, HR and audit services. Whether these services are provided pursuant to the terms of a written agreement or whether they are provided via custom and practice, they are such that in my opinion a court would find it an impediment to holding dual offices. Regardless of the probable outcome of potential litigation over these issues, in view of

my analysis of the issue of incompatibility of office below, it is not necessary for me to investigate these matters any further.

Finally, I will touch on the issue of incompatible offices. In the seminal case of *People v. Haas*, 145 Ill.App. 283 (Dist.1 1908) the court set forth the common law principle of incompatibility of office as follows, "Incompatibility, in this connection, is present when the written law of a state specifically prohibits the occupant of either one of the offices in question from holding the other and, also, where the duties of either office are such that the holder of the office cannot in every instance, properly and fully, faithfully perform all the duties of the other office." As set forth above, the Public Officer Prohibited Activities Act, prohibits a County Board member from holding any other office unless a specific exemption is set forth in statute or unless it is a position with a unit of local government with which there is no contractual relationship.

However, resolving the question of whether the VAC is a unit of local government and whether there is a contractual relationship between the VAC and the County does not end the inquiry. We must still address the question of whether a person holding both the office of county board member and Delegate can in every instance, properly and fully, faithfully perform all the duties of the other office. In the case of *People v. Swailes*, 101 Ill.2d 458 (1984), the court considered whether the position of county board member and township assessor were incompatible. In deciding that the positions were incompatible, the Court pointed out that although there was no statutory prohibition to holding both offices simultaneously, that nevertheless, the position of county board member held both supervisory and budgetary authority over the position of supervisor of assessment, which in turn had general supervisory authority over the position of township assessor. Therefore, should a township assessor simultaneously hold the position of county board member they would be in a position to unduly influence an officer who is charged with monitoring their activities. Consequently, one person cannot properly, fully and faithfully perform all the duties of both offices. This is not unlike the simultaneous service as both a VAC Delegate and county board member. The Military Veterans Assistance Act that is currently in effect requires a County Board appropriate such sums as is recommended by the Veterans Assistance Commission. If the County Board fails or refuses to appropriate such funds, the VAC is then authorized to apply to the Circuit Court for mandamus to require the County Board to appropriate such necessary funds. An individual cannot represent two opposing interests in establishing a budget. Furthermore, if the bodies were at serious odds with each other the individual would find themselves in a position of being a participating member of two boards involved in litigation as opposing parties. That cannot happen. Based upon the foregoing, the offices of county board member and Delegate to the VAC are incompatible offices.

Very Truly Yours,

  
Mary M. Tatroe,  
Civil Division Chief