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ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

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FILE NO. 91-015

COMPATIBILITY OF OFFICES:
Offices of County Housing Authority
Commissioner, Trustee of River
Conservancy District, and Mayor of City

Honorable Thomas J. Foster
State's Attorney, Gallatin County
Post Office Box 412
Shawneetown, Illinois 62984

Dear Mr. Foster:

I have your letter wherein you inquire whether one person may simultaneously hold the offices of commissioner of a county housing authority, trustee of a river conservancy district and mayor of a city which is located within the jurisdictional territory of both the county and the district. For the reasons hereinafter stated, it is my opinion that one person may hold both the offices of mayor of a city and

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commissioner of a county housing authority within the jurisdiction of which the city lies, but that the office of trustee of a river conservancy district is incompatible with either of the other two offices.

Incompatibility between offices arises 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), 148 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 prohibiting simultaneous tenure in the offices mentioned in your letter. To the contrary, section 3 of the Housing Authority Act (Ill. Rev. Stat. 1989, ch. 67 1/2, par. 3) provides, in the fourth paragraph thereof:

" * * *

* * * Any public officer shall be eligible to serve as a commissioner [of a housing authority], and the acceptance of appointment as such shall not terminate nor impair his public office, the provision of any statute to the contrary notwithstanding; * * * nor shall more than two public officers be commissioners of the same Authority at one time; * * * The term 'public officer' as herein used means a person holding a state or local governmental office required to be filled by the vote of electors,

and for which provision is made by law for the payment of annual compensation from public funds.

* * *

"

(Emphasis added.)

Under the express terms of this statute, if not more than one other public officer serves on the housing authority board, the mayor of a city may serve as a commissioner. A mayor is a "public officer" within the meaning of that term as it is defined in the statute, as he is elected to office and receives annual compensation from public funds. (Ill. Rev. Stat. 1989, ch. 24, pars. 3-4-1, 3-13-4.)

Section 3 of the Housing Authority Act does not, however, resolve the issue of potential incompatibility between the offices of commissioner of the housing authority and trustee of a river conservancy district. A trustee of a river conservancy district is not a "public official" within the meaning of section 3, because trustees are appointed, not elected. (Ill. Rev. Stat. 1989, ch. 42, par. 386a.) Therefore, with respect to the offices of housing authority commissioner and conservancy district trustee, and the offices of mayor and conservancy district trustee, it must be determined whether a conflict of duties would exist if one individual were to occupy both offices.

The Saline Valley Conservancy District is a special district formed in accordance with the River Conservancy Districts Act (Ill. Rev. Stat. 1989, ch. 42, par. 383 et seq.). County Housing Authorities are organized pursuant to

the Housing Authorities Act, (Ill. Rev. Stat. 1989, ch. 67 1/2, par. 1 et seq.) and are also special districts. Both entities, like the city, are units of local government. (Ill. Const. 1970, art. VII, § 1.)

The possibilities of a conflict of interest in serving both the conservancy district and the city, or the conservancy district and the housing authority, are numerous. The powers of the conservancy district are exercised by its board of trustees (Ill. Rev. Stat. 1989, ch. 42, par. 388). The powers of the Housing Authority are exercised by its commissioners (Ill. Rev. Stat. 1989, ch. 67 1/2, par. 6). In each case a trustee or commissioner would influence all actions of the conservancy district or housing authority directly by his or her vote as a board member. The powers of a mayor vary depending upon the particular organization of the municipality. In every case, however, the mayor has sufficient power to influence city actions so that a conflict of interest could arise.

One potential area of conflict relates to contracts between the city and the conservancy district. Such contracts are authorized in several instances. For example, the conservancy district is authorized to construct, operate or improve water reservoirs, wells, and purification facilities for the production and delivery of water to cities, and to sell such water to cities within its territory (Ill. Rev. Stat. 1989, ch. 42, par. 394(a)). The city is authorized to contract with

other public entities for an adequate water supply (Ill. Rev. Stat. 1989, ch. 24, par. 11-124-1). Further, the conservancy district is authorized to provide a sewage system and sewage treatment facility to the city (Ill. Rev. Stat. 1989, ch. 42, par. 394(b)). The city may contract for provision of sewage services (Ill. Rev. Stat. 1989, ch. 24, par. 11-137-1). A person holding offices on the governing bodies of both a municipality and a conservancy district could not, therefore, fully and faithfully represent the interest of both governments when they contract with each other.

Membership on the governing bodies of both the conservancy district and a county housing authority would give rise to similar potential conflicts of interest. The Housing Authority is empowered to arrange with any other governmental entity for streets, roads, or other public facilities and the acquisition of services in connection with its projects. (Ill. Rev. Stat. 1989, ch. 67 1/2, par. 8.3.) Section 4 of the Housing Cooperation Law (Ill. Rev. Stat. 1989, ch. 67 1/2, par. 31) specifically authorizes any public body to cooperate with a housing authority for the purpose of providing water and sewage or drainage facilities at housing projects. These are services which a river conservancy district may provide. A person holding offices on both governing bodies could not, therefore, fully and faithfully represent the interests of both governments should they contract with one another.

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It may be noted that there are also potential areas of conflict between the duties of a city mayor and a housing authority commissioner which could give rise to questions of incompatibility. Section 3 of the Housing Authority Act, however, indicates a legislative determination that the danger of such potential conflicts is outweighed by competing interests. Since the doctrine of compatibility of offices is based upon the common law, the General Assembly may determine statutorily to permit simultaneous tenure in two offices which would otherwise be incompatible.

In conclusion, it is my opinion that the offices of mayor of a city and commissioner of a county housing authority are not incompatible, because a statute expressly authorizes simultaneous tenure in those offices. It is further my opinion that the office of trustee of a river conservancy district is incompatible with either the office of mayor or that of county housing authority commissioner.

Respectfully yours,

A handwritten signature in cursive script, reading "Roland W. Burris". The signature is written in dark ink and is positioned above the printed name and title.

ROLAND W. BURRIS
ATTORNEY GENERAL