



TYRONE C. FAHNER

ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

June 29, 1982

FILE NO. 82-020

COMPATIBILITY OF OFFICES:
City Alderman and County
Zoning Administrator

Honorable Thomas J. Difanis
State's Attorney
Champaign County
Court House
Urbana, Illinois 61801

Dear Mr. Difanis:

I have your letter wherein you inquire whether the office of city alderman is compatible with that of county zoning administrator for the county in which the city is located. For the reasons hereinafter stated, it is my opinion that the offices in question are incompatible and that the same person may not hold both offices simultaneously.

Incompatibility arises where the written law prohibits the occupant of one office from holding another or where the

COPIES

Honorable Thomas J. Difanis -2.

duties of two offices are such that a holder of one cannot, in every instance, fully and faithfully discharge the duties of the other. (People ex rel. Myers v. Haas (1908), 145 Ill. App. 283, 286.) There is no constitutional or statutory provision prohibiting one person from holding the offices of city alderman and county zoning administrator simultaneously. I am of the opinion, however, that the duties of the two offices conflict in a manner which would make it impossible for the holder of one to fully and faithfully, in every instance, discharge the duties of the other.

Section 1 et seq. of "AN ACT in relation to county zoning" (Ill. Rev. Stat. 1981, ch. 34, par. 3151 et seq.) authorizes a county to enact a zoning ordinance. Section 3 of the Act (Ill. Rev. Stat. 1981, ch. 34, par. 3153) requires the county zoning administrator to enforce the ordinance and to make decisions thereunder. Section 3 provides in pertinent part as follows:

"All ordinances or resolutions passed under the terms of this Act shall be enforced by such officer of the county as may be designated by ordinance or resolution. The ordinance or resolution * * * may vest in the officer designated to enforce the ordinance or resolution, the power to make orders, requirements, decisions and determinations with respect to applications for such permits and with respect to the enforcement of the terms of the ordinance or resolution."

A county has authority to enforce its zoning ordi-

Honorable Thomas J. Difanis -3.

nances within the 1 1/2 mile area outside of, and bordering, city limits. (Village of Mount Prospect v. County of Cook (1969), 113 Ill. App. 2d 336, 344; City of Canton v. County of Fulton (1973), 11 Ill. App. 3d 171, 174.) The Illinois Municipal Code authorizes municipalities to enact and enforce subdivision regulations within this same 1 1/2 mile zone. (Ill. Rev. Stat. 1979, ch. 24, par. 11-12-5.)

Controversies do arise between cities and counties regarding their rights to regulate developments within the 1 1/2 mile zone. In City of Urbana v. County of Champaign (1979), 76 Ill. 2d 63, for example, the city of Urbana sought a declaratory judgment and injunction to prevent a planned unit development which had been approved by the County of Champaign, until the city had approved the plan as conforming to its subdivision ordinance. Similarly, controversies often develop between a county and a city concerning the provisions of a county zoning ordinance within 1 1/2 miles of the city limits. In City of Canton v. County of Fulton (1973), 11 Ill. App. 3d 171, 174, the court held that, where a city did not appear and submit in writing its proposals for zoning of contiguous territory as provided by statute, the county ordinance took precedence over and superseded the city zoning as to such area, even though the county ordinance was passed by less than

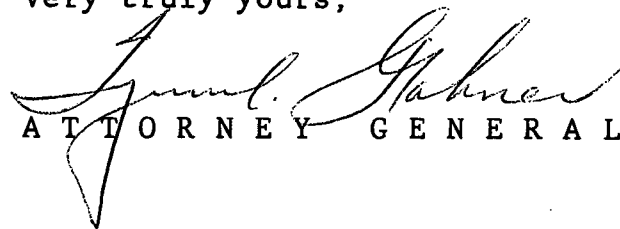
Honorable Thomas J. Difanis -4.

three-fourths of the board members.

Frequently local governments such as cities or counties are involved in controversies in regard to the right of one of them to subject the other to its own zoning ordinance. (See, City of Des Plaines v. Sanitary District (1971), 48 Ill. 2d 11.) An analysis of this subject is found in Balancing Interests to Determine Governmental Exemption From Zoning Laws, 1973 U.Ill. L.F. 125.

It is therefore my opinion that, because of the actual and potential areas of conflict and competing interests of a city and a county in zoning matters, the offices of county zoning administrator and city alderman are necessarily incompatible. The holder of one of these offices could not therefore properly and faithfully perform all of the duties of the other.

Very truly yours,


ATTORNEY GENERAL