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SPRINGFIELD

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FILE NO. 80-027

COMPATIBILITY OF OFFICES:
State Representative and
Township Supervisor (Chairman
of Board of Health of Public
Health District)

Honorable Harry "Bus" Yourell
State Representative
State of Illinois
Room M 1 - William G. Stratton Building
Springfield, Illinois 62706

Dear Representative Yourell:

I have your letter wherein you ask whether the office of Representative in the General Assembly is compatible with that of township supervisor (and chairman and ex officio member of the Board of Health of the Public Health District of the town). For the reasons discussed below, it is my opinion that the offices in question are compatible and that the same person may hold both offices simultaneously.

The general rule regarding incompatibility of offices was laid down in People ex rel. Myers v. Haas (1908),

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145 Ill. App. 283, 286. Incompatibility arises where the Constitution or a statute specifically prohibits the occupant of either one of the offices from holding the other, or where because of the duties of either office a conflict of interest may arise, or where the duties of either office are such that the holder of one cannot in every instance properly and faithfully perform all the duties of the other.

There is no constitutional or statutory provision which prohibits a person from holding both of the offices in question. A proposal before the Sixth Illinois Constitutional Convention that a member of the General Assembly should not hold any other elective or appointive public office was rejected. (4 Record of Proceedings, Sixth Illinois Constitutional Convention 2821-2828.) Section 2(e) of article IV of the Illinois Constitution of 1970 only prevents a member of the General Assembly from receiving "compensation as a public officer or employee from any other governmental entity for time during which he is in attendance as a member of the General Assembly".

In People v. Capuzi (1960), 20 Ill. 2d 486, the Supreme Court held that a village president, deputy bailiff, deputy coroner, and deputy clerk could also serve as a member of the General Assembly. In construing article III and section 3 of article IV of the Illinois Constitution of 1870,

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the court pointed out at pages 492 and 494:

" * * * [I]n People v. Reiner, 6 Ill. 2d 337, we said that the ~~separation-of-powers~~ provision of the constitution does not require that the legislative, executive, and judicial powers should be entirely divorced one from the other, but that the whole power of two or more of these departments shall not be lodged in the same hand. * * *

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* * * Considering that in 1870 members of the General Assembly received a per diem of \$5 per day, it would appear that had the framers of the constitution desired to forbid the legislators from any and all other public employment, they would have been explicit in expressing such an intention. * * *

No precedent in Illinois suggests that a Representative in the General Assembly is prohibited by the common law doctrine of incompatibility of offices from serving as a township supervisor (and chairman and ex officio member of the Board of Health District of the town). The argument that a member of the General Assembly would supervise himself if he held a local office, thus rendering such offices incompatible, was specifically rejected by the New Jersey Supreme Court in Reilly and State of New Jersey ex rel. Reilly v. Ozzard (N.J. 1960), 166 A. 2d 360, 371.

In conclusion, it is my opinion that the office of State Representative is compatible with that of township supervisor (and chairman and ex officio member of the Board of Health of the Public Health District of the town). There is no constitutional provision or statute prohibiting a

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person from holding both of the offices in question. The duties of the offices are such that the holder of one could properly and faithfully perform the duties of the other. Consequently, a person may be elected to either of these offices without being considered to have abandoned or vacated the other.

Very truly yours,

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