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FILE NO. S-1367

**COMPATIBILITY OF OFFICES:
Membership on County Zoning
Board of Appeals and Office
of Drainage District Commissioner,
School Board Member or Township
Supervisor**

Honorable Thomas J. Difanis
State's Attorney
Champaign County
Court House
Urbana, Illinois 61801

Dear Mr. Difanis:

I have received your letter requesting an opinion as to whether membership on the Champaign County Zoning Board of Appeals is compatible with the positions of drainage district commissioner, school board member, or township supervisor.

The general rule as to incompatibility between offices was laid down in People v. Haas (1908), 145 Ill.

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App. 283. Incompatibility arises where the Constitution or a statute specifically prohibits the occupants of either one of the offices from holding the other, or where because of the duties of either office a conflict in 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.

Section 3.1 of "AN ACT in relation to county zoning" (Ill. Rev. Stat. 1977, ch. 34, par. 3154) provides:

"The regulations by this Act authorized may provide that a board of appeals may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein contained in cases where there are practical difficulties or particular hardship in the way of carrying out the strict letter of any of such regulations relating to the use, construction or alteration of buildings or structures or the use of land;
* * * ."

Section 3.3 of the same Act (Ill. Rev. Stat. 1977, ch. 34, par. 3156) provides:

"The board of appeals shall also hear and decide appeals from and review any order, requirement, decision or determination made by an administrative official charged with the enforcement of any ordinance or resolution adopted pursuant to this Act.

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In addition, section 3.1 mandates that the county board of zoning appeals vote on any proposal submitted to the county board which creates a variation to the zoning regulations. If any proposed variation fails to receive the approval of the board of appeals, it takes a three-fourths vote of all the members of the county board to pass the resolution. Under section 5 (Ill. Rev. Stat. 1977, ch. 34, par. 3158), a hearing must be held before the county board of zoning appeals before the county board may amend zoning regulations.

In opinion No. S-419 (1972 Ill. Att'y. Gen. Op. 45) I advised on the question of whether the position of city zoning board of appeals member was compatible with membership on the county board. In that opinion I stated:

"Decisions by this board [city zoning board of appeals] relating to land use within the municipality but near its boundary with the county could be advantageous or disadvantageous to the county. Here the county board member's vote on the city zoning board of appeals may be cast to further the county's interest rather than the city's. * * * "

This same kind of conflict in duty would be present if a member of the county zoning board were also to

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be a drainage district commissioner, school board member or township supervisor. The school board is interested in the character of the neighborhood surrounding its schools. It also is concerned with the number and type of residential units within its district since this will affect student enrollment. A drainage district is, of course, concerned with all construction within the district. Zoning decisions have a direct impact on the work of township supervisors. Basically, zoning decisions determine the character of the development in each of these governmental districts. Development determines the tax base and demand for services on each district. A person holding a position on the county board of appeals and one of these other offices could not in every instance properly and faithfully perform all the duties of both offices.

Therefore, in light of the broad and substantial powers of county zoning board of appeal members to review enforcement decisions, grant variations to zoning regulations and advise the county board on zoning variations and amendments, and in light of the duties of the other offices, it is my opinion that the office of county zoning board of appeals

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**member is incompatible with school board member, drainage
district commissioner and township supervisor.**

Very truly yours,

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