



**JIM RYAN**  
ATTORNEY GENERAL  
STATE OF ILLINOIS



January 31, 1996

FILE NO. 96-011

GOVERNMENTAL ETHICS AND  
CONFLICT OF INTEREST:  
Village Trustee Employed  
as a Deputy Sheriff by  
County Contractually  
Providing Police Services  
to the Village

Honorable Ted J. Hamer  
State's Attorney, Henry County  
100 South Main Street  
Cambridge, Illinois 61238

Dear Mr. Hamer:

I have your letter wherein you inquire whether a village trustee of a village that contracts with a county for police services may serve simultaneously as a part-time deputy sheriff for the county without creating a prohibited pecuniary interest. For the reasons hereinafter stated, it is my opinion that there is no per se violation of the Illinois conflict of interest statutes when a village trustee simultaneously serves as a part-time deputy sheriff for a county with whom the village contracts for police services. Depending upon the specific circumstances present, however, a violation of these statutes may occur.

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According to the information you have provided, a village trustee of the Village of Andover also serves as a part-time deputy sheriff for Henry County. The Village of Andover and Henry County have entered into a contract under which Henry County provides police services to the village. To date, the trustee, in his capacity as part-time deputy sheriff, has not been assigned to provide police services in the Village of Andover. Rather, his assignments have been limited to providing police services in a neighboring municipality.

Section 3 of the Public Officer Prohibited Activities Act (50 ILCS 105/3 (West 1994)) and section 3.1-55-10 of the Illinois Municipal Code (65 ILCS 5/3.1-55-10 (West 1994)), which 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, respectively provide, in pertinent part:

"No 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. \* \* \* Any contract made and procured in violation hereof is void. \* \* \*

\* \* \*

"

(50 ILCS 105/3 (West 1994).)

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"(a) A municipal officer shall not be interested, directly or indirectly, in the officer's own name or in the name of any other person, association, trust, or corporation, in any contract, work, or business of the municipality or in the sale of any article whenever the expense, price, or consideration of the contract, work, business, or sale is paid either from the treasury or by an assessment levied by statute or ordinance. \* \* \*

\* \* \*

"

(65 ILCS 5/3.1-55-10 (West 1994).)

In the course of interpreting the various conflict of interest statutes, the Illinois Supreme Court has stated that section 3 of the Public Officer Prohibited Activities Act is a broadly drafted conflict of interest statute (Croissant v. Joliet Park Dist. (1990), 141 Ill. 2d 449, 459; Miller v. County of Lake (1980), 79 Ill. 2d 481, 490), 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. (Croissant v. Joliet Park Dist., 141 Ill. 2d 449, 459-62.) The same policy underlies section 3.1-55-10 of the Municipal Code. Thus, these conflict of interest statutes not only bar an official from having a private pecuniary interest in a contract, but also prohibit 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 contract. Miller v. County of Lake, 79 Ill. 2d 481, 490; People v. Savaiano (1976), 66 Ill. 2d 7, 15.

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It is clear that if a village were contracting with a private corporation which employed a village trustee, rather than another public body, the village trustee would have a prohibited conflict of interest. In People v. Sperry (1924), 314 Ill. 205, the court held that a contract between a city and a corporation of which nine members of the city council were employees, was void. The court stated:

" \* \* \*

\* \* \* If we attach any significance to the words used by the statute, "directly or indirectly interested in the contract," we think the conclusion cannot be escaped that the officers of the city, who are also employees of the contractor, must be considered as indirectly interested in the contract, without regard to the fact that they derived no direct benefits from the contract itself. They would be more than human if they could make the same fair and impartial contract with the contractor, as they could with another party with whom they had no relation by way of employment or otherwise. \* \* \*" (People v. Sperry, 314 Ill. 205, 209.)

This rule is deemed to apply regardless of whether there is an actual conflict and regardless of the good faith of the individual involved. 1976 Ill. Att'y Gen. Op. 56, 58.

The same conclusion, however, does not necessarily appertain when the employer is a public body which contracts with another public body which the employee serves in an official capacity. Such a situation was initially addressed by Attorney General Scott in opinion No. S-1031, issued January 8, 1976 (1976

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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. Attorney General Burriss subsequently addressed this issue in opinion No. 92-026, issued October 27, 1992 (Ill. Att'y Gen. Op. No. 92-026, issued October 27, 1992), which concerned a person who served as a school board member and who was simultaneously employed by another school district in circumstances in which the two school districts shared administrators, facilities and programs. In their opinions, my predecessors distinguished between the nature of public and private employment, noting:

" \* \* \*

First, the pecuniary interest is not as certain. 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 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.

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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 wherever 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.' " (Ill. Att'y Gen. Op. 92-026, issued October 27, 1992 at 3-4, quoting 1976 Ill. Att'y Gen. Op. at 59.)

An interest which violates the 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; Hollister v. North (1977), 50 Ill. App. 3d 56, 59.) A public employee typically does not have the sort of financial interest in the contracts of his or her employer which a private firm's employee may have. Local public bodies are not profit making enterprises, but rather are the means of carrying out the corporate interests of the people. For that reason, contracts between public bodies do not necessarily benefit the officers or employees of either financially, since the salary or wages for such employees are not likely to depend upon such contracts. Thus, the mere fact that a village trustee is employed by another governmental body with which the village

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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 3.1-55-10 of the Illinois Municipal Code.

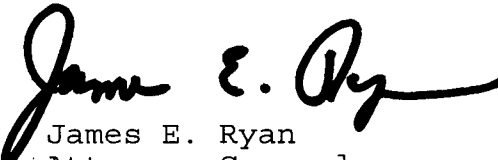
Although there is no per se violation of the Illinois conflict of interest statutes when a village trustee is employed by another unit of government with which the village contracts, I do not discount the possibility that specific circumstances may exist in which a part-time deputy sheriff would be deemed to have an indirect financial interest in a police services contract between the village and the county which would be violative of the pertinent statutes. If, for example, the county board were to establish the number of part-time deputies the sheriff may appoint (55 ILCS 5/3-6008 (West 1994)) based, either formally or informally, upon the number of police service contracts the county enters into with local municipalities, or if the amount of money appropriated to the sheriff's department is based upon income derived from municipal police service contracts, then the village trustee would have an indirect interest in the police service contract because his future employment as a part-time deputy sheriff could depend upon the village's continuation of its police service contract with the county. Thus, in order to determine whether a statutory violation occurs in this particular situation, it will be necessary for you to review the provisions of the police service contract, the terms of employment for part-time sheriff's deputies and any ordinances adopted by the county

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board regarding the number of part-time sheriff's deputies. Consideration should also be given to the exceptions permitting certain de minimis interests contained in both statutes.

I would further note that the common law recognizes that conflicts of interest other than those covered by such statutes may arise, and 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 Heirich (1956), 10 Ill. 2d 357, 384, cert. denied 355 U.S. 805 (1957); see also Annotation 10 ALR 3d 694.) Such potential common law conflicts of interest can arise whenever official action could result in a personal advantage or disadvantage to the interested official. Therefore, even if there is no violation of the pertinent statutes present, it is also my opinion that the village trustee in question must abstain from voting or acting upon matters from which he may be personally benefitted as a part-time deputy sheriff for the county.

Sincerely,

  
James E. Ryan  
Attorney General