



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

**Lisa Madigan**  
ATTORNEY GENERAL

December 23, 2014

FILE NO. 14-002

LEGISLATIVE BRANCH:  
State Representative Receiving  
Compensation as Police Detective

The Honorable Jack D. Franks  
Chairman, State Government Administration Committee  
State Representative, 63<sup>rd</sup> District  
1193 South Eastwood Drive  
Woodstock, Illinois 60098

Dear Representative Franks:

I have your letter inquiring whether a member of the Illinois House of Representatives may simultaneously be employed as a city police detective and receive the salary and other fringe benefits of that position while performing his legislative duties. For the reasons set out below, it is my opinion that a legislator may be employed simultaneously as a police detective while serving in the General Assembly. Pursuant to article IV, section 2(e), of the Illinois Constitution of 1970, however, he may not be compensated for his city employment for the time during which the General Assembly is in session and not in recess.

## **BACKGROUND**

The focus of your letter is on Representative John Cabello, who is employed as a police detective by the City of Rockford and was appointed to the Illinois House of Representatives in August 2012. Since assuming legislative office, the Representative has been on a continuous leave of absence from his city position. At the November 4, 2014, general election, Representative Cabello was elected to a two-year term of office. The Representative would like to resume his duties as a city police detective on a part-time basis. Questions have arisen as to whether such a part-time arrangement would be permissible under article IV, section 2(e), of the Illinois Constitution of 1970.

## **ANALYSIS**

### **Incompatibility of Offices**

When considering whether a public officer may hold two public positions simultaneously, the analysis begins with a review of the common law doctrine of incompatibility of offices. In the current circumstances, as discussed below, the doctrine does not apply. Offices are deemed incompatible, when: (1) a State statute specifically prohibits the occupant of either one of the offices in question from holding the other; or (2) the duties of either office are such that the holder of one office cannot in every instance fully and faithfully perform all of the duties of the other office. *People ex rel. Fitzsimmons v. Swailes*, 101 Ill. 2d 458, 465 (1984); *People ex rel. Smith v. Brown*, 356 Ill. App. 3d 1096, 1098 (2005); *People ex rel. Myers v. Haas*, 145 Ill. App. 283, 286 (1908). In Illinois, however, the doctrine of incompatibility of offices is

applicable only to officers and not to employees. 1975 Ill. Att'y Gen. Op. 278. Because rank and file police officers are generally considered to be public employees, rather than officers of the municipality they serve (*see generally Midwest Television, Inc. v. Champaign-Urbana Communications, Inc.*, 37 Ill. App. 3d 926, 931-32 (1976) (setting out the criteria to be used in determining whether a position constitutes a public office)), the doctrine would not be applicable in these circumstances.<sup>1</sup>

Even assuming that the doctrine applied here, it would not bar simultaneous service in the positions of Illinois State Representative and city police detective. In this case, there is no statute that prohibits a city police detective from serving as a legislator. Moreover, the duties of the two positions do not appear to conflict. Consequently, even under the doctrine of incompatibility of offices, it does not appear that one person would be precluded from holding the positions of Illinois State Representative and city police detective simultaneously.

#### Constitutional Limitations

Article IV, section 2(e), of the Constitution provides, in pertinent part:

(e) No member of the General Assembly shall receive 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.* (Emphasis added.)

---

<sup>1</sup>*But see Rogers v. Village of Tinley Park*, 116 Ill. App. 3d 437 (1983), in which the court concluded that a village police officer could not simultaneously serve as a trustee of the village because the positions were incompatible. The court did not address or explain, however, its basis for departing from the well-established principle that the doctrine of incompatibility is applicable only to tenure in two or more public offices. The court did reference several conflicts that could arise when one person holds two positions under the same unit of local government, an issue which is not presented here.

Section 2(e) does not prohibit a General Assembly member from simultaneously holding a local public office or from receiving compensation for services performed as an employee for a unit of local government. *See generally* 1980 Ill. Att'y Gen. Op. 116; 1976 Ill. Att'y Gen. Op. 49.

Rather, section 2(e) prohibits a General Assembly member from "receiv[ing] compensation" for local government service "for time during which he is in attendance as a member of the General Assembly."

Because your question turns on the meaning of this constitutional language, my analysis follows the general principles of constitutional interpretation. The meaning of a constitutional provision is best determined by referring to the common understanding of the words used. *Committee for Educational Rights v. Edgar*, 174 Ill. 2d 1, 13 (1996); *League of Women Voters of Peoria v. County of Peoria*, 121 Ill. 2d 236, 243 (1987). Where the language of a constitutional provision is unambiguous, it will be given effect as written. *Committee for Educational Rights*, 174 Ill. 2d at 13. However, if, after reviewing the language of a provision, doubt remains as to its meaning, it is appropriate to consult the official documents related to the adoption of the Constitution, including the comments of the Constitutional Convention's delegates, to ascertain the meaning they attached to the provision. *Committee for Educational Rights*, 174 Ill. 2d at 13; *League of Women Voters*, 121 Ill. 2d at 243-44.

The precise meaning of the phrase "for time during which he is in attendance as a member of the General Assembly" in section 2(e), as it applies to legislators who are also employed as public employees, is not clear from the constitutional language alone. It could be

interpreted to mean the entire two-year period during which the General Assembly is convened,<sup>2</sup> the period between the convening of an annual session and its adjournment, or only those periods in which the specific chamber is convened and conducting business. Accordingly, because the language of section 2(e) could be subject to differing interpretations, it is appropriate to refer to the official documents related to its adoption to discern the provision's meaning.<sup>3</sup>

### **Constitutional Debates**

Under the Illinois Constitution of 1870, members of the General Assembly were prohibited from holding any other lucrative office. Ill. Const. 1870, art. IV, §3; *see also* Ill. Const. 1870, art. IV, §15. The Committee on the Legislative Article of the Sixth Constitutional Convention (the Committee) redrafted the Constitution to clarify and combine all provisions concerning dual office-holding and to specifically address a member of the General Assembly serving as a public employee. 6 Record of Proceedings, Sixth Illinois Constitutional Convention 1341-44. The Committee initially drafted section 2(e) so as to prohibit a member of the General Assembly from receiving "compensation and allowances as a public employee and as a member of the General Assembly" and from holding "any other elective or appointive public office." 6 Record of Proceedings, Sixth Illinois Constitutional Convention 1331. In explaining the intent behind the prohibition on receiving "compensation and allowances as a public employee and as a

---

<sup>2</sup>*See* Ill. Const. 1970, art. IV, §5 ("The General Assembly shall convene each year on the second Wednesday of January. The General Assembly shall be a continuous body during the term for which members of the House of Representatives are elected").

<sup>3</sup>The information disseminated to the voters in anticipation of their vote to adopt the proposed Illinois Constitution of 1970 is silent with regard to the meaning of article IV, section 2(e). *See* 7 Record of Proceedings, Sixth Illinois Constitutional Convention 2673-74, 2696.

member of the General Assembly[,]" the Committee used as an example a legislator who was also a police officer:

To be seated as a member of the General Assembly, a member who is a public employee would necessarily have to take a leave of absence, if possible, or resign from his position as a public employee. The intent of this language is to preclude dual or joint salaries at any time during a legislative session. *For example, if the General Assembly were in session during January, February and March, a member who was a policeman could not receive any salary except his legislative salary. But when the session concluded at the end of March, he could resume his salaried position as a policeman while ceasing to receive his salary as a legislator.*<sup>4</sup> (Emphasis added.) (Underscore in original.) 6 Record of Proceedings, Sixth Illinois Constitutional Convention 1344.

Following extensive debate, the proposal was rejected and the pertinent language was replaced with what is now the first sentence of section 2(e). 4 Record of Proceedings, Sixth Illinois Constitutional Convention 2669-76, 2820-37. The debate concerning section 2(e), as introduced, focused primarily on whether a General Assembly member should be prohibited from receiving compensation as a public employee while also serving in the General Assembly. 4 Record of Proceedings, Sixth Illinois Constitutional Convention 2669-76, 2827-28.

---

<sup>4</sup>Until 1897, General Assembly members were paid by the number of days in a legislative session. In 1897, their *per diem* was replaced by a biennial salary. 1895 Ill. Laws 176 (§1). At the time of the Constitutional Convention, General Assembly members were paid in annual lump sums, but could receive two years' salary at the start of the biennial session, on written request. Taran Ley, *History of Illinois Legislators' Compensation and Expense Allowances*, Legislative Research Unit File 11-112, May 21, 2010, available at <http://www.ilga.gov/commission/lru/Compensation2010.pdf> (stating that annual compensation began in 1941 and requests for biennial compensation began in 1943). Monthly payment was not required until 1977. See Public Act 79-1333, effective January 12, 1977. General Assembly members are currently paid in 12 equal monthly installments payable on the last working day of the month. 25 ILCS 115/1 (West 2013 Supp.), as amended by Public Act 98-682, effective June 30, 2014. However, the frequency of payment for General Assembly members is not relevant to the instant inquiry.

Proponents of the language of section 2(e) clearly intended to prohibit a member of the General Assembly from receiving "dual compensation—payment from two public payrolls for the same time" (Remarks of Delegate Mathias, 4 Record of Proceedings, Sixth Illinois Constitutional Convention 2835), while still permitting a member to be compensated by a unit of local government "for days that were used actually performing his duties as a public employee notwithstanding the fact [that] the General Assembly may be in session but recessed." 6 Record of Proceedings, Sixth Illinois Constitutional Convention 1469.

Accordingly, a General Assembly member could be paid "for the days where he is actually working for the governmental entity, such as would be on a per diem basis." Remarks of Delegate Kelley, 4 Record of Proceedings, Sixth Illinois Constitutional Convention 2671. As long as a General Assembly member was "not receiving dual salary— \* \* \* getting paid twice for one day— \* \* \* there would be no impropriety \* \* \* and it would not interfere with his duties as a legislator nor \* \* \* whatever governmental job that he h[eld]." Remarks of Delegate Kelley, 4 Record of Proceedings, Sixth Illinois Constitutional Convention 2671. The following colloquy between Delegates Kelley and Mathias illustrates this intent:

MR. KELLEY: \* \* \* I would like to ask Mr. Mathias a question. When the language was [originally] drafted — when I drafted the language for the minority report, the reason was solely due to the fact that the majority report required a public employee to take a leave of absence during the time that he was to serve in the legislature. If the legislature was for a six-months' session, he would have to take a leave of absence or resign from his job for that six-month period.

The minority language intent is simply to mean that *the individual can spend one day in the legislature and not get paid \* \* \* for that day by the governmental entity he is employed by, but then he can go back to his employing agency and be paid for days during the time the legislature is in session but recessed.*

Is that your intent for the minority language now?

MR. MATHIAS: Yes. \* \* \*

My understanding is as you stated it, yes, that this person could work part time in the days he is not attending legislative sessions. (Emphasis added.) Remarks of Delegates Kelley and Mathias, 4 Record of Proceedings, Sixth Illinois Constitutional Convention 2834.

The delegates subsequently considered and rejected a proposal to further amend section 2(e) to prohibit a member of the General Assembly from receiving compensation from another public entity for the time during which he was compensated as a General Assembly member. 5 Record of Proceedings, Sixth Illinois Constitutional Convention 4066-70. That amendment was defeated, with several delegates reiterating their intention to prohibit dual compensation from public funds only for the time the General Assembly is in session and not in recess, not to prohibit a General Assembly member from receiving compensation for actual days worked in other public employment when the General Assembly was not in session. *See, e.g.*, Remarks of Delegates Elward and Stemberk, 5 Record of Proceedings, Sixth Illinois Constitutional Convention 4067-70.



Thus, it is my opinion that the constitutional debates clearly reflect that it was the framers' intent to allow a General Assembly member to be employed by another governmental entity, as long as he or she does not receive compensation from that public employment for the time during which the General Assembly is in session and not in recess.

#### **Fringe Benefits**

The issue also arises as to whether the prohibition on receiving compensation from another governmental entity while the General Assembly is in session applies to the accrual of fringe benefits, such as paid vacation and insurance coverage. As previously discussed, article IV, section 2(e), prohibits General Assembly members from receiving "compensation" as a public officer or employee for the time during which the General Assembly is in session and not in recess. The Illinois Constitution does not expressly define the term "compensation," however. It is a longstanding principle that unless otherwise defined, "compensation" includes both salary and fringe benefits. *See* 1978 Ill. Att'y Gen. Op. 179, 180 (paid vacation and sick leave are both forms of compensation). To permit members of the General Assembly to receive fringe benefits from their other public employment based on days when the General Assembly is in session would contravene the intent of article IV, section 2(e), of the Constitution.

Accordingly, it is my opinion that a General Assembly member may not receive fringe benefits from public employment, such as accruing vacation time, sick leave, or paid time off, if the benefits are calculated to include credit for time that the General Assembly was in session. Thus, if the police detective-legislator would ordinarily accrue one vacation day for

every month that he is in active service for the city, for example, then either the accrual rate or the amount of the benefit earned must be adjusted to exclude credit for any time that the General Assembly was in session and not in recess.<sup>5</sup>

I would point out, however, that there may be certain fringe benefits that do not accrue or otherwise correlate to the number of days or weeks worked, such as dental plans that include semi-annual exams. In those instances, to the extent that there is a practical way to adjust the particular benefit, the public employer must do so. Whether a particular fringe benefit accrues based on the number of days or weeks worked will depend on an examination of the circumstances surrounding each case and is not an issue than can be resolved in a legal opinion of this office. *See* Statement of Policy of the Attorney General Relating to Furnishing Written Opinions, <http://www.illinoisattorneygeneral.gov/opinions/opinionpolicy.pdf>.

### CONCLUSION

Pursuant to article IV, section 2(e), of the Illinois Constitution of 1970, a General Assembly member may receive compensation for services performed for another governmental entity. However, section 2(e) prohibits the General Assembly member from receiving compensation from the governmental employer for the time during which the General Assembly is in session and not in recess. The term "compensation" includes salary, as well as fringe benefits.

---

<sup>5</sup>Similarly, a General Assembly member may not utilize accrued vacation time, personal time, or other paid time off as a city employee to avoid the application of article IV, section 2(e). When a city employee uses paid time off, generally, the employee is entitled to his or her usual and customary city salary and other compensation. To permit a police detective-legislator to use paid time off from the city during the time in which the General Assembly is in session and not in recess, would entitle the police detective-legislator to collect his full city salary and other compensation. That would contravene the intent of article IV, section 2(e).

The Honorable Jack D. Franks - 11

Accordingly, it is my opinion that a legislator may be employed simultaneously as a city police detective while serving in the General Assembly. Pursuant to article IV, section 2(e), of the Illinois Constitution of 1970, however, it is my further opinion that he may not receive compensation, including the accrual of fringe benefits, from the city for the time during which the General Assembly is in session and not in recess.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lisa Madigan", written in a cursive style.

LISA MADIGAN  
ATTORNEY GENERAL