



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

**Jim Ryan**  
ATTORNEY GENERAL

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FILE NO. 96-042

GOVERNMENTAL ETHICS AND  
CONFLICT OF INTEREST:  
County Board Member Serving  
as County Housing Authority  
Executive Director

Honorable Kathryn Dobrinic  
State's Attorney, Montgomery County  
Montgomery County Courthouse  
120 North Main, Room 212  
Hillsboro, Illinois 62049

Dear Ms. Dobrinic:

I have your letter wherein you inquire whether a county board member or the chairman of the county board may simultaneously serve as the appointed executive director of a housing authority established by the county under the Housing Authorities Act (310 ILCS 10/1 et seq. (West 1994)). For the reasons hereinafter stated, it is my opinion that neither the county board chairman nor a member of the county board may simultaneously serve as the executive director of the county housing authority.

Initially, I note that you have specifically inquired regarding whether either the county board chairman or a county

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board member may serve as executive director of a housing authority. There is no significant distinction between these offices, for purposes of this analysis, and, therefore, I will refer to the county board positions collectively as "county board member".

In Rogers v. Village of Tinley Park (1983), 116 Ill. App. 3d 437, the court held that the positions of municipal police officer and village trustee were incompatible. This decision was based, in part, on the conflicting interests which may arise when a subordinate official, in another capacity, supervises his superior. The court quoted the following principles with respect thereto:

" \* \* \*

' [Incompatibility] is to be found in the character of the offices and their relation to each other, in the subordination of the one to the other, and in the nature of the duties and functions which attach to them.

Incompatibility of offices exists where there is a conflict in the duties of the offices, so that the performance of the duties of the one interferes with the performance of the duties of the other. They are generally considered incompatible where such duties and functions are inherently inconsistent and repugnant, so that because of the contrariety and antagonism which would result from the attempt of one person to discharge faithfully, impartially, and efficiently the duties of both offices, considerations of public policy render it improper for an incumbent to retain both.

At common law, it is not an essential element of incompatibility of offices that the clash of duty should exist in all or in the greater part of the official functions.

If one office is superior to the other in some of its principal or important duties, so that the exercise of such duties may conflict, to the public detriment, with the exercise of other important duties in the subordinate office, then the offices are incompatible.'

\* \* \*

'One of the most important tests as to whether offices are incompatible is found in the principle that the incompatibility is recognized whenever one is subordinate to the other in some of its important and principal duties, and subject in some degree to the other's revisory power. Thus, two offices are incompatible where the incumbent of the one has the power of appointment to the other office or the power to remove its incumbent, even though the contingency on which the power may be exercised is remote.' [Citation omitted.]

\* \* \*

"  
Rogers v. Village of Tinley Park (1983), 116  
Ill. App. 3d at 441.

This aspect of the doctrine of incompatibility was subsequently relied upon by the court in People ex rel. Fitzsimmons v. Swailes (1984), 101 Ill. 2d 458, 468-9, in holding that the offices of county board member and township assessor were incompatible. The court noted therein that as a county board member, the defendant would have been in a position to act upon the appointment of the supervisor of assessments, who has supervisory authority over township assessors, as well as to act upon the salary and budget of the supervisor. The court stated:

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" \* \* \*

We believe that, since the township assessor's position is obviously subordinate to the position of supervisor of assessments, and as a county board member defendant Swailes votes on who will be his supervisor, there may be a possible conflict and therefore hold that in Du Page County, where there is a supervisor of assessments elected by the county board, Swailes cannot hold the offices of township assessor and county board member because they are incompatible.

\* \* \*

People ex rel. Fitzsimmons v. Swailes, 101 Ill. 2d at 469.

As noted, Montgomery County has created a housing authority pursuant to the provisions of the Housing Authorities Act. Housing authority commissioners are appointed under section 3 of the Act (310 ILCS 10/3 (West 1995 Supp.)) in the following manner:

" \* \* \*

\* \* \* the presiding officer of the \* \* \* county shall appoint, with the approval of the governing body of the unit of local government, 5 commissioners with initial terms of 1, 2, 3, 4 and 5 years, \* \* \*

\* \* \*

At the expiration of the term of each commissioner, and of each succeeding commissioner, or in the event of a vacancy, the presiding officer shall appoint a commissioner, subject to the approval of the governing body as aforesaid, to hold office, in the case of a vacancy for the unexpired term, or in the case of expiration for a term of five years, or until his successor shall have been appointed and qualified. \* \* \*

\* \* \*

"

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The term "presiding officer" is defined by the Act as "the presiding officer of the board of a county \* \* \* for which an authority is created hereunder". (310 ILCS 10/17 (West 1994).) Thus, the county board chairman, with the approval of the county board, appoints the housing authority commissioners. Furthermore, the county board chairman has the sole power to remove housing authority commissioners. (310 ILCS 10/4 (West 1994).)

I further note that in counties over 25,000 inhabitants, the county board is authorized to establish a per diem allowance from the county budget for the housing authority commissioners. (310 ILCS 10/7 (West 1994).) The population of Montgomery County is 30,728 based on the 1990 Federal Census figures. (Illinois Blue Book 420 (1993-94).) A county board member who simultaneously serves as the executive director would be placed in a position to act upon the budget from which the per diem is paid to the housing authority commissioners.

Section 6 of the Act (310 ILCS 10/6 (West 1994)) provides, in pertinent part, as follows:

" \* \* \*

\* \* \* The commissioners shall, from time to time, select and appoint a chief executive officer and officers and employees, including engineering, architectural and legal assistants, as they may require for the performance of their duties, and may prescribe the duties and compensation of each officer and employee or expressly delegate that authority to the chief executive officer."

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The "executive director" referred to in your letter is that office which the Act refers to as a "chief executive officer".

The office of executive director is clearly subordinate to the housing authority board. The potential for competing duties and divided loyalties is at least as significant in these circumstances as it was in those discussed in People ex rel. Fitzsimmons v. Swailes. Therefore, it is my opinion that the county board member's power to act upon the appointment of the housing authority commissioners, who in turn select and supervise the executive director of the housing authority, precludes simultaneous tenure in these positions. Mere abstention by the county board member from voting or participating in housing authority matters would not remove the incompatibility. See People ex rel. Teros v. Verbeck (1987), 155 Ill. App. 3d 81, 84.

You have also inquired whether it would be permissible for a county board member to be appointed to serve as the executive director of the housing authority if: 1) he or she resigns from the office of county board member prior to assuming the office of executive director; or 2) his or her term of office as a county board member expires prior to the assumption of the office of executive director.

Clearly, the doctrine of incompatibility of offices would not be applicable in these circumstances, since no simultaneous tenure in the two offices is contemplated. Moreover, there

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is no per se prohibition upon a public officer resigning from one office to assume another, or from assuming a second public office when the term of the first expires. Consequently, there appears to be no absolute impediment to a succession in these offices. The potential for impropriety in such actions, however, must be considered.

As a general principle, a public officer is prohibited from using his or her official powers for personal gain. (See 50 ILCS 105/3; 720 ILCS 5/33-1, 33-1 (West 1994).) Thus, in Mulligan v. Village of Bradley (1985), 131 Ill. App. 3d 513, the court stated that it was improper for a village president to lobby for appointment to the newly-created position of village administrator, and then resign to accept that position. The court noted that even though a grand jury failed to indict the former village president for violating the pertinent conflict of interest statutes, there was a sufficient basis for declaring the appointment to be void.

In People v. Scharlau (1990), 141 Ill. 2d 180, the court upheld the convictions of several former city commissioners for official misconduct and corrupt practices stemming from their negotiation of a consent agreement in a Federal voting rights law suit that changed the city's government from a commission form to a mayor-aldermanic form, but also guaranteed their appointment as salaried "department heads" for three years in the new city government. The court stated therein:

"

\* \* \*

\* \* \* Defendants had a duty to act in the best interests of the city. They also had a duty to refrain from using their positions as city commissioners for personal benefit. We agree that defendants' settling the lawsuit was within their lawful authority. We find, however, that defendants' arranging for their own employment for a fixed term and salary was outside that authority. Public officials are expected to adhere to the highest standards of ethical conduct. (See [People v.]Saviano, 66 Ill. 2d at 15; Comment, Illinois Conflict of Interest Law and Municipal Officers, 12 S. Ill. U.L.J. 571, 571-72 (1988) (quoting President Kennedy, who said that 'No responsibility of government is more fundamental than the responsibility of maintaining the highest standards of ethical behavior \* \* \*. There can be no dissent from the principle that all officials must act with unwavering integrity, absolute impartiality and complete devotion to the public interest,' and citing O. Reynolds, Local Government Law §84 (1982)).)

\* \* \*

We also note that a conviction under section 33-3 of the Criminal Code of 1961 requires only that the accused have an intent to obtain a personal advantage for himself or another. (People v. Sims (1982), 108 Ill. App. 3d 648, 651.) Knowledge that the action in question violates the statute by being outside the officer's lawful authority is not an element. (People v. Kleffman (1980), 90 Ill. App. 3d 1, 3.) The crime in these cases is not that a public official intends to exceed the official's authority, but that in seeking personal gain the official's public duty and personal interest are intertwined. Public officials in this situation cannot perform official duties without effecting their personal interests. There can be no 'severing' of the two. (See 193 Ill. App. 3d at 293.) \* \* \* We hold that the statutes under which defendants were convicted were



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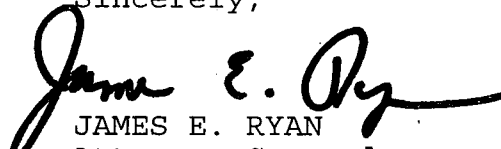
enacted to discourage this type of ethical dilemma and the abuses that stem from it. See Miller, 79 Ill. 2d at 490 (these provisions aimed at both bad-faith abuse of power and creation of relationships which carry potential abuse).

\* \* \*

People v. Scharlau (1990), 141 Ill. 2d 180, 196-200.

It is conceivable, in the circumstances you have described, that a county board member could use his or her appointment or approval power to extract from appointees to the housing authority board an agreement for favorable consideration in the subsequent appointment of an executive director. A county board member who misuses his or her powers to obtain such a personal advantage would, in my opinion, act unlawfully. Whether a public officer has misused his or her power is necessarily a subjective determination which must be based upon the specific facts at issue. The judicial decisions cited above will provide further guidance in making such a determination.

Sincerely,

  
JAMES E. RYAN  
Attorney General