



United Counties Council of Illinois
217 East Monroe ~ Suite 101
Springfield, Illinois 62701

217.544.5585

W. Michael McCreery, Executive Director

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January 17, 2018

To: UCCI Membership

Re: Opinion Request re Conflict in Serving on Multiple Boards

Issue:

May a county board member be appointed to serve as a trustee for the Sanitary District Board.

Analysis:

The provisions of the Public Officers Prohibited Activities Act (50 ILCS 105/01 et seq.) addresses conflicts of interest, including conflicts involving county board members.

The Attorney General of Illinois has opined that "incompatibility between offices arises 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 instance properly and faithfully perform all the duties of the other."¹ The following offices are deemed NOT to be in conflict with a county board member:

- Trustee of a forest preserve district created under Section 18.1 of the Conservation District Act (70 ILCS 410/18.5);
- Member of an emergency telephone system board as provided in Section 15.4 of the Emergency Telephone System Act (50 ILCS 75/15.4);
- Member of a county extension board as provided in Section 7 of the Counties Cooperative Extension Law (505 ILCS 45/7);
- Aldermen of a city or member of the board of trustees of a village or an incorporated town, provided the city, village or incorporated town as fewer than 1,000 inhabitants and is located in a county with less than 50,000 inhabitants;
- Member of a regional planning commission by appointment or election or a member of the board of review as provided in Section 6-30 of the Property Tax Code (35 ILCS 200/6-30);

¹ Illinois Att'y General Op. No. 91-015 (March 14, 1991) citing *People ex rel. Myers v. Haas* (1908), 148 Ill. App. 283, 286; see generally *people ex rel. Teros v. Verbeck* (1987), 155 Ill. App. 3d 81.

- A member of the board of education, regional board of school trustees, board of school directors, board of community college districts or board of school inspectors in counties having fewer than 40,000 inhabitants, and under certain circumstances depending on county size, hold an office of township supervisor, trustee, assessor or town clerk.


Under the general provisions embodied in the Public Officers Prohibited Activities Act, which states that nothing in that Act can be construed to prohibit an elected county official from holding an elected office in another unit of local government so long as there is no contractual relationship between the county and the other unit of local government.² Similar to the previously cited Attorney General opinion, "a person holding offices on the governing bodies of both units of local government could not, therefore, fully and faithfully represent the interest of both governments when they contract with each other."³ As a result, the county board member would find his or herself confronted with a conflict of interest wherein he or she must choose the interest of one unit of local government over another.

Conclusion:

Based on the above analysis, it is the opinion of this office that even in the absence of a statutory prohibition preventing a county board member who meets the qualifications of trustee for the Sanitary District Board from being appointed, there are other legal hurdles to such an appointment. Accordingly, our opinion is that the possibility of a conflict of interest is very real for either or both positions due to the individual positions' duties to their respective local governments. Therefore, appointing a county board member is NOT advisable.

At the request and direction of UCCI this opinion was prepared by:

GIFFIN, WINNING, COHEN & BODEWES, P.C.


Herman G. Bodewes


Jason E. Brokaw

² See 50 ILCS 105/1.

³ Illinois Att'y General Op. No. 91-015 (March 14, 1991) at p. 5.

Disclaimer: This opinion was prepared by Giffin, Winning, Cohen and Bodewes, P.C., at the request of UCCI and is to be used solely by UCCI and its members. The State's Attorney is the attorney for the County. Legal advice, if requested, should be sought from the State's Attorney.