



ROLAND W. BURRIS  
ATTORNEY GENERAL  
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October 25, 1994

FILE NO. 94-021

COMPATIBILITY OF OFFICES:  
County Board Member and  
Community College Board Trustee

Honorable Henry F. Bergmann  
State's Attorney, Clinton County  
850 Fairfax, Room 5  
Carlyle, Illinois 62231

Dear Mr. Bergmann:

I have your letter wherein you inquire whether one person may simultaneously serve as both a county board member and a trustee of a community college, part of the territory of which is located within the county. For the reasons hereinafter stated, it is my opinion that the offices in question are incompatible, and, therefore, one person may not simultaneously hold both offices.

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

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instance, properly and faithfully perform all of the duties of the other. (Rogers v. Village of Tinley Park (1983), 116 Ill. App. 3d 437, 440-41; People ex rel. Myers v. Haas (1908), 145 Ill. App. 283, 286.) There is no constitutional or statutory provision which prohibits one person from simultaneously serving as both a county board member and a community college board trustee. The issue, therefore, is whether the duties of either office are such that the holder of one cannot fully and faithfully discharge all of the duties of the other.

There are at least two specific circumstances in which the duties of the officers in question could conflict. Firstly, section 3-42.2 of the Public Community College Act (110 ILCS 805/3-42.2) (West 1992)) grants to the board of trustees of a community college district the power:

"To establish parking regulations, to regulate, and control the speed of, travel on all paths, driveways and roadways which are owned and maintained by, and within the property of, the community college district, to prohibit the use of such paths, driveways and roadways for racing or speeding purposes, to exclude therefrom traffic and vehicles, and to prescribe such fines and penalties for the violation of such traffic regulations as cities and villages are allowed to prescribe for the violation of their traffic ordinances.

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The local community college board may enforce the provisions of this Section by use of members of the Security Department of the community college or by agreeing in writing

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with a municipality, county or the State for its law enforcement officers to provide such enforcement." (Emphasis added.)

Under this provision, a county and a community college district are expressly authorized to enter into an agreement regarding the use of county law enforcement services for purposes of parking and traffic regulation in the community college district. A community college board trustee and a county board member, however, are under similar duties to represent and protect the interests of the governmental entity which he, or she serves. It is well established 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. 30, 32; 1976 Ill. Att'y Gen. Op. 116, 117.

Secondly, under subsection 10(d)(11) of the County Economic Development Project Area Tax Increment Allocation Act of 1991 (55 ILCS 90/10(d)(11) (West 1992)), counties are specifically required to enter into an agreement with any community college district located within a tax increment financing district with respect to the payment of certain economic development project costs. In such situations, the interests of the county and the community college district could be divergent and contrary. A person holding office on the governing bodies of both a county and a community college located within the county could be placed

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in the position of favoring one governmental entity to the detriment of the other.

Moreover, I note that the Intergovernmental Cooperation clause of the 1970 Illinois Constitution (Ill. Const. 1970, art. VII, § 10) and the provisions of the Intergovernmental Cooperation Act (5 ILCS 220/1 et seq. (West 1992)) grant to counties and other governmental units, such as community college districts, broad powers to contract or otherwise associate among themselves to obtain or share services, powers or functions. Again, if one person were to hold the offices in question, he or she could not fully represent the interests of both governmental units should those units contract with each other.

Accordingly, because of the potential conflicts in the duties of these offices, it is my opinion that the office of county board member is incompatible with that of trustee for a community college located within the county. One person, therefore, may not simultaneously hold both offices.

Respectfully yours,

A handwritten signature in cursive script, reading "Roland W. Burris".

ROLAND W. BURRIS  
ATTORNEY GENERAL