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SPRINGFIELD



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File No. 85-019

COMPATIBILITY OF OFFICES:  
The Offices of City Council  
Member and School Board Member  
are Incompatible

Honorable Gerald G. Dehner  
Logan County State's Attorney  
Logan County Courthouse, Room 13  
Lincoln, Illinois 62656

Dear Mr. Dehner:

I have your letter of September 9, 1985, wherein you inquire concerning the compatibility of the offices of school board member and city council member. For the reasons hereinafter stated, it is my opinion that the offices in question are incompatible.

Incompatibility arises where the Constitution or a statute specifically prohibits the occupant of one office from holding another, or where the duties of the two offices are

such that the holder of one cannot, in every instance, fully and faithfully discharge the duties of the other. (People ex rel. Myers v. Haas (1908), 145 Ill. App. 283, 286.) There is no constitutional or statutory provision prohibiting one person from holding the offices of school board member and city council member. Therefore, it must be determined whether the duties of either office are such that the holder of one cannot, in every instance, fully and faithfully discharge all of the duties of the other.

Under section 3 of "AN ACT in relation to State revenue sharing with local government entities" (Ill. Rev. Stat. 1983, ch. 85, par. 613) a city council may allocate all or part of its revenue sharing funds to a school district which lies at least partly within the municipality. As a school board member, one has a duty to provide for the revenue necessary to maintain the schools in his or her district. (Ill. Rev. Stat. 1983, ch. 122, par. 10-20.3.) A conflict could arise, therefore, between a dual officeholder's duty as a city council member to determine how municipal revenue sharing funds should be spent to best serve the needs of the citizens of the municipality and his or her duty as a school board member to provide for the revenue necessary to maintain the district's schools.

Additionally, there are a number of statutes which expressly or impliedly authorize a municipality and a school district to contract with one another. For example, a municipality and a school district may, in accordance with statute, contract with one another for the transfer, lease or sale of real property. (See, e.g., Ill. Rev. Stat. 1983, ch. 24, pars. 11-45-15, 11-74.2-12; ch. 30, par. 156 et seq.; ch. 122, pars. 10-22.11, 16-9.) A school district may contract with a municipality in order to provide for traffic regulation in parking areas, and to agree to the expense and method of payment for municipal fire protection for school buildings. (Ill. Rev. Stat. 1983, ch. 24, par. 11-6-2; ch. 122, pars. 10-22.42, 16-10.) A school district is also authorized to provide a water supply for its facilities, which in many cases will require contracting with a municipality for municipal services. (Ill. Rev. Stat. 1983, ch. 122, par. 10-20.17.) Moreover, under the Intergovernmental Cooperation section of the 1970 Illinois Constitution (Ill. Const. 1970, art. VII, § 10) and the Intergovernmental Cooperation Act (Ill. Rev. Stat. 1983, ch. 127, par. 741 et seq.), municipalities and school districts are authorized to enter into contracts to obtain or share services, and to exercise, combine or transfer powers or functions.

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If an individual were to serve as both a city council member and a school board member, and those units were to contract, he or she would be required to protect and represent the interests of both the city and the school district. It is clear that a person cannot represent the interests of both governmental units when these units contract with each other. (1975 Ill. Att'y Gen. Op. 37; 1976 Ill. Att'y Gen. Op. 116.)

Therefore, because one who holds the offices of school board member and city council member cannot, in every instance, fully and faithfully discharge the duties of both offices, it is my opinion that the offices are incompatible. See also 1980 Ill. Att'y Gen. Op. 81, in which it was advised that the offices of school board member and village mayor are incompatible.

It is well settled in Illinois that the acceptance of an incompatible office by the incumbent of another office constitutes an ipso facto resignation of the first office. (People v. Bott (1931), 261 Ill. App. 261, 265.) Formal resignation or ouster by legal proceedings is not required. (Packingham v. Harper (1896), 66 Ill. App. 96, 100; 1981 Ill. Att'y Gen. Op. 47, 48.)

Very truly yours,

  
ATTORNEY GENERAL