



WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

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FILE NO. S-1477

OFFICERS:

When an Individual Simultaneously
Holding the Offices of Township
Supervisor and Member of County
Board May Vote on Propositions
Before Either Body

Honorable Robert J. Bier
State's Attorney, Adams County
County Building
Quincy, Illinois 62301

Dear Mr. Bier:

I have your letter of wherein you inquire whether, in accordance with Article XIII, section 20, of "AN ACT to revise the law in relation to township organization" (Ill. Rev. Stat. 1978 Supp., ch. 139, par. 126.10(2)), a member of the Adams County board who is also a township supervisor, may vote on the proposition of whether or not the county's share of State tax revenue sharing monies should be allocated to the township road district for the construction of township or district roads. For the reasons hereinafter stated, it is my opinion that such board member is not barred from voting on the proposition by section 20 of the

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aforementioned provision or section 3 of "AN ACT to prevent fraudulent and corrupt practices, etc." (Ill. Rev. Stat. 1978 Supp., ch. 102, par. 3).

The simultaneous holding of the offices of county board member and township supervisor has been expressly authorized by the General Assembly. (P.A. 80-1424, §1, effective September 8, 1978, Ill. Rev. Stat. 1978 Supp., ch. 102, par. 4.11.) Although simultaneous tenure in this case is statutorily authorized, the General Assembly has otherwise specified certain circumstances where, due to possible conflicts of interest, the dual officeholder may not vote. For example, section 20 of Article XIII of "AN ACT to revise the law in relation to township organization" (Ill. Rev. Stat. 1978 Supp., ch. 139, par. 126.10) provides in pertinent part as follows:

"Those township supervisors, or other elected township officials, who are also members of a county board, shall not vote on questions before the township board of trustees or the county board which relate to agreements or contracts between the township and the county pursuant to provisions in this Section or agreements or contracts between the township and the county which are otherwise authorized by law." (Emphasis added),

and section 3 of "AN ACT to prevent fraudulent and corrupt practices, etc." (Ill. Rev. Stat. 1978 Supp., ch. 102, par. 3) provides in pertinent part as follows:

"No person holding any office, either by election or appointment under the laws or constitution of this state, may be in any manner

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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. No such officer may represent, either as agent or otherwise, any person, association, trust or corporation, with respect to any application or bid for any contract or work in regard to which such officer may be called upon to vote. Nor may any such officer take or receive, or offer to take or receive, either directly or indirectly, any money or other thing of value as a gift or bribe or means of influencing his vote or action in his official character. Any contract made and procured in violation hereof is void." (Emphasis added.)

Because the question you pose involves voting on the allocation of county funds to a township road district, it becomes necessary to determine if the township road district is a part of the township organization of which a township supervisor is a member and in which he consequently would have an interest.

The road districts are created by Article 6 of the Illinois Highway Code (Ill. Rev. Stat. 1977, ch. 121, par. 6-101 et seq.). Therein their organization and powers are defined separately from those of the township. The highway commissioner of each district has jurisdiction over township roads within his district and is mandated to perform functions set forth in sections 6-201.1 through 6-201.17 of the Code. Section 6-201.6 provides that the highway commissioner of each road district shall:

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"Direct the expenditure of all moneys collected in the district for road purposes and draw warrants on the district treasurer therefor, provided such warrants are countersigned by the district clerk."

According to Illinois case law the highway commissioner is a quasi-corporation created by statute and as such, is separate and distinct from the town or township. Roesch-Zeller, Inc. v. Hollembeak (1955), 5 Ill. App. 2d 94, 107; American Mexican Refining Co. v. Wetzel (1932), 350 Ill. 575, 579. Furthermore, a town is a separate and distinct municipal corporation with no power or authority over roads. (Western Sand and Gravel Co. v. Town of Cornwall (1954), 2 Ill. 2d 560, 566.) The Illinois courts, as a general rule, have viewed the road district and the township as separate and distinct entities with the exception of a line of cases originating with Hennigs v. Centreville Township (1974), 56 Ill.2d 151, 154. The Hennigs case held the township amenable to suit in tort for the negligence of the highway commissioner. Because that result involved a negligence theory and was supported by the Molitor v. Kaneland Community Unit Dist. No. 302 (1959), 18 Ill. 2d 11, decision, which abrogated the doctrine of governmental tort immunity, and by the enactment of the Local Governmental Employees Tort Immunity Act (Ill. Rev. Stat. 1971, ch. 85, par. 1-101), it does not appear to overrule the well-established principle of the separation of the road district and the township nor should it alter the separate

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legal relationship of the road district and the township based on the circumstance you have described. See, opinion No. S-1083 (1976 Ill. Att'y Gen. Op. 173).

Because the Adams County board member in question is a township supervisor only, he does not hold an office or a position in the township road district. Nor is he a party to or in a position to otherwise direct the disposition of the fund allocated to the district. A vote on the allocation of county funds to the township road district is not related to an agreement or contract between the county and the township itself and thus, voting by the dual officeholder is not barred by either of the aforementioned provisions. Therefore, because the situation you have described does not pertain to the passage of county funds to the township, a county board member who is also a township supervisor may vote on the question of the allocation of county funds to the township road district even though one of the township road districts may be in the county board member's own township.

Very truly yours,

A T T O R N E Y G E N E R A L