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January 8, 2019

To: UCCI Membership

Re: *Conflict of Interest*

Issue:

Whether a conflict of interest exists where an elected county sheriff is simultaneously employed as a municipal police officer by a city within the county.

Analysis:

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 such that the holder of one cannot, in every instance, properly and faithfully perform all the duties of the other office.<sup>1</sup>

We note from the outset that a municipal police officer is generally not considered “municipal officer” for purpose of the traditional incompatibility-of-officers analysis. Rather, the police officer is an employee of the municipality. A municipal office may only be created by a legislative act creating that specific office.<sup>2</sup> Unless a specific statute or ordinance creates that office, the individual filling the position is not an officer. Instead, he is an employee whose conduct is governed by laws relating to employees. As such, the facts presented comprise a unique situation. To the best of our research, the question of whether an elected county sheriff may simultaneously be employed as a municipal police officer has not yet been publicly addressed. However, the incompatibility-of-offices analysis is nevertheless apt here. For the reasons that follow, we believe a conflict of interest exists where an elected county sheriff is simultaneously employed as a municipal police officer by a city within the county.

There appears to be no constitutional or statutory provision that prohibits an individual from serving simultaneously as both a county sheriff and a municipal police officer. The issue thus becomes whether a conflict in interest arises such that the holder cannot fully and faithfully discharge the duties

<sup>1</sup> *People ex rel. Fitzsimmons v. Swales*, 101 Ill. 2d 458, 469 (1984) (quoting Ill. Att’y Gen. Op. No. 81–021 (July 23, 1981)); *People ex rel. Smith v. Brown*, 356 Ill. App. 3d 1096, 1098 (2005) (quoting *People v. Claar*, 293 Ill. App. 3d 211, 215 (1997)); *People ex rel. Myers v. Haas*, 145 Ill. App. 283, 286 (1908).

<sup>2</sup> *People ex. Rel. Kwiat v. Board of Fire and Police Commissioners*, 14 Ill App. 3d 45 (1973).

of both positions simultaneously. “Public policy demands that an office holder discharge his duties with undivided loyalty.”<sup>3</sup> “The doctrine of incompatibility is intended to assure performance of that quality.”<sup>4</sup> Indeed, “the doctrine of incompatibility [exists] to ensure that there be the appearance as well as the actuality of impartiality and undivided loyalty.”<sup>5</sup>

In this case, the all-important question is whether the county sheriff would have sufficient time to faithfully and properly perform the duties of both county sheriff and municipal police officer simultaneously. The county sheriff is statutorily required to keep the office open and to attend to the duties thereof on a full-time basis.<sup>6</sup> Pursuant to the Counties Code, “[e]ach sheriff shall keep and maintain his or her office at the county seat of the county for which he or she is the sheriff, and shall in counties having a population of less than 500,000 keep his or her office open and attend to the duties thereof from 8 o'clock in the forenoon to 5 o'clock in the afternoon of each working day.”<sup>7</sup> The county sheriff is also in charge of the county jail.<sup>8</sup> One can easily envision a scenario wherein the individual is engaged in actively performing his municipal police officer duties at the same time the need arises for him to be elsewhere in the county discharging the duties of county sheriff. There could also be a situation where the sheriff is needed at the county jail at the same time he is working as a municipal police officer. Such situations have the potential to create public safety issues.

Further, because a municipal police officer answers to the city police chief, he is not free to set his schedule or to take off a moment's notice to answer a call requiring him to act in his role as county sheriff. Assuming, for the sake of argument, such an arrangement was tenable, a reasonable question remains regarding how long the arrangement could be consistently maintained. Indeed, such an arrangement would constantly require another municipal officer to act as the individual's backup, able to respond at a moment's notice to ensure the municipal police officer's duty to serve the public as an officer did not go unfulfilled. Further, such an agreement would only arise by virtue of the individual holding office. In other words, the municipal police officer would be receiving special treatment because of his county sheriff office, to which other police officers would not be entitled.

Moreover, even if the municipal police officer job is not a full-time position, the elected county sheriff job is. Indeed, a brief survey of municipal codes around the State reveal that it is not uncommon to require outside employment to not (i) interfere with the employee's performance and/or effectiveness on the municipal job; (ii) place the employee in a position of conflict of interest with his municipal employment; or (iii) interfere with the employee's response to emergency calls.

Issues may also arise where the sheriff is able to use his position as sheriff to subvert the chain of command within the municipal police department. In other words, where the individual is directed by the municipal police chief from taking a certain course of action, that individual municipal police officer may take it upon himself or be able to undertake the same course as sheriff that he was

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<sup>3</sup> *Rogers v. Village of Tinley Park*, 116 Ill. App. 3d 437, 446 (1983).

<sup>4</sup> *Rogers*, 116 Ill. App. 3d at 446.

<sup>5</sup> *People ex rel. Teros v. Verbeck*, 155 Ill. App. 3d 81, 84(1987); *Rogers*, 116 Ill. App. 3d at 446.

<sup>6</sup> See 55 ILCS 5/3-6019.

<sup>7</sup> 55 ILCS 5/3-6019.

<sup>8</sup> 55 ILCS 5/3-6017 (“Sheriff custodian of courthouse and jail. He or she shall have the custody and care of the courthouse and jail of his or her county, except as is otherwise provided.”).

previously prohibited from doing so as a municipal police officer. Accordingly, the duties of the two positions are likely to conflict. Inversely, the law may compel the individual to act as sheriff at times when he is otherwise obligated to serve as municipal police officer. Consequently, the two positions conflict such that the holder of one cannot, in every instance, properly and faithfully perform all the duties of the other.

Considering the foregoing, it is entirely possible that one person would be unable to perform all the duties of both offices for an extended period of time. A conflict of interest can be reasonably found where the duties of either office are such that the holder of the office cannot properly and fully, faithfully perform all the duties of the other office in every instance.<sup>9</sup> Given the 24 hours a day, 7 days a week, 365 days a year nature of the elected position of county sheriff, it is the opinion of this office that an individual attempting to simultaneously perform the duties of both county sheriff and municipal police officer cannot reasonably and in every instance properly, fully, and faithfully perform all the duties of the other office. However, because the positions are not both officers, *i.e.*, the municipal police officer position is that of an employee not a municipal officer, there is likely no clear remedy for the county to pursue. If there is any remedy to be had, it likely would have to be addressed by the municipality as a personnel matter.

**Conclusion:**

In sum, it is the opinion of this office that an individual attempting to simultaneously perform the duties of county sheriff and municipal police officer cannot properly, fully, and faithfully perform all the duties of the other office at all times and in every instance. As such, holding both positions simultaneously necessarily result in a conflict of interest.

At the request and direction of UCCI this opinion was prepared by  
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<sup>9</sup> See *Haas*, 145 Ill. App. at 286.