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December 16, 2019

To: UCCI Membership

Re: Conflict of Interest

Issue:

Whether being a member of a county ethics commission conflicts with also being a (i) township official, (ii) municipal official, (iii) member of a regional planning commission, or (iv) party precinct committeeman.

Analysis:

I. County Ethics Commission Recommended, not Required

The Illinois Governmental Ethics Act ("Act") requires all units of local government within 6 months of the Act's effective date to adopt ordinances to regulate local officials' ethical and political conduct.¹ The Act also mandates that the Attorney General develop a model ordinance to assist units of local government in complying with the requirements of the new ethics law.² The creation of an ethics commission by local government, though not required by the Act, is strongly recommended by the Attorney General.³

The purpose of the ethics commission is to enforce compliance with the Act's mandatory provisions. Duties of an ethics commission include reviewing, adjudicating, or referring for adjudication, complaints that allege violation of the local ordinance adopted pursuant to the Act.⁴ Further, ethics commissions are impliedly authorized to impose a fine of up to \$1,000 per violation of a local ordinance adopted pursuant to the Act.⁵

¹ 5 ILCS 430/70-5.

² 5 ILCS 430/70-5.

³ Ill. Att'y Gen., *A Guide to the Implementation of the Model Ethics Ordinance*
http://illinoisattorneygeneral.gov/government/ethics_ordinance_guide.pdf

⁴ Ill. Att'y Gen., *Model Ethics Ordinance*, http://ag.state.il.us/government/model_ethics_ordinance.pdf

⁵ Ill. Att'y Gen. Op. No. 99-0007, 18 (June 30, 1999)

II. Incompatibility of Office

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.⁶

A. No Constitutional or statutory bar, local ordinance may preclude simultaneous office

No constitutional provision precludes an individual from holding both offices. Likewise, we have not identified any statutory provision precluding an individual from holding both offices. In fact, the Public Officer Prohibited Activities Act addresses conflicts of interest and permits county, municipal, and township officials to hold simultaneous office in another unit of local government so long as there is no contractual relationship between the two units of government.⁷

However, a local government ordinance may preclude holding simultaneous office. The Act sets a minimum standard not a maximum for local governments.⁸ Ordinances promulgated pursuant to Act may be no less restrictive than the Act.⁹ Section I, Article 20 of the Model Ordinance is silent as to whether an elected official may also serve as a member of the county ethics commission but prohibits the appointment of a member to the Ethics Commission “who is related, either by blood or marriage up to the degree of first cousin, to any elected officer.”¹⁰ Some local governments, that have created a county ethics commission, adopted the Model Ordinance verbatim, whereas others have been more restrictive, precluding members of the county ethics commission from also holding any other elected or public office.

B. Potential conflict exists under common law doctrine of Incompatibility of Office

Where the duties of two public offices conflict such that holder of one cannot, in every instance, properly and faithfully perform all the duties of the other office, the common law doctrine of incompatibility of offices precludes simultaneous tenure in both public offices.¹¹ Members of the county ethics commission are charged with regulating the ethical and political activities of county

⁶ *People ex rel. Fitzsimmons v. Swails*, 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).

⁷ 50 ILCS 105/1, 2- 2a.

⁸ 5 ILCS 430/70-15.

⁹ 5 ILCS 430/70-15.

¹⁰ Ill. Att’y Gen., *Model Ethics Ordinance*, http://ag.state.il.us/government/model_ethics_ordinance.pdf

¹¹ *Swails*, 101 Ill. 2d at 465 (quoting *People ex rel. Myers v. Haas* (1908), 145 Ill. App. 283, 286).

officials. A member of the county ethics commission would only review or adjudicate alleged violations of the ordinance flowing from his or her activity in the other public office if simultaneously serving as a county official. However, serving as a member of a county ethics commission simultaneous to also being a (i) township official, (ii) municipal official, (iii) member of a regional planning commission, or (iv) party precinct committeeman may, nonetheless, present a potential conflict. An individual holding both offices could leverage his or her seat on a county ethics commission to serve the interests of the other elected or appointed office. Ultimately, how a local government implements the provisions of the Act, including the establishment and composition of a county ethics commission, is left to its governing body so long as it is no less restrictive than the Act.

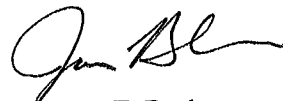
III. Conclusion:

In sum, it is the opinion of this office that absent a local ordinance precluding simultaneous office, being a member of a county ethics commission does not automatically present an actual conflict with being a (i) township official, (ii) municipal official, (iii) member of a regional planning commission, or (iv) party precinct committeeman. However, holding such positions simultaneously could give rise to conflicts of interest or the appearance of impropriety. Therefore, any county ethics commission that includes members who simultaneously hold such offices should devise procedures to protect and maintain the integrity and impartiality of the commission.

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