



**WILLIAM J. SCOTT**

ATTORNEY GENERAL  
STATE OF ILLINOIS  
500 SOUTH SECOND STREET  
SPRINGFIELD

March 13, 1972

File No. S-419

**OFFICERS:**  
Compatibility

Honorable William J. Cowlin  
State's Attorney of McHenry County  
Court House Annex Building  
P.O. Box 545  
Woodstock, Illinois 60098

Dear Mr. Cowlin:

I have your letter of October 15, 1971, wherein  
you state:

"I have received an inquiry on compatability (sic) of the County Board member under the Illinois Revised Statutes, Chapter 34, Section 831 et seq. and the office of Mayor, member of City or Village Zoning Board of Appeals, office of Alderman for City or Village and member of City or Village Planning Commission. I have already informed the County Clerk that based on prior opinions of the Attorney General's Office the office of Mayor and Alderman have been held to be incompatable (sic) under the former system of the Township Supervisor being a member of the County Board and following the same logic I would imagine that the office of the County Board member under the new Statute would also be incompatable (sic) with the office of Mayor or Alderman. I would appreciate your reply on each of the above mentioned offices at your earliest possible convenience."

From the general rules laid down in People v. Haas, 145 Ill. App. 283, it appears that incompatibility between offices arises where the Constitution or a statute specifically prohibits the occupant of either one of the offices from holding the other, or where, because of the duties of either office, a conflict of interest may arise, or where the duties of either office are such that the holder of one cannot, in every instance, properly and faithfully perform all the duties of the other.

There are no constitutional or statutory restraints in simultaneously holding the county and city offices mentioned in your letter. The problem in your question is whether a conflict of interest exists. The Attorney General's opinion No. 1514, 1928, at page 268, states:

"It has been the holding of this office for a great many years that the duties of an alderman and a supervisor of a township are inconsistent and incompatible and the two offices cannot be held by the same person at the same time."

I concur with this earlier opinion. The interests of the city and county are often divergent and contrary. The possibilities of a conflict of interest in serving both city or village and a county are many.

One of the potential areas of conflict is a contract between the city and county. There is considerable statutory authorization for such contracts. A county is authorized to contract with the city for the collection or disposition of garbage, refuse and ashes; for the use of the city workhouse; for a joint program of air contamination control; for joint plans and construction of projects for the control of floods and the conservation or development of water, waterways and water resources; for leasing space in the city courthouse. (Ill. Rev. Stat., 1971, ch. 34, pars. 405, 416, 421.2, 3115, 3551.) A city is authorized by statute to contract with the county for using the county jail; for county use of the city House of Correction; for collection and disposition of garbage, ashes or refuse; and for a supply of water. (Ill. Rev. Stat. 1971, ch. 24, pars. 11-3-2, 11-4-6, 11-19-1, 11-124-1.)

Section 10 of article VII of the 1970 Illinois constitution broadens the contracting powers of local governments by granting general contracting powers between cities or villages and counties. The new section provides:

"Units of local government and school districts may contract or otherwise associate among themselves, with the State, with other states and their

units of local government and school districts, and with the United States to obtain or share services and to exercise, combine, or transfer any power or function, in any manner not prohibited by law or by ordinance. Units of local government and school districts may contract and otherwise associate with individuals, associations, and corporations in any manner not prohibited by law or by ordinance. Participating units of government may use their credit, revenues, and other resources to pay costs and to service debt related to inter-governmental activities."

Section 1 of the same article defines "units of local government" to include counties. Section 10 authorizes what may well be an increasing number of city-county contracts. A person, holding both a city and county office, clearly cannot fully represent the interest of both governments when they are contracting with each other.

Another area of potential conflict is the city's or village's authority outside their boundaries. Cities and villages are given statutory authority for many powers that can be exercised outside their corporate boundaries. A city may, for example, operate outside its corporate boundaries a tuberculosis sanitarium, a cemetery, a stadium, an athletic field, recreational systems, airports and waterworks. (Ill. Rev. Stat. 1971, ch. 24, pars. 11-29-6, 11-52.1-1, 11-68-1, 11-95-1, 11-101-1, 11-125-2, 11-138-1.) Furthermore, a city or village can exercise the power of eminent domain in adjacent

unincorporated areas and its planning commission has authority up to 1 1/2 miles outside the city in unincorporated areas.

(Ill. Rev. Stat. 1971, ch. 24, pars. 11-12-5, 11-61-1.) The exercise of any of these powers may work to the advantage or disadvantage of the county. A person holding both city and county offices would easily be in the position of aiding one governmental unit to the detriment of the other.

A city or village and a county may also be in competition for the same funds. Each of these governmental units may appoint a Coordinator of State and Federal Aid. (Ill. Rev. Stat. 1971, ch. 24, par. 11-5.1-1, ch. 34, par. 403-1.) The competency of the appointee certainly can affect the amount of funds received. Therefore, another potential conflict of interest is present.

Zoning is another area where a conflict of interest may arise. Counties have authority to regulate zoning outside municipal areas. (Ill. Rev. Stat. 1971, ch. 34, par. 3151.) Municipal corporations are, however, authorized to zone within their boundaries. (Ill. Rev. Stat. 1971, ch. 24, par. 11-13-1.) A county is certainly concerned about how land within a municipality, but adjacent to county land, is zoned and vice versa. The respective interests may well be contrary and, therefore,

the officeholder could not fully represent the interest of both governmental units.

Therefore, the possibilities for conflict of interest are many. The above examples are not meant as a complete list of all possible conflicts of interest between city and county offices.

The powers of the county are exercised through the county board. (Ill. Rev. Stat. 1971, ch. 34, par. 302.) Therefore, a county board member would influence all actions of the county either directly by his vote on the board or indirectly by officers appointed by the board. The powers of mayor and alderman or councilman vary, depending on the particular organization of the municipality. In every case, however, each of these officers has sufficient power to influence city actions so that a conflict of interest could arise.

A county board member who serves on a city zoning board of appeals would also be open to a conflict of interest. Decisions by this board relating to land use within the municipality but near its boundary with the county could be advantageous or disadvantageous to the county. Here the county board member's vote on the city zoning board of appeals may

be cast to further the county's interest rather than the city's. On the other hand, a county board member may use his influence in the county government to have county land near a municipality zoned advantageous to the interest of the municipality.

A conflict of interest may also result if the county board member serves on the city or village planning commission. Such a commission has jurisdiction over contiguous territory 1 1/2 miles beyond the corporate limits and not included in any municipality. (Ill. Rev. Stat. 1971, ch. 24, par. 11-12-5.) It may designate land suitable for annexation and recommend zoning for such land. The commission also prepares a comprehensive plan for present and future development of the municipality. Any one of these functions could work to the advantage or disadvantage of the county and hence, a conflict of interest is also possible in this situation.

Therefore, the office of county board member is incompatible with any of the city or village offices mentioned in your request. Please note that when a person holding one office assumes another office incompatible with the first,

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he thereby ipso facto vacates the first. People v. Haas,  
145 Ill. App. 283.

Very truly yours,

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