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ATTORNEY GENERAL
STATE OF ILLINOIS

July 27, 1993

FILE NO. 93-017

COMPATIBILITY OF OFFICES:
Township Assessor and Deputy
Supervisor of Assessments

Honorable Daniel A. Fish
State's Attorney, Lee County
Lee County Courts Building
Post Office Box 462
Dixon, Illinois 61021

Dear Mr. Fish:

I have your letter wherein you inquire whether a deputy supervisor of assessments may serve simultaneously as an elected township assessor. For the reasons hereinafter stated, it is my opinion that these offices are incompatible. Therefore, one person may not hold both offices simultaneously.

Offices are deemed to be incompatible where the constitution or a statute specifically prohibits the occupant of one office from holding the other, or where the duties of the two offices conflict so that the holder of one cannot in every instance properly and faithfully perform all of the duties of the other. (People ex rel. Myers v. Haas (1908), 145 Ill. App. 283, 286; see generally People ex rel. Teros v.

Verbeck (1987), 155 Ill. App. 3d 81.) There are no constitutional or statutory provisions which prohibit simultaneous tenure as a deputy supervisor of assessments and as a township assessor. Therefore, the issue is whether a conflict of duties would exist if one individual were to occupy both of these positions simultaneously.

The office of township assessor is created by section 7-1 of the Township Law (Ill. Rev. Stat. 1991, ch. 139, par. 60; 60 ILCS 5/7-1 (West 1992)), which provides for the election of an assessor or multi-township assessor for a term of four years. The duties of the office are governed by the Revenue Act of 1939 (Ill. Rev. Stat. 1991, ch. 120, par. 482 et seq.; 35 ILCS 205/1 et seq. (West 1992)).

The office of supervisor of assessments is created by sections 2 and 3a of the Revenue Act of 1939 (Ill. Rev. Stat. 1991, ch. 120, pars. 483, 484a; 35 ILCS 205/2, 3a (West 1992)). Section 2 provides, in part:

"In counties having less than 1,000,000 inhabitants and in which no board of assessors has heretofore been elected as provided in Section 4 of this Act, there shall be a county supervisor of assessments appointed as provided in Section 3a or elected. * * *

* * *

"

Section 3a of the Act provides:

"In counties containing less than 1,000,000 inhabitants and not having an elected board of assessors or an elected supervisor of assessments, the office of

supervisor of assessments shall be filled by appointment by the presiding officer of the county board with the advice and consent of the county board, as herein provided.

* * *

Section 3b of the Revenue Act of 1939 (Ill. Rev. Stat. 1991, ch. 120, par. 484b; 35 ILCS 205/3b), provides, in part, with respect to the office of supervisor of assessments:

" * * *

Each such officer may, by and with the advice and consent of the county board, appoint necessary deputies and clerks, their compensation to be fixed by the county board and paid by the county.

* * *

In opinion No. NP-785, issued July 18, 1974, Attorney General Scott concluded that a conflict between the duties of the offices of township assessor and deputy supervisor of assessments existed because both officers have authority to assess the same property. I concur in that conclusion.

Section 17 of the Revenue Act of 1939 (Ill. Rev. Stat. 1991, ch. 120, par. 498; 35 ILCS 205/17 (West 1992)), after listing certain property to be assessed by State authorities, provides:

"* * * the township assessor, multi-township assessor, county assessor, supervisor of assessments, board of assessors, board of review, or board of appeals, as the case may be, shall assess all other property not exempted from taxation."

Section 43 of the Act (Ill. Rev. Stat. 1991, ch. 120, par. 524; 35 ILCS 205/43 (West 1992)) provides:

"

* * *

On or before June 1 in each general assessment year in all counties having a population less than 1,000,000 inhabitants, and as soon as he reasonably can in each general assessment year in counties having a population of 1,000,000 or more inhabitants, or if any such county is divided into assessment districts as provided above, as soon as he reasonably can in each general assessment year in such assessment districts, the assessor in person or by his deputy shall actually view and determine as near as practicable the value of each tract or lot of land listed for taxation as of January 1, or as provided in Section 27a of this Act, of such year and assess the same at 33 1/3% of its fair cash value, or in accordance with Sections 20e and 20k of this Act, or in accordance with a county ordinance adopted pursuant to Section 4 of Article IX of the Constitution of Illinois, setting down the sum in the proper column in the books furnished him.

* * *

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(Emphasis added.)

Section 44 of the Act (Ill. Rev. Stat. 1991, ch. 120, par. 525;

35 ILCS 205/44 (West 1992)) provides, in pertinent part:

"On or before the first day of June in each year other than the year of the general assessment, in all counties having less than 1,000,000 inhabitants, and as soon as he reasonably can in counties containing 1,000,000 or more inhabitants, the assessor shall list and assess all real property which shall become taxable and which is not upon the general assessment, and also make and return a list of all new or added buildings, structures or other improvements of any kind, the value of which shall not have been previously added to or included in the valuation of the tract or lot on which such improvements have been erected or placed, specifying

the tract or lot on which each of said improvements has been erected or placed, the kind of improvement and the value which, in his opinion, has been added to such tract or lot by the erection thereof; such assessment shall also include or exclude, as the case may be, on a proportionate basis in accordance with the provisions of Section 27a of this Act, all such new or added buildings, structures or other improvements, the value of which was not included in the valuation of the property for such year, and all such improvements which were destroyed or removed in accordance with this Act; * * *

* * *

"

Further, section 95 of the Act (Ill. Rev. Stat. 1991, ch. 120, par. 576; 35 ILCS 205/95 (West 1992)) provides:

"The supervisor of assessments shall have the same authority as the township or multi-township assessor to assess and to make changes or alterations in the assessment of property, and shall assess and make such changes or alterations in the assessment of property as though originally made. Such changes by the supervisor of assessments in valuations returned by the township or multi-township assessor shall be noted in a column provided therefor, and no change shall be made in the original figures.

When the supervisor of assessments in person or by his deputy makes actual viewing of real property for the purposes of assessing such property or determining whether a change or alteration in the assessment of such property is required, notice shall be given to the township assessor by U.S. Mail at least 5 days but not more than 30 days prior to such viewing, so that such assessor may arrange to be present at such viewing if he so wishes. Notice shall also be given to taxpayer-owners of the properties to be viewed by means of notices in a paper of general circulation in the township. Such

notices shall state the supervisor of assessments' intention to view such property but need not specify the date and time of such viewing. When the supervisor of assessments in person or by his deputy is present at the property to be viewed, immediately prior to such viewing, he shall make a reasonable effort to ascertain if the taxpayer-owner or his representative or the assessor are on the premises and, if either of them are, to inform such taxpayer-owner or representative and assessor of his intention to view such property. Failure to provide notice to the township assessor and taxpayer-owner shall not of and by itself invalidate any change in an assessment. A viewing under this Section and Section 43 means actual viewing of the visible property in its entirety from on or at the site of such property.

All changes and alterations in the assessment of real property shall be subject to revision by the board of review in the same manner that original assessments are reviewed." (Emphasis added.)

Pursuant to section 95 of the Revenue Act of 1939, a deputy supervisor of assessments has the authority, at the direction of the supervisor of assessments, to review and make changes in assessments returned by a township assessor. Thus, a person who held both offices simultaneously would be placed in a position in which he or she could be permitted to review his or her own work. A policy whereby a supervisor of assessments does not permit his deputy to review assessments which the deputy has returned in his position as township assessor does not resolve the conflict. Rather, it acknowledges that a person who holds both offices is not capable of faithfully fulfilling all of the duties of each office.

Another area in which the duties of the two offices may conflict involves the supervisory authority of the supervisor of assessments and his deputies. Section 2 of the Revenue Act of 1939, after creating the office of supervisor of assessments, provides:

"* * * In counties under township organization, the township assessors and multi-township assessors shall allow the elected or appointed supervisor of assessments to make a duplicate copy of any or all records compiled and maintained by the township assessor and multi-township assessor. The supervisor of assessments shall make and maintain a complete set of all property record cards. The township or multi-township assessor shall supply the supervisor of assessments with a copy of all new property record cards as they are added to the tax rolls. The supervisor of assessments shall, by January 1 of each year, assemble all assessors and their deputies for consultation and shall give such instructions to them as shall tend to a uniformity in the action of the assessors and their deputy assessors in his county. Such instructions shall be in writing and shall be available to the public. Notice of such annual assembly shall be published in a newspaper published in the township or the tax assessment district and if there is no newspaper published in the township or tax assessment district, in a newspaper published in the county and in general circulation in the township or tax assessment district not more than 30 nor less than 10 days before the assembly. At the time of publishing such notice, a press release giving notice of such assembly shall be given to each newspaper published in the county and to each commercial broadcasting station whose main office is located in the county. Such assembly may be attended by any person. Any assessor or deputy assessor who wilfully refuses or neglects to observe or follow the direction of the supervisor of

assessments, which is in accordance with law,
shall be guilty of a Class B misdemeanor.

* * *

"

Pursuant to this section, a deputy supervisor of assessments could be directed to instruct and direct township assessors. A person who held both offices could be placed in a position of supervising himself. Consequently, such an individual would be unable to carry out all the duties of both offices.

For these reasons, it is my opinion that the offices of deputy supervisor of assessments and township assessor are incompatible, and that one person cannot, therefore, hold both offices simultaneously.

You have stated that in Lee County the supervisor of assessments retains all final decision making authority, and that all supervisory acts and final decisions are made through him personally or at his personal direction. Further, you have provided a job description of the position of "deputy assessor". The examples of work listed in the job description do not include the making or reviewing of assessments or appraising property, but, rather, appear to be largely clerical in nature.

The apparent lack of official discretion in the position of "deputy supervisor of assessments", as constituted in Lee County, does not affect my conclusion that the offices of deputy supervisor of assessments and township assessor, as

those offices are provided for by statute, are incompatible. However, the position description does raise the question of whether the position actually constitutes that of a deputy supervisor of assessments.

A deputy is a person who is empowered to act for the principal in his name and behalf in all matters in which the principal may act. (Blackburn v. Brorein (Fla. 1954), 70 So.2d 293, 296.) Thus, a deputy is authorized to exercise the office or rights which the officer possesses, for and in place of the officer, and where the principal is unable to perform the duties of his office, it devolves upon the deputy to do so. (Wilbur v. Office of City Clerk (1956), 143 Cal. App. 2d 636, 300 P.2d 84, 89.) It is the duties of the position as defined by statute or the ordinance or resolution of the body authorized to create the position, rather than the name which is given to the position, which determines its status. People ex rel. Cutmore v. Harding (1929), 333 Ill. 384; see also Rohr v. Kenngott (1942), 288 N.Y. 97, 41 N.E.2d 905.

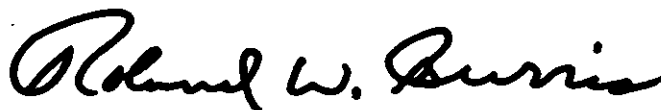
The name by which the county board has chosen to designate a position, therefore, does not control the nature of the position for purposes of application of a statute. For example, in People ex rel. Cutmore v. Harding (1929), 333 Ill. 384, 392, the fact that a board of assessors called appointees having the power of deputy assessors by the title of "clerks"

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was held to make no difference in their compensation. Conversely, if persons in the Lee County job classification of "deputy assessors" may exercise only the authority of clerks, then their position would not be that of a "deputy", within the meaning of the statutes governing that office.

Whether the position you have described is that of deputy supervisor of assessments within the meaning of statutes providing for that office is a matter of fact which will have to be determined based upon all of the duties which those holding the position are actually authorized to exercise. If the incumbent may exercise the powers of a deputy, then the position is an office which is incompatible with the office of township assessor as discussed above. If the incumbent may not exercise the powers of a deputy, then the application of the doctrine of compatibility will have to be determined based upon the actual duties of the position.

Respectfully yours,

A handwritten signature in cursive script that reads "Roland W. Burris". The signature is written in dark ink and is positioned above the typed name and title.

ROLAND W. BURRIS
ATTORNEY GENERAL