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ATTORNEY GENERAL  
STATE OF ILLINOIS

October 27, 1992

FILE NO. 92-026

GOVERNMENTAL ETHICS AND  
CONFLICT OF INTEREST:  
Board Member of One School District  
Employed by Affiliated School District

Honorable Terry M. Green  
State's Attorney, Franklin County  
202 West Main Street  
Post Office Box 518  
Benton, Illinois 62812

Dear Mr. Green:

I have your letter wherein you inquire whether a person who is employed by one school district may serve on the governing board of another school district in circumstances in which the two districts share administrators, facilities and programs. For the reasons hereinafter stated, it is my opinion that the two board members to whom you refer may properly hold their respective positions of employment while serving on the boards of the affiliated districts.

According to the information you have provided, the Thompsonville grade school and high school districts are sepa-

rate districts formed in accordance with the Illinois School Code (Ill. Rev. Stat. 1991, ch. 122, par. 1-1 et seq.). However, a single facility houses both the grade school and the high school, one person serves as superintendent of both schools and one person serves as principal of both schools. The schools share a lunch room, gymnasium and library. Intergovernmental agreements between the districts govern the lunch program and certain Federal aid and academic programs. The common superintendent and principal are involved in negotiations and staff evaluations, as well as general policy determinations.

In the November, 1991, election, a custodian employed by the grade school district was elected to the high school board. At the same election, a high school teacher was elected to the grade school board. Because of the close relationship between the two districts, questions have arisen regarding whether the two board members in question may be in violation of the conflict of interest provisions contained in section 3 of the Public Officer Prohibited Activities Act (Ill. Rev. Stat. 1991, ch. 102, par. 3) and section 10-9 of the School Code (Ill. Rev. Stat. 1991, ch. 122, par. 10-9).

Section 3 of the Public Officer Prohibited Activities Act and section 10-9 of the School Code generally prohibit the public officers to whom they apply from possessing any direct or indirect interest in any contract of the public body which they serve. If either school board member was employed by a

private entity having contracts with the public body which he or she serves, the conflict of interest provisions cited above would be violated because such employees would have at least an indirect interest in the contracts of their employers. (People v. Sperry (1924), 314 Ill. 205.) Such a conclusion, however, does not necessarily result when the employer is a public body which contracts with another public body which the employee serves in an official capacity.

This issue was addressed by Attorney General Scott in opinion No. S-1031, issued January 8, 1976 (1976 Ill. Att'y Gen. Op. 56), which concerned several persons who simultaneously served as either school or municipal officials, and were also employed by either the school district or the municipality with which the school district proposed to contract. In his opinion, my predecessor distinguished between the nature of public and private employment:

" \* \* \*

First, the pecuniary interest is not as certain [in public employment]. The interest that a public official has in a contract with an entity of which he is an employee is that his salary or wage will continue or increase as the corporation continues to exist and grow. This same interest is not necessarily present to as great a degree when a person works for a public body. In the particular situation presented by your request, both the city and the school district are fulfilling public purposes which by statute are required to be continued. Furthermore, salary or wage increases are not as readily or conveniently granted in the public sector.

Secondly, with the adoption of the Illinois Governmental Ethics Act (Ill. Rev. Stat. 1973, ch. 127, pars. 601-101 et seq.) Illinois has sought to prohibit conflicts of interest not by prohibiting certain interests per se but by requiring disclosure of economic interests by public officials. Under section 4A-102 of the Act (Ill. Rev. Stat. 1973, ch. 127, par. 604A-102) the municipal officers are required to disclose the name of any unit of government which has employed them.

\* \* \*

I am, therefore, of the opinion that a contract between two public bodies is not void whenever there is a mere possibility that an officer of one has an interest in that contract. There must be an actual interest. This you will have to determine from the particular facts in the situation." 1976 Ill. Att'y Gen. Op. 56, 59.

An interest which violates these conflict of interest statutes must be certain, definable, pecuniary or proprietary; it must be financial in nature. (Panozzo v. City of Rockford (1940), 306 Ill. App. 443, 456.) A public employee typically does not have the sort of financial interest in the contracts of his employer which a private firm's employee may have. Local public entities are not profit making enterprises, but rather are the means of carrying out the corporate interests of the people. For that reason, contracts between such entities do not necessarily benefit the officers or employees of either financially, since the salary or wages of such employees are not likely to depend upon such contracts.

It is possible that specific circumstances may exist in which a school district employee would be deemed to have a

financial interest in a contract between the two districts which would violate the pertinent conflict of interest statutes. Such a violation cannot be avoided by abstention from voting. (People v. Saviano (1977), 66 Ill. 2d 7.) The mere fact that a member of one school board is employed by another with which it contracts does not, in my opinion, result in a per se violation of either section 3 of the Public Officer Prohibited Activities Act or section 10-9 of the School Code.

While the teacher and custodian may have no prohibited financial interest in agreements between the district they serve as officers and the district that employs them, they may have other interests which could interfere with their duty of fidelity as public officers. Their duties may, for example, include participating in determining the terms and conditions of employment of the administrative personnel shared by the two districts, and supervising the performance of their duties. These administrators may, in turn, negotiate employment terms respecting the teacher and custodian as employees of their respective districts, supervise them and evaluate their job performance. The issue of supervising one's supervisor has traditionally been discussed with respect to the doctrine of compatibility of offices. (See People ex rel. Fitzsimmons v. Swailes (1984), 101 Ill. 2d 458; Rogers v. Village of Tinley Park (1983), 116 Ill. App. 3d 437.) In Illinois, however, the doctrine of compatibility of offices has been applied only to

offices and not to positions of employment. (1975 Ill. Att'y Gen. Op. 278.) Since neither a teacher nor a custodian in a school district can be considered a public officer, the doctrine of compatibility does not preclude these individuals from being employed by one district while serving as officers of another.

Even though statutory conflict of interest statutes and the doctrine of compatibility may be inapplicable in these circumstances, it is well established 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. (In re Heinrich (1956), 10 Ill. 2d 357, 384; see also Annotation 10 ALR 3d 694.) Such potential conflicts, referred to generically as common law conflicts of interest, can arise whenever official action could result in a personal advantage or disadvantage to the interested official. Therefore, it is my opinion that each of the board members in question must abstain from voting or acting upon matters from which he or she may be personally benefitted as an employee of the other district, including those which directly relate to persons who serve as their administrative supervisors in their employment relationships.

Respectfully yours,

A handwritten signature in cursive script, appearing to read "Roland W. Burris".

ROLAND W. BURRIS  
ATTORNEY GENERAL