



OFFICE OF THE ATTORNEY GENERAL

STATE OF ILLINOIS

July 9, 1999

Jim Ryan

ATTORNEY GENERAL

FILE NO. 99-015

COMPATIBILITY OF OFFICES:

General Assembly Member and
Community College Board Trustee

The Honorable Vince Demuzio
Assistant Democratic Leader
49th Senate District
309 Capitol Building
Springfield, Illinois 62706

Dear Senator Demuzio:

I have your letter wherein you inquire regarding whether the offices of member of the General Assembly and member of a community college board of trustees are incompatible. For the reasons hereinafter stated, it is my opinion that the offices in question are not incompatible, and that one person may, therefore, hold both offices simultaneously.

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

The Honorable Vince Demuzio - 2.

instance, properly and faithfully perform all of the duties of the other. (People ex rel. Fitzsimmons v. Swailes (1984), 101 Ill. 2d 458, 465; People ex rel. Myers v. Haas (1908), 145 Ill. App. 283, 286.) There is no constitutional or statutory provision which prohibits a person from holding both of the offices in question. 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.

Arguably, a conflict of duties could arise because a member of the General Assembly, who also serves as a member of a community college board of trustees, may vote upon legislation that affects his or her powers and duties as a member of a community college board. A similar argument, however, was rejected by Attorney General Scott in opinion No. S-1027, issued January 5, 1976 (1976 Ill. Att'y Gen. Op. 49), in which it was determined that the offices of member of the General Assembly and county board member were not incompatible. The reasoning of that opinion is still sound, and is equally applicable to the offices of member of the General Assembly and community college trustee.

It is also possible that a conflict in duties could arise from the General Assembly's appropriation authority, or from the requirement that the Senate act upon appointments of members of the Illinois Board of Higher Education (110 ILCS 205/2

The Honorable Vince Demuzio - 3.

(West 1996)) and the Illinois Community College Board (110 ILCS 805/2-1 (West 1996)). Illinois courts have held that common law incompatibility may be established where an individual holding one office has authority to act upon the appointment, salary and budget of his superior in a second. (People ex rel. Teros v. Verbeck (1987), 155 Ill. App. 3d 81, 83; People ex rel. Fitzsimmons v. Swailes (1984), 101 Ill. 2d 458.) Thus, it could be argued that the offices of member of the General Assembly and member of a community college board are incompatible because the former may be called upon to act upon the budgets of, and, in the case of Senators, the appointments of members to the Illinois Board of Higher Education and the Illinois Community College Board.

The Public Community College Act (110 ILCS 805/1-1 et seq. (West 1996)) governs the operations of the State's several community colleges. As provided in the Act, the powers of a community college district are exercised by its board of trustees (110 ILCS 805/3-30 (West 1996)). The Illinois Board of Higher Education and the Illinois Community College Board, however, also play a role in the operation of the community college system in Illinois.

The Illinois Board of Higher Education (hereinafter referred to as "IBHE") consists of 15 members, 10 of whom are

The Honorable Vince Demuzio - 4.

appointed by the Governor by and with the advice and consent of the Senate (110 ILCS 205/2 (West 1996)). Also serving on the IBHE is one student member selected by the recognized advisory committee of students of the Board of Higher Education, the chairman of the Illinois Community College Board, the chairman of the Illinois Student Assistance Commission, and one member of a public university governing board and one member of a private college or university board of trustees, appointed by the Governor without the advice and consent of the Senate (110 ILCS 205/2 (West 1996)).

The Illinois Community College Board (hereinafter referred to as "ICCB") consists of 12 members, 11 of whom are appointed by the Governor by and with the advice and consent of the Senate (110 ILCS 805/2-1 (West 1996)). A nonvoting student member is also selected by the recognized advisory committee of students of the Illinois Community College Board (110 ILCS 805/2-1 (West 1996)).

People ex rel. Fitzsimmons v. Swailes (1984), 101 Ill. 2d 458, involved the issue of incompatibility between the offices of county board member and township assessor. As a county board member, the defendant in that case had authority to act upon the appointment of the supervisor of assessments, as well as the salary and budget of the supervisor. The supervisor of assess-

The Honorable Vince Demuzio - 5.

ments, in turn, exercised supervisory authority over the township assessor. Once a township assessor made assessments for his township, the assessments were then subject to changes by the supervisor of assessments. Those changes were also subject to revision by the board of review, upon the appointments of the members of which the county board also had the authority to act. The Illinois Supreme Court held that because the township assessor's position was subordinate to the position of supervisor of assessments, and, as a county board member, the township assessor voted upon who would be his supervisor, the offices were incompatible and one person could not hold both offices simultaneously. People ex rel. Fitzsimmons v. Swailes (1984), 101 Ill. 2d at 469.

Similarly, in People ex rel. Teros v. Verbeck (1987), 155 Ill. App. 3d 81, 83, the court held that the offices of county board member and deputy coroner were incompatible because the member of the county board had authority to act upon the salary and budget of the county coroner who, in turn, determined the defendant's salary as deputy coroner subject to budget limitations imposed by the county board.

It is clear that a member of the General Assembly serving in either house acts upon the budgets of the IBHE and the ICCB. Moreover, a member of the General Assembly serving in the

The Honorable Vince Demuzio - 6.

Senate also acts upon the appointment of members to the IBHE and the ICCB. Thus, the question which must be resolved is whether the office of community college board is subordinate to the IBHE and the ICCB.

Generally, the oversight that the IBHE or the ICCB exercises with respect to community college districts concerns the maintenance of statewide planning standards or the expenditure of State funds. Community college boards maintain significant autonomy over the governance of community colleges. Community college boards are authorized to levy taxes for educational purposes and for the operation and maintenance of facilities at the rates provided in the proposition which created the community college district (110 ILCS 805/3-1 (West 1996)). Although certain additional taxes require the issuance of a certificate of eligibility from the ICCB (110 ILCS 805/3-14.2 and 3-14.3 (West 1996)), the issuance of the certificate is based upon statutory qualifications for certain grants, not the discretion of the ICCB. Further, although community colleges may receive grant funds distributed by the IBHE or the ICCB, the community college board is given authority over its own annual budget (110 ILCS 805/3-20.1 (West 1996)). The board sets its own fiscal year, selects its own basis of financing and its own system of accounting. (110 ILCS 805/3-20.1 (West 1996).) Neither the IBHE nor

The Honorable Vince Demuzio - 7.

the ICCB is given authority to review, advise or change a community college board's annual budget.

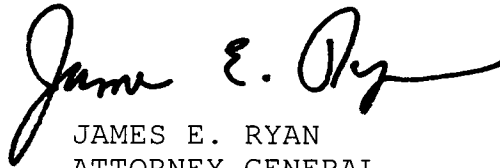
The relationship of the IBHE and the ICCB to community college boards is distinguishable from the supervisory relationship between the offices discussed in People ex rel. Fitzsimmons v. Swailes and People ex rel. Teros v. Verbeck. Unlike the relationships in those cases, community college boards are not subordinate to, or under the control of, the IBHE or the ICCB. Thus, a member of the General Assembly, in acting upon the budgets of and the appointments of members to the IBHE and the ICCB, where applicable, is not acting upon the budget or appointment of his superior in the position of community college board trustee. Moreover, in contrast to the situations presented in People ex rel. Fitzsimmons v. Swailes and People ex rel. Teros v. Verbeck, a member of the General Assembly does not act to fix the salaries of IBHE or ICCB members, since those officers serve without compensation and are reimbursed only for reasonable and necessary expenses. (See 110 ILCS 805/2-5, 3-7; 110 ILCS 205/5 (West 1996).)

For the reasons stated, it is my opinion that the offices of member of the General Assembly and member of a commu-

The Honorable Vince Demuzio - 8.

nity college board of trustees are not incompatible, and one person may hold both offices simultaneously.

Sincerely,

A handwritten signature in cursive script that reads "James E. Ryan". The signature is written in black ink and is positioned above the typed name and title.

JAMES E. RYAN
ATTORNEY GENERAL