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FILE NO. S-1388

ELECTIONS:

Member of State Board of Elections
Holding Other Public Office or
Public Employment or Office in a
Political Party

Mr. John W. Countryman, Chairman
State Board of Elections
1020 South Spring Street
Springfield, Illinois 62708

Dear Mr. Countryman:

This responds to your letter wherein you ask the following questions:

1. May a member of the State Board of Elections serve as a member of a law firm that advises and represents a municipal corporation on particular legal matters, which would not include matters relating to elections?
2. May a member of the State Board of Elections serve as a delegate to the national nominating convention of a political party?

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Both of your questions require a consideration of section 1A-14 of the Election Code (Ill. Rev. Stat. 1977 Supp., ch. 46, par. 1A-14) which reads as follows:

"No member of the State Board of Elections may become a candidate for nomination for, or election to, or accept appointment to or hold any other remunerative public office or public employment or any office in a political party. Violation of any prohibition in this Section shall disqualify a member of the Board and a vacancy is thereby created. A vacancy also exists upon the occurrence of any of the events enumerated in Section 25—2 of this Act as in the case of an elective office." (Emphasis added.)

In regard to your first question, a person who is a member of a law firm which advises and represents a municipal corporation is not a public officer. (Dianis v. Waenke (1975), 29 Ill. App. 3d 133.) Generally, the characteristics of a public office include: (1) creation by statute or constitution; (2) exercise of some portion of sovereign powers of government; (3) a continuing position not occasional or contractual, and (4) the requirement of an oath. (Wargo v. Industrial Commission (1974), 58 Ill. 2d 234, 236; Midwest Television, Inc. v. Champaign Communications (1976), 37 Ill. App. 3d 926, 931; 1975 Ill. Att'y Gen. Op. 278.) It is apparent that a member of a law firm which contracts to advise and represent a municipal corporation on particular matters does not qualify as a public officer.

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Neither is such a person a public employee. A practicing lawyer who has numerous clients is not the employee of any particular client; he is rather an independent contractor retained by the client to perform professional services. (Weinrob v. Heintz (1952), 346 Ill. App. 30, 40.) Thus, a member of a law firm which contracts to advise and represent a municipal corporation on particular matters has the status of an independent contractor rather than that of an employee of the municipal corporation.

Because a member of a law firm which advises and represents a municipal corporation on particular matters is neither a public officer nor a public employee, it is my opinion that section 1A-14 of the Election Code does not prohibit a member of the State Board of Elections from serving as a member of such a law firm.

In response to your second question, delegates to a political party's national nominating convention are officers of the party. (See, Wigoda v. Cousins (1973), 14 Ill. App. 3d 460, rev'd on other grounds, 419 U.S. 477, and Alexander v. Booth (1952, Fla.), 56 So. 2d 716, 719.) Because a delegate to

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a party's national nominating convention holds an office in the party, it is my opinion that section 1A-14 of the Election Code prohibits a member of the State Board of Elections from serving as a delegate to a party's national nominating convention.

Very truly yours,

A T T O R N E Y G E N E R A L