



ROLAND W. BURRIS  
ATTORNEY GENERAL  
STATE OF ILLINOIS

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FILE NO. 94-010

COMPATIBILITY OF OFFICES:  
Township Supervisor and  
County Executive

Honorable Miguel A. Santiago  
State Representative, 3rd District  
4145 West North Avenue  
Chicago, Illinois 60639

Dear Representative Santiago:

I have your letter wherein you inquire whether one person may simultaneously serve as both a township supervisor and a county executive. For the reasons hereinafter stated, it is my opinion that these two offices are incompatible, and, therefore, that one person cannot properly hold both offices simultaneously.

Offices are deemed to be incompatible when a statute or the constitution prohibits the holder of one office from holding the other, or where the duties of either office are such that the holder of the one office cannot fully and faithfully perform all of the duties of the other office. (People ex rel. Myers v. Haas (1908), 145 Ill. App. 283.) One person may not hold two incompatible offices simultaneously. As you have observed, there is

Honorable Miguel A. Santiago - 2.

no statutory or constitutional prohibition upon simultaneous tenure in the offices of township supervisor and county executive. It is my opinion, however, that because of potential conflicts in the duties of the offices, the holder of one cannot, in every instance, fully and faithfully discharge all of the duties of the other.

The county executive form of government may be established by referendum pursuant to division 2-5 of the Counties Code (55 ILCS 5/2-5001 et seq. (West 1992)). Under the county executive form of government, the departments of county government are administered by the county executive, who is elected at large. (55 ILCS 5/2-5003 (West 1992).) Section 2-5009 of the Code (55 ILCS 5/2-5009 (West 1992)) provides:

"Duties and powers of county executive.  
Any county executive elected under this Division shall:

(a) see that all of the orders, resolutions and regulations of the board are faithfully executed;

(b) coordinate and direct by executive order or otherwise all administrative and management functions of the county government except the offices of elected county officers;

(c) prepare and submit to the board for its approval the annual budget for the county required by Division 6-1 of this Code;

(d) appoint, with the advice and consent of the board, persons to serve on the various boards and commissions to which appointments are provided by law to be made by the board;

(e) appoint, with the advice and consent of the board, persons to serve on various special districts within the county except where appointment to serve on such districts is otherwise provided by law;

(f) make an annual report to the board on the affairs of the county, on such date and at such time as the board shall designate, and keep the board fully advised as to the financial condition of the county and its future financial needs;

(g) appoint, with the advice and consent of the board, such subordinate deputies, employees and appointees for the general administration of county affairs as considered necessary, except those deputies, employees and appointees in the office of an elected county officer;

(h) remove or suspend in his discretion, after due notice and hearing, anyone whom he has the power to appoint;

(i) require reports and examine accounts, records and operations of all county administrative units;

(j) supervise the care and custody of all county property including institutions and agencies;

(k) approve or veto ordinances or resolutions pursuant to Section 2-5010;

(l) preside over board meetings; however, the county executive is not entitled to vote except to break a tie vote;

(m) call a special meeting of the county board, by a written executive order signed by him and upon 24 hours notice by delivery of a copy of such order to the residence of each board member;

Honorable Miguel A. Santiago - 4.

(n) with the advice and consent of the county board, enter into intergovernmental agreements with other governmental units;

(o) with the advice and consent of the county board, negotiate on behalf of the county with governmental units and the private sector for the purpose of promoting economic growth and development;

(p) at his discretion, appoint a person to serve as legal counsel at an annual salary established by the county board at an amount no greater than the annual salary of the state's attorney of the county;

(q) perform such other duties as shall be required of him by the board."

The county executive not only executes the orders of the county board, but also makes recommendations, presides over board meetings, votes to break ties and may veto or approve ordinances.

The duties of a township supervisor are set forth in articles 70, 80 and 85 of the Township Code (60 ILCS 1/70-5 et seq.; 60 ILCS 1/80-5 et seq.; 60 ILCS 1/85-5 et seq.). (The Township Law was recently recodified as the Township Code by Public Act 88-62, effective January 1, 1994 (to be codified at 60 ILCS 1/1-1 et seq.); for simplification of reference, I shall refer to Code sections as they appear in the Public Act, without referencing the Act in each case.) In addition to serving as the chief executive officer and fiscal officer of the township (60 ILCS 1/70-15), the supervisor is a voting member of the township board, and presides over board meetings. (60 ILCS 1/80-5.)

Honorable Miguel A. Santiago - 5.

While the general corporate powers of a township are exercised by the town electors at the town meeting (60 ILCS 1/30-5 et seq.), broad powers have been granted directly to the township board, as well. Township boards may provide for a wide array of programs and services for township residents, and may levy taxes for such services (60 ILCS 1/235-5), including: ambulance services (60 ILCS 1/195-5), mental health services (60 ILCS 1/185-5 et seq.; 60 ILCS 1/190-5 et seq.), youth services (60 ILCS 1/215-5 et seq.), public safety, environmental protection, public transportation, health, recreation, libraries, social services for the poor and aged, economic development (60 ILCS 1/85-13) and environmental health (60 ILCS 1/105-15, 105-20). In many of these areas, the duties and interests of the county and the township may overlap or conflict.

In opinion No. S-877, issued March 17, 1975 (1975 Ill. Att'y Gen. Op. 37), Attorney General Scott concluded that the offices of township supervisor and county board member were incompatible. That opinion discussed at length the possible conflicts which could arise between the duties of the two positions, stating, in part:

" \* \* \*

So as to emphasize this new degree of overlapping functions of counties and townships which has been brought about by the combination of the enactments of the Intergovernmental Cooperation Act and Public Act 78-1189 [now see 60 ILCS 1/85-13], the fol-

lowing represents an example of the statutory functions of the county which correspond to the new areas of township function set out in the amendment. With respect to:

- (1) Public Safety: The County Safety Council contracts for police and fire protection between counties and townships; eradication of dangerous and unsafe buildings.
- (2) Environmental Protection: Sewage disposal, sanitation and waterworks systems; garbage disposal, landfills; conservation; air contamination control.
- (3) Public Transportation: Acquisition and construction of parking facilities.
- (4) Health: Clinics for alcoholics; hospitals; community mental health boards; care and treatment of tuberculosis; public health departments; ambulance services; creation of boards of health; County Hospital Governing Commission; county sheltered care and nursing homes for infirm and chronically ill.
- (5) Recreation: Park and recreational areas.
- (6) Social Services for the Poor and Aged: Community action agencies; homes for the aged.

In all of the above areas, the county board and the board of town auditors may enter into contracts with each other to provide a particular service to the people of the township and the county. In addition, the contractual scheme may allow more township funds, including Federal revenue sharing funds, to be

funneled to county projects, or vice versa. Even in this regard it should be noted that the county board has certain responsibilities with regard to coordinating Federal and State aid. This responsibility of a county board member may conflict with his responsibility as a township supervisor to expend the revenue sharing funds the township receives on its own.

The conflict of interest that will arise by the simultaneous holding of the two offices is best explained by examining the kinds of issues that an individual in both offices must consider and vote upon. Chief among these are:

What services shall be provided to people of the county and of the township?

Which governmental entity (county or township) should provide the service?

In what area of the county should the service be provided (e.g., location of buildings, parks, recreational areas, streets and parking areas, landfills, etc.)?

With a view to the priority expenditures of each unit of government, the revenue of which unit of government shall be used to provide the service?

What specific terms shall be contained in a contract between the county and township?

In attempting to make decisions in each of the above areas, the dual office holder cannot fairly represent the conflicting interests of the two units of government. In particular where the service is to be provided pursuant to a contract entered into between the township and county, the dual officer is clearly representing, and attempting

Honorable Miguel A. Santiago - 8.

to negotiate a contract most advantageous to,  
the interest of both parties to the bargain.

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(Original citations omitted.)

I concur in my predecessor's opinion that a person who serves as both a county board member and a township supervisor cannot, in every instance, fully and faithfully represent the conflicting interests of the two units of government. Therefore, the offices of township supervisor and county board member are incompatible under the common law doctrine of incompatibility of offices. Because, in addition to his or her executive duties, a county executive also has legislative functions with respect to the board, it necessarily follows that the offices of county executive and township supervisor are incompatible under the common law.

This inquiry cannot be concluded at this point, however. Since incompatibility is a common law doctrine, it may be modified or superseded legislatively. Shortly after opinion No. S-877 was issued, the General Assembly enacted Public Act 79-457, effective October 1, 1975, which permitted persons to hold the offices of county board member and township supervisor simultaneously until the end of their then-current terms of office. The enactment was amended three years later by Public Act 80-1424, effective September 9, 1978, which permitted one person to serve in both positions generally. A further amendment, Public Act 82-



Honorable Miguel A. Santiago - 9.

554, effective September 17, 1981, extended the purview of the Act to include certain other township offices, and declared that, at least in certain circumstances, one person could hold those offices simultaneously with the office of county board member. (50 ILCS 110/0.01 et seq. (West 1992).) Neither the original enactment nor subsequent amendments have expressly included within the provisions of the Public Officer Simultaneous Tenure Act the office of county executive, even though that office had been created by Public Act 77-1746, effective December 3, 1971, which was several years prior to the first of the enactments addressing simultaneous tenure. In my opinion, the otherwise plain language of the statute cannot be construed to include the office of county executive within the phrase "county board member".

The Public Officer Simultaneous Tenure Act is in derogation of common law principles regarding the duties of public officers. It is well established that a statute will be construed as changing the common law only to the extent that the terms thereof warrant, or as is necessarily implied from what is expressed. (Acme Fireworks Corp. v. Bibb (1955), 6 Ill. 2d 112, 119.) Repeal of the common law by implication is not favored. Hawkins v. Hawkins (1981), 102 Ill. App. 3d 1037, 1039.

The office of county executive, although possessing significant legislative functions, is distinct from that of

Honorable Miguel A. Santiago - 10.

county board member (55 ILCS 5/2-5008 (West 1992)), and was in existence when the Public Officer Simultaneous Tenure Act was first adopted and subsequently amended. Had the General Assembly intended the Act to extend to the office of county executive, it could have done so expressly. Inclusion of the office of county executive is not necessarily implied by the reference in the Public Officer Simultaneous Tenure Act to county board members, and, in my opinion, the common law doctrine of incompatibility should not be impliedly repealed with respect to one office by reference to another.

This conclusion is further supported by consideration of the circumstances leading up to the adoption of the Simultaneous Tenure Act. (Follett's Illinois Book & Supply Store, Inc. v. Isaacs (1963), 27 Ill. 2d 600.) As was discussed at some length in opinion No. S-877, prior to 1972 the powers of the county board in a county under township organization were exercised by a board of supervisors comprised of the several township supervisors and assistant township supervisors in the county. In 1969, in order to comply with United States Supreme Court rulings requiring "one man, one vote", the General Assembly enacted a series of amendments to provide that the corporate powers of counties would be exercised by separately elected county boards. The first such boards were elected in 1972. The Act authorizing

creation of the office of county executive was enacted within this period.

In view of the long statutory history of interwoven functions between the offices of township supervisor and county board member, and because the reason for separating them was based upon a constitutional mandate rather than a belief that they were incompatible, Attorney General Scott, in opinion No. S-130, issued February 13, 1970 (1970 Ill. Att'y Gen. Op. 26), concluded that the two offices were not incompatible. Subsequent to the issuance of that opinion, however, the powers of township boards were broadened to include many of the duties referred to above, leading my predecessor to reconsider his 1970 opinion and, in 1975, to conclude that the two offices were incompatible. Thus, when the first of the Acts specifically permitting simultaneous tenure was enacted, there had been a long history of dual office holding in the offices of county board member and township supervisor. The Acts which approved the practice essentially permitted continuation of the status quo.

In contrast, the office of county executive is of comparatively recent origin and is a creature of a fundamentally different form of government. The county executive form of government was not created until after the board of supervisors was abandoned. There was, therefore, no history of dual office holding with respect to the offices of county executive and

Honorable Miguel A. Santiago - 12.

township supervisor, and no historical basis for permitting simultaneous tenure. Thus, there is no rationale for extending the purview of the Public Officer Simultaneous Tenure Act to encompass those offices.

For the reasons stated, it is my opinion that the offices of county executive and township supervisor are incompatible, and that the Public Officer Simultaneous Tenure Act cannot be construed to permit simultaneous tenure in the offices of county executive and township supervisor. Therefore, one person cannot hold the offices of county executive and township supervisor simultaneously.

Respectfully yours,

A handwritten signature in cursive script, reading "Roland W. Burris". The signature is written in black ink and is positioned above the typed name and title.

ROLAND W. BURRIS  
ATTORNEY GENERAL