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November 15, 2018

To: UCCI Membership

Re: *Sheriff's Merit Commission*

**Issue:**

Whether the appointment of a municipal police officer to a County Sheriff's Merit Commission is permissible under the Counties Code.

**Analysis:**

Generally, home rule units may exercise powers and perform functions pertaining to its government and affairs without regard to specific statutory authority.<sup>1</sup> Non-home-rule units, however, possess only those powers which are specifically conveyed by the Illinois Constitution or by statute.<sup>2</sup>

The Illinois Attorney General 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."<sup>3</sup> Thus, for a municipal police officer to legally act as a member of a County Sheriff's Merit Commission, the appointment must not be prohibited by the constitution or other act or law, and the appointment must not create any conflict of interest.

The Merit Commission is charged with the certification for employment and promotion, as well as discipline and discharge upon complaint of the sheriff or State's Attorney.<sup>4</sup> All full-time deputy sheriffs shall be under the jurisdiction of the Sheriff's Merit System Law.<sup>5</sup> The county board may

<sup>1</sup> Ill. Const. 1970, art. VII, § 6; *T & S Signs, Inc. v. Village of Wadsworth*, 261 Ill. App. 3d 1080, 1090 (2nd Dist. 1994).

<sup>2</sup> *Commonwealth Edison Co. v. City of Warrenville*, 288 Ill. App. 3d 373, 380 (2nd Dist. 1997).

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

<sup>4</sup> 55 ILCS 5/3-8007.

<sup>5</sup> 55 ILCS 5/3-8007.

provide that other positions, including jail officers, be placed be under the jurisdiction of the Commission.<sup>6</sup>

Pursuant to Section 3-8003 of the Counties Code, titled “Appointment of Merit Commission”, “Any ordinance providing for the adoption and implementation of a merit system under this Division shall provide for the appointment of a Sheriff’s Office Merit Commission consisting of 3 or 5 members appointed by the sheriff with the approval of a majority of the members of the county board.”<sup>7</sup> “If the sheriff fails to make the appointments within 60 days after the adoption of the ordinance, the members of the commission shall be appointed by the chairman of the county board with the approval of a majority of the members of the county board. No member of the commission shall hold a statutory partisan political office.”<sup>8</sup>

“If a vacancy occurs in the office of a commissioner, the sheriff, with the approval of a majority of the members of the county board, shall appoint a suitable person to serve the unexpired portion of that commissioner’s term.”<sup>9</sup> “If the sheriff fails to appoint a person to fill the vacancy within 30 days, the chairman of the county board shall appoint a person to fill the unexpired portion of the term, with the approval of a majority of the members of the county board.”<sup>10</sup>

So long as the above-discussed requirements are observed there does not appear to be a statutory prohibition against the appointment of a municipal police officer to a County Sheriff’s Merit Commission.

You have also asked whether having a municipal police officer serve on the Sheriff’s Merit Commission could present a conflict of interest. A conflict of interest applies to specific conduct or relating to a specific transaction that is before the county board. For example, Section 3 of the Public Officer Prohibited Activities Act (the “Prohibited Activities Act”)<sup>11</sup> provides that “[n]o person holding any office, either by election or appointment under the laws or constitution of this state, may be in any manner interested, either directly or indirectly, in his own name or in the name of any other person, association, trust or corporation, in any contract or the performance of any work in the making or letting of which such officer may be called upon to act or vote.”<sup>12</sup>

In interpreting that language, the Illinois Supreme Court has stated that Section 3 of the Prohibited Activities Act is a broadly drafted conflict of interest statute which expresses a general policy requiring public officers to refrain from entering into transactions which could give rise to competing interests or loyalties that could hamper their performance as public officials.<sup>13</sup> Section 3 of the Act not only bars an official from having a private pecuniary interest in a binding contract, but

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<sup>6</sup> See *Goodwin v. McHenry County Sheriff’s Department Merit Commission*, 316 Ill. App. 3d 1238, 1243 (2000) (citing 55 ILCS 5/3-8007).

<sup>7</sup> 55 ILCS 5/3-8003.

<sup>8</sup> 55 ILCS 5/3-8003.

<sup>9</sup> 55 ILCS 5/3-8003.

<sup>10</sup> 55 ILCS 5/3-8003.

<sup>11</sup> 50 ILCS 105/0.01 *et seq.*

<sup>12</sup> 50 ILCS 105/3 (prohibited interest in contracts)

<sup>13</sup> *Miller v. County of Lake*, 79 Ill. 2d 481, 490 (1980); *Croissant v. Joliet Park District*, 141 Ill. 2d 449, 459-462 (1990).

also prohibits the officer from being placed in a position in which he or she may be called upon to act or vote in the making of such a contract.<sup>14</sup>

Conflicts of interest may be statutory or common law in nature. It is well-established in Illinois that where a member of a governmental body has a personal interest in a matter coming before the body, he or she is disqualified from voting or otherwise acting thereon.<sup>15</sup> Such potential conflicts, are referred to generally as common law conflicts of interest. Common law conflicts of interest may arise whenever official action could result in a personal advantage or disadvantage to the interested official. A conflict of interest may generally, but not on all occasions, be resolved by the member's recusal or abstention from voting on the issue in question. Therefore, it is suggested that a city police officer serving on the Sheriff's Merit Commission abstain from voting or otherwise acting on those matters from which he may personally benefit, or which may be reasonably perceived as personally benefiting him, as a municipal police officer.

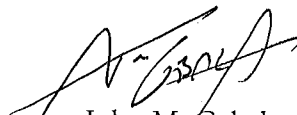
**Conclusion:**

In sum, the Counties Code does not appear to prevent a municipal police officer from serving on a Sheriff's Merit Commission. However, a Sheriff's Merit Commission should be aware of any potential statutory or common law conflicts of interest (or the appearance of such potential conflicts) that may arise as a result of the appointment. In such cases, the officer in question should decline to act or vote on those issues giving rise to any reasonably perceived conflict of interest.

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

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<sup>14</sup> *People v. Savaiano*, 66 Ill. 2d 7, 15 (1976); *County of Lake*, 79 Ill. 26 at 490.

<sup>15</sup> *In re Heinrich*, 10 Ill. 2d 357, 384 (1956).