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FILE NO. S-1016

OFFICERS:

Compatibility of Offices of
County Board Member and Township
Supervisor

Honorable William K. O'Connor
State's Attorney of Henry County
Court House
Cambridge, Illinois 61238

Dear Mr. O'Connor:

This is in response to your inquiry regarding Public Act 79-457. Your question is whether, in light of this new enactment, an individual, who is elected to the Henry County Board in November of 1976 may also hold the office of township supervisor if he is elected to the latter in 1977.

Public Act 79-457, which became effective on October 1, 1975, adds sections 4.10, 4.11 and 4.12 to "AN ACT to prevent fraudulent and corrupt practices in the making or accepting of official appointments and contracts by public officers".

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(Ill. Rev. Stat. 1973, ch. 102, par. 4.10, 4.11 and 4.12, as per amendment by Public Act 79-457.) These sections provide:

"§ 4.10. The General Assembly finds and declares that questions raised regarding the legality of simultaneously holding the office of county board member and township supervisor are unwarranted; that the General Assembly viewed the office of county board of supervisor and township supervisor as compatible; and that to settle the question of legality and avoid confusion among such counties and townships as may be affected by such questions it is lawful to hold the office of county board member simultaneously with the office of township supervisor in accordance with this Act.

§ 4.11. It is lawful for any county board member who may be elected in 1977 or before 1977 to the office of township supervisor to hold the office of county board member and township supervisor simultaneously until the expiration of his term of office as county board member; thereafter it is unlawful for the same individual to hold both such offices simultaneously.

§ 4.12. All actions of such person, as township supervisor after December 1, 1974, which are otherwise in accordance with law, are hereby validated."

This Public Act was enacted subsequent to the issuance of my opinion No. S-877 (March 17, 1975) in which I held that because of the incompatibility of these offices, "any township supervisor who has assumed the office of county board

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member, or any county board member who has assumed the office of township supervisor by election or appointment after September 5, 1974, has ipso facto resigned and vacated the prior held office.

In 1972 the date of election for members to county boards in counties under township organization, which had a population of less than 3,000,000, was on the first Tuesday in April of that year. One-half of the county board members were to serve for terms of 2 years while the other half were to serve for 4 years. (Ill. Rev. Stat. 1973, ch. 34, par. 839, as amended by P.A. 79-604; Ill. Rev. Stat. 1974 Supp., ch. 46, par. 2-26.01.) Therefore, one-half of the county board members would serve until 1974 while the other half would serve until 1976. Section 2-26.01 of The Election Code (Ill. Rev. Stat. 1974 Supp., ch. 46, par. 2-26.01) was amended by Public Act 78-1 to provide for the optional holding of an election for county board members in November rather than in April. Under the recently enacted Public Act 79-604, section 2-26.01 of The Election Code was amended effective October 1, 1975 to provide that all county board member elections in the year 1976 and thereafter be held in

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the month of November. Public Act 79-604 also amended section 839 of "AN ACT relating to the composition and election of county boards in certain counties" (Ill. Rev. Stat. 1973, ch. 34, par. 839) by repeating that county board member elections are to be held on the first Tuesday of November in 1976 and thereafter. Also, the terms of incumbent members were extended from the first Monday in May until the first Monday in December.

It is clear from the foregoing that the General Assembly has contemplated an election of county board members in the year 1976. By virtue of section 9 of "AN ACT relating to the composition and election of county boards in certain counties" and section 2-26.01 of The Election Code, an election is to be held in November of 1976 for purposes of filling the offices on the county board which were held for 4 years following the election in 1972. For purposes of county board elections in 1976, Public Act 79-604 has served to consolidate these elections so that they would occur in November and not in April.

Section 60 of "AN ACT to revise the law in relation to township organization" (Ill. Rev. Stat. 1974 Supp., ch. 139, par. 60, as amended by P.A. 79-341) provides that:

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"* * * In the year 1977 and every 4 years thereafter there shall be elected by ballot on the first Tuesday in April in each town a supervisor (who shall be ex officio supervisor of general assistance) to succeed the supervisor whose term expires in that year. The supervisor so elected shall hold office for a term of 4 years and until their successors are elected and qualified. The terms of office of all supervisors serving on the effective date of this amendatory act of 1974 whether elected in 1971 or in 1973, shall expire in 1977. * * *"

I emphasize that section 4.11 of "AN ACT to prevent fraudulent and corrupt practices in the making or accepting of official appointments and contracts by public officers" (Ill. Rev. Stat. 1973, ch. 102, par. 411, as added by P.A. 79-457) refers to "any county board member". It is evident that by using these words, by being cognizant of the fact that there would be elections for county board members in November of 1976, and by recognizing the fact that township supervisors would be elected in 1977, the General Assembly intended, by virtue of section 4.11 of the Act, to permit an individual to lawfully hold the office of county board member and township supervisor, if he is elected to both offices in 1976 and 1977, respectively.

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Finally, in the case of Livingston v. Ogilvie, 43 Ill. 2d 9, at 17, the Illinois Supreme Court applied the following rule:

"* * * [T]he right to hold office is a valuable one and its exercise should not be declared prohibited or curtailed except by plain provisions of the law. The rule that provisions imposing disqualifications should be strictly construed is applicable to those which prohibit dual office-holding. That should not be extended by implications beyond the office or offices expressed or to persons not clearly within their meaning. In other words, they should be construed in favor of eligibility. 42 Am. Jur. Public Officers, sec. 61."

As a county board member who is elected in November 1976 and who may be elected township supervisor in 1977 is not clearly within the disqualifications provided in section 4.11 of the above Act, it follows that under this section, he may hold both offices simultaneously under the conditions prescribed therein. Section 4.11 should be construed in favor of permitting an incumbent to hold both offices until the expiration of his term as county board member. If he is elected to county board member in 1976, he may therefore hold both offices until his office as county board member expires in 1980. Ill. Rev. Stat. 1973, ch. 34, par.

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839, as amended by P.A. 79-604.

For the foregoing reasons, I am of the opinion that Public Act 79-457 does not prohibit, but rather permits an individual who is elected to the Henry County Board in November of 1976 to hold that position simultaneously with the office of township supervisor should he be elected to the latter office in 1977.

Very truly yours,

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