



WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD



July 1, 1976

FILE NO. S-1114

**COMPATIBILITY OF OFFICES:
Whether a Township Supervisor,
An Assistant Regional Super-
intendent of Schools, or a
County Board Member May be
Appointed to the Community
Mental Health Board**

**Honorable Patrick J. Corcoran
State's Attorney
Hancock County
Carthage, Illinois 62921**

Dear Mr. Corcoran:

I have your letter wherein you ask whether a town-
ship supervisor, an assistant regional superintendent of
schools, or a county board member may be appointed to the
community mental health board of a county. The question is
whether these offices are incompatible. For the reasons
discussed below I am of the opinion that one county board

Honorable Patrick J. Corcoran - 2.

member and an assistant regional superintendent of schools may be appointed to the community mental health board, but a township supervisor may not.

Incompatibility between offices arises where the Constitution, or a statute, specifically prohibits the occupant of either 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. People ex rel. Meyer v. Haas, 145 Ill. App. 283.

There are no constitutional or statutory prohibitions against the appointment of a township supervisor to the county community mental health board, but it is my opinion that a township supervisor cannot properly and faithfully perform the duties of a county community mental health board member. Section 3e of the Community Mental Health Act (Ill. Rev. Stat. 1975, ch. 91 1/2, par. 303e) authorizes the county community mental health board to enter into joint agreements with townships and other governmental units within the county. Section 3e provides in pertinent part as follows:

Honorable Patrick J. Corcoran - 3.

The community mental health board may:

(e) Enter into joint agreements with other governmental units located within the geographical area of the board. Such agreements shall be written and shall provide for the rendition of services by the board to the residents of such governmental units.

The board of town auditors is authorized to contract with the community mental health board having jurisdiction within the township for mental health services to residents of the township. (Ill. Rev. Stat. 1975, ch. 139, par. 126.11.) The township supervisor, as a member of the township board of auditors, may be called upon to consider and vote upon such contracts with the county community mental health board. A person holding the offices of township supervisor and community mental health board member would thus have to represent the interests of both the township and the board when the township contracts with the board for mental health services. A person cannot represent the interests of both governmental units when those units contract

Honorable Patrick J. Corcoran - 4.

with each other. (Opinion No. NP-962, issued September 24, 1975; Opinion No. S-877, issued March 17, 1975; 1972 Ill. Att'y. Gen. Op. 45.) The contracting responsibilities of the offices of township supervisor and community mental health board member make it impossible for a person holding both offices to fairly represent the interests of the township and the board. It is, therefore, my opinion that the offices of township supervisor and county community mental health board member are incompatible and that a township supervisor may not be appointed to the community mental health board of a county.

With regard to an assistant regional school superintendent and a county board member, the General Assembly has provided otherwise, even though it may be argued that there is a conflict in duties. Incompatibility is founded upon principles of public policy, and it is unquestionably within the power of the legislature to provide that two offices may be held by the same individual even though such offices might be held to be incompatible at common law. Ahto v. Weaver, 89 A.2d 27 (N.J., 1963); McQuillon Mun. Corp. 3rd Ed. Rev., sec. 12.67, p. 296.

Honorable Patrick J. Corcoran - 5.

It is my opinion that the intent of the legislature is that persons, such as assistant regional school superintendents, who are responsible for services to the mentally retarded may be appointed to the community mental health board even though the board must review and evaluate services for the mentally retarded in the county. This intent is evidenced in section 3a of the Community Mental Health Act, which provides in part as follows:

"Every governmental unit authorized to levy an annual tax under any of the provisions of this Act shall, before it may levy such tax, establish a 7 member community mental health board who shall administer this Act. Such board shall be appointed by the chairman of the governing body of a county, the mayor of a city, the president of a village, the president of an incorporated town, or the supervisor of a township, as the case may be, with the advice and consent of the governing body of such county, city, village, incorporated town or the town board of auditors of any township. Members of the community mental health board shall be residents of the government unit and, as nearly as possible, be representative of interested groups of the community such as local health departments, medical societies, local comprehensive health planning agencies, hospital boards, lay associations concerned with mental health and alcoholism, controlled substances addiction or use of cannabis and mental retardation, as well as the general public. One member shall be a member of the governing body.

* * *

Honorable Patrick J. Corcoran - 6.

This section provides that the board members shall be representative of interested groups in the community. Among the interested groups expressly mentioned are local health departments. Since health departments are responsible for establishing and carrying out programs and services for the mentally retarded (Ill. Rev. Stat. 1975, ch. 111 1/2, par. 20c13), it must be concluded that the legislature has determined that persons responsible for services to the mentally retarded may be appointed to the community mental health board.

The assistant regional superintendent's duty to supervise special education programs for the mentally retarded does not prevent him from serving on the community mental health board. The office of assistant regional superintendent falls in the same category as local health departments. The statute specifically provides for representation from interested groups even though their duties may conflict with the duties of a community mental health board member. Thus by statute the two offices are not incompatible; and it is therefore my opinion that an assistant regional school superinten-

Honorable Patrick J. Corcoran - 7.

dent may be appointed to the community mental health board of a county.

With regard to appointment of a county board member, section 3a of the Community Mental Health Act (Ill. Rev. Stat. 1975, ch. 91 1/2, par. 303a) authorizes the county board chairman, as chairman of the county's governing body, to make appointments to the county's community mental health board with the advice and consent of the county board. There is an express provision in section 3a for the appointment of one member from county board, as the governing body to the community mental health board of the county.

The county board chairman's authority to appoint a county board member to the community mental health board is inconsistent with the prohibition in section 1 of "AN ACT to prevent fraudulent and corrupt practices * * * "(Ill. Rev. Stat. 1975, ch. 102, par. 1) which forbids the appointment of a county board member to another office when the appointment is made by the county board of which he is a member. However, where there are two statutes, one dealing with a subject in general and comprehensive terms, and the other dealing with the same subject in a narrow and definite

Honorable Patrick J. Corcoran - 8.

way, the two statutes should be read together with a view toward a consistent legislative policy. To the extent the two statutes are in conflict, the special statute will prevail over the general one. (Rosehill Cemetery v. Leuder, 406 Ill. 458.) Section 1 of "AN ACT to prevent fraudulent and corrupt practices * * *" is a general prohibition against the appointment of county board members. The definite provision in section 3a of the Community Mental Health Act for the appointment of one county board member to the community mental health board evidences a legislative intent that section 3a should stand as an exception to the general prohibition. Therefore, it is my opinion that one county board member must be appointed to the community mental health board of the county. Only one member of the county board may be appointed.

Very truly yours,

ATTORNEY GENERAL