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ATTORNEY GENERAL
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I-93-013

GOVERNMENTAL ETHICS &
CONFLICT OF INTEREST:
Fire Protection District
Trustee Serving as a Volunteer
Firefighter

Honorable Larry S. Vandernick
State's Attorney, Henry County
100 South Main Street
Cambridge, Illinois 61238

Dear Mr. Vandernick:

I have your letter wherein you inquire whether a fire protection district trustee may serve simultaneously as an unpaid volunteer firefighter of the fire protection district of which he or she is an officer. Because of your need for an expedited response, I will comment informally upon the question you have raised.

Initially, I note that the common law doctrine of incompatibility of offices, which precludes one person from simultaneously holding two public offices in circumstances in which the duties of one office may interfere with the full and faithful performance of the duties of the other, is not applicable to positions which constitute mere employment. (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.) The primary indicia of public office, as distinguished from public employment, is that the holder of an

office has been authorized to exercise some portion of the sovereign power. (Wargo v. Industrial Commission (1974), 58 Ill. 2d 234, 236-37.) In reviewing the duties and powers of volunteer firefighters, the Illinois courts have concluded that volunteer firefighters are employees, and not officers of the unit of government which they serve. (Village of Creve Coeur v. Industrial Commission (1965), 32 Ill. 2d 430, 433; Daniels v. City of Venice, (1987), 162 Ill. App. 3d 788, 790.) Consequently, because the position of volunteer firefighter does not constitute a public office, the doctrine of incompatibility of offices would not be applicable to preclude a person from simultaneously serving as a fire protection district trustee and a volunteer firefighter of the fire protection district.

With respect to potential prohibited pecuniary interests, section 3 of the Public Officer Prohibited Activities Act (Ill. Rev. Stat. 1991, ch. 102, par. 3, as amended by Public Acts 87-855, effective July 1, 1992, 87-1197, effective September 25, 1992; 50 ILCS 105/3 (West 1992)) and section 4 of the Fire Protection District Act (Ill. Rev. Stat. 1991, ch. 127 1/2, par. 24; 70 ILCS 705/4 (West 1992)) respectively provide, in pertinent part:

"§3. (a) No person holding any office, either by election or appointment under the laws or constitution of this state, may be in any manner interested, either directly or indirectly, in his own name or in the name of any other person, association, trust or corporation, in any contract or the performance of any work in the making or letting of which such officer may be called upon to act or vote. * * * Any contract made and procured in violation hereof is void.
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(Emphasis added.)

"§4. * * *

* * *

* * * No trustee or employee of such district shall be directly or indirectly interested financially in any contract work or business or the sale of any article, the expense,

price or consideration of which is paid by the district; nor in the purchase of any real estate or other property, belonging to the district, or which shall be sold for taxes or assessments or by virtue of legal process at the suit of the district. Nothing in this Section prohibits the appointment or selection of any person or trustee or employee whose only interest in the district is an owner of real estate in such fire protection district or of contributing to the payment of taxes levied by the district. * * *

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(Emphasis added.)

Section 3 of the Public Officer Prohibited Activities Act and section 4 of the Fire Protection District Act do not, per se, prohibit one person from serving a unit of local government in two capacities. However, those provisions would be violated if a fire protection district trustee possessed a personal pecuniary interest in a contract entered into by the fire protection district board, and was not exempted by compliance with the de minimus interest provisions thereof (see Ill. Rev. Stat. 1991, ch. 102, par. 3(c); ch. 127 1/2, par. 4(c).) In this situation, it appears that a violation of those provisions could occur if the fire protection district compensates its volunteer firefighters for their personal services, or if the fire protection district provides group life, health, accident, hospital or medical insurance for the benefit of its firefighters and pays the premiums for such insurance, since the trustee would, as a volunteer firefighter, be pecuniarily benefitted thereby while standing in a position, as a trustee, to vote or act upon the provision of the compensation or benefits. (Ill. Rev. Stat. 1991, ch. 127 1/2, par. 26; 70 ILCS 705/6 (West 1992)).

You have indicated in your letter that the fire protection district's volunteer firefighters receive no compensation for their services. If this is correct, then a trustee in these circumstances would not be called upon to fix the compensation for his or her own services as a volunteer firefighter, thereby avoiding a violation of either Act. Since we have not been furnished with information concerning the fire protection district's provision of insurance benefits to its volunteer firefighters, however, we cannot determine whether section 3 of the Public Officer Prohibited Activities Act and section 4 of the Fire Protection District Act may be violated in these circumstances. Assuming that no insurance benefits

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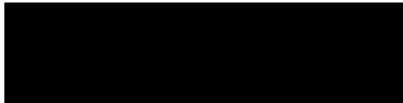
are provided to the district's volunteer firefighters at the expense of the district, or that the de minimis exceptions provided in subsection 3(c) of the Public Officer Prohibited Activities Act and subsection 4(c) of the Fire Protection District Act can be complied with, the mere fact that a fire protection district trustee serves as volunteer firefighter would not appear to result in a per se violation of either Act.

I would further note that although a fire protection district trustee may not be precluded from serving as a volunteer firefighters in the circumstances you have described, other interests which could interfere with his or her duty of fidelity as a public officer must be recognized. A trustee's duties may, for example, include participating in determining the terms and conditions of employment of the district's fire chief (Ill. Rev. Stat. 1991, ch. 127 1/2, par. 26; 70 ILCS 705/6 (West 1992)) and supervising the performance of the chief in carrying out his or her duties. The chief will, in turn, supervise volunteer firefighters, including a trustee who also serves as a volunteer firefighter. This relationship appears to create what is generally referred to as a common law conflict of interest.

It is well established that where a member of a governmental body has a personal interest in a matter coming before the body, he or she is disqualified from voting or otherwise acting thereon pursuant to common law conflict of interest principles. (In re Heirich (1956), 10 Ill. 2d 357, 384, appeal denied 355 U.S. 805; In re Betts (1985), 109 Ill. 2d 154, 168; see also Annotation 10 ALR 3d 694.) Thus, in opinion No. 92-026 (1992 Ill. Att'y Gen. Op. 92-026, issued October 27, 1992), Attorney General Burriss advised that a board member should abstain from voting or acting upon matters from which he or she may be personally benefitted, including those matters which directly relate to persons who serve as their supervisors in their employment relationships. Consequently, in order to avoid a possible breach of the duty of fidelity, it appears that a fire protection district trustee who also serves as a volunteer firefighter should abstain from acting upon any matters which relate to the district's fire chief or other issues which could result in a personal advantage or disadvantage to the interested trustee.

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

Very truly yours,


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