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STATE OF ILLINOIS  
April 22, 1992

FILE NO. 92-006

COMPATIBILITY:  
Township Supervisor and  
Deputy Assessor

Honorable Henry Bergmann  
State's Attorney, Clinton County  
Clinton County Courthouse  
Carlyle, Illinois 62232

Dear Mr. Bergmann:

I have your predecessor's letter wherein he inquired whether one person may hold the offices of deputy assessor of a multi-township assessment district and township supervisor of a township located within the multi-township assessment district simultaneously. For the reasons hereinafter stated, it is my opinion that the two offices are incompatible; therefore, one person may not lawfully hold the offices simultaneously.

Two public offices are deemed to be incompatible where the written law of the State specifically prohibits the occupant of either one of the offices in question from holding the other, or where the duties of the two offices are such that

the holder of one cannot, in every instance, fully and faithfully discharge all of the duties of the other office. (People ex rel. Myers v. Haas (1908), 145 Ill. App. 283, 286; Rogers v. Village of Tinley Park (1983), 116 Ill. App. 3d 437, 440.) Because the doctrine of incompatibility extends only to public offices, and not to employment relationships (1975 Ill. Att'y Gen. Op. 278), the initial inquiry must be whether both positions in question constitute offices. Indicia of public office include the creation of the position by law, the requirement of an oath or a bond, duties prescribed by law rather than by contract or agreement and the continuous nature of the duties of the position without regard to the particular person who holds the position. Wargo v. Industrial Commission (1974), 58 Ill. 2d 234, 237; People v. Brady (1922), 302 Ill. 576, 582.

The position of township supervisor is unquestionably a public office. By statute, the township supervisor is the chief executive officer of the town (Ill. Rev. Stat. 1989, ch. 139, par. 101), is a member and chairman of the board of town trustees (Ill. Rev. Stat. 1989, ch. 139, par. 117), must take an oath of office (Ill. Rev. Stat. 1989, ch. 139, par. 84) and must give bond to the town (Ill. Rev. Stat. 1989, ch. 139, par. 100).

The status of the position of deputy assessor, however, is not so evident. Section 2.1 of the Revenue Act of 1939 (Ill. Rev. Stat. 1989, ch. 120, par. 483.1) provides that

deputy assessors, together with clerks and secretaries, may be "employed" on an annual, monthly or daily basis. The Act also provides, however, that a multi-township assessor may "appoint" one or more suitable persons to assist in making the assessment required by the Act. (Ill. Rev. Stat. 1989, ch. 120, pars. 482.6, 483.1) "Assessment" is the making of an official estimate of the value of property for the purpose of taxation (People ex rel. Village of Park Forest v. Cullerton (1958), 13 Ill. 2d 575, 578), and taxation is part of the sovereign power of the State. (See, Anderson v. City of Park Ridge (1947), 396 Ill. 235, 244) The board of trustees of the multi-township assessment district must levy a tax to finance the operations of the multi-township assessor, including the payment of compensation for necessary deputies. (Ill. Rev. Stat. 1989, ch. 120, pars. 482.5, 482.6 and 483.4) The deputy of a multi-township assessor must, "before entering upon the duties of his office", take and subscribe to an oath that he will faithfully discharge all the duties of the "office" of deputy assessor. (Ill. Rev. Stat. 1989, ch. 120, par. 488.) It has been said of a deputy assessor that "[h]e is pro hac vice the assessor and his act is in law the act of the assessor"; the deputy, therefore, has the same authority to make the assessment of real property as his principal. (People ex rel. Cutmore v. Harding (1929), 333 Ill. 384, 389-90.) Additionally, the positions of assistant assessor of a township (1927 Ill. Att'y Gen. Op. 225) and deputy assessor of the

supervisor of assessments (opinion No. NP-785, issued July 18, 1974) have been treated as offices for purposes of applying the doctrine of incompatibility of offices. Based upon the foregoing, it is my opinion that the position of deputy assessor of a multi-township assessment district is a public office, and that the doctrine of incompatibility will therefore apply to the holder thereof.

There is no statutory or constitutional prohibition against holding the offices of township supervisor and deputy assessor of a multi-township assessment district; consequently, it is necessary to determine whether there is any potential conflict in the duties of the two offices.

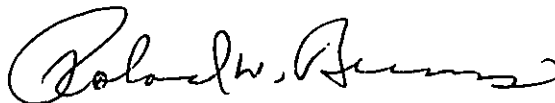
The supervisor of each township comprising a multi-township assessment district is, ex officio, a member of the board of trustees of the assessment district. (Ill. Rev. Stat. 1990 Supp., ch. 120, par. 482.3.) That board is required to adopt a budget for the district after one is prepared by the multi-township assessor and presented to the board, to determine the amount required and permitted by law to finance the operations of the office of the multi-township assessor and to levy the taxes necessary to provide the funds required by the budget. (Ill. Rev. Stat. 1989, ch. 120, par. 482.5; Ill. Rev. Stat. 1990 Supp., ch. 120, par. 482.3.) The board is also required to set the salary of the multi-township assessor. (Ill. Rev. Stat. 1989, ch. 120, par. 482.6) A supervisor who

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also holds the office of deputy assessor would, therefore, be in the position of approving the budget and salary of the multi-township assessor by whom he will be appointed. The supervisor's compensation as deputy assessor would be established by the assessor within budgetary limitations established by the board of which the supervisor is a member. Incompatibility is established when a dual office holder has the authority, as holder of one office, to act on the budget and salary of his superior in the other office. (People ex rel. Teros v. Verbeck (1987), 155 Ill. App. 3d 81, 83-84.) These are precisely the circumstances present under the facts you have provided.

It is my opinion, therefore, that the offices of deputy assessor of a multi-township assessment district and supervisor of a township which is part of that district are incompatible. Consequently, one person may not simultaneously hold both offices.

Respectfully yours,



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