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OFFICERS:
Compatibility of
Legislator and
County Board Member

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Dear Mr. Greanias:

This responds to your request for an opinion as to whether the offices of member of the General Assembly and member of a county board are compatible. Offices are incompatible if by statute or constitution the same person is prohibited from holding both offices, or if under the common law they are incompatible. There is no common law doctrine against one person holding two offices per se. For the reasons to be discussed below, I am of the opinion

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that the two offices are not incompatible and that one person may hold both offices.

There is no statute or constitutional provision which prohibits the holding of both offices. Section 1 of "AN ACT to prevent fraudulent and corrupt practices, etc." (Ill. Rev. Stat. 1973, ch. 102, par. 1) only prevents a member of the county board from accepting another office by appointment or election of the county board. Section 2(e) of article ~~IV~~^{IV} of the Illinois Constitution of 1970 only prevents a member of the General Assembly from receiving "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". Under the Constitution of 1870 a member of the General Assembly was prohibited from holding any lucrative office under this State. (Ill. Const. art. IX, sec. 3[1870].) A proposal before the Sixth Illinois Constitutional Convention that no member of the General Assembly should hold any other elective or appointive public office was rejected. VI Record of Proceedings 2821 to 2828.

The separation of powers provision in the State Constitution has sometimes been interpreted to make certain offices incompatible. (See Saxby v. Sonnemann, 318 Ill. 600.)

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This has never specifically been applied by the court to offices at different levels of government. Such argument was made in People v. Capuzi, 20 Ill. 2d 486. In that case the Supreme Court held that a deputy coroner, deputy bailiff, deputy clerk and a village president could be members of the General Assembly. The separation of powers provision did not apply since the duties of these officers were ministerial and also since the qualifications for members of the General Assembly were set forth in the legislative article of the Constitution.

Under the common law officers are incompatible "where the duties of either office are such that the holder of the office cannot in every instance, properly and fully, faithfully perform all duties of the other office".

(People v. Haas, 145 Ill. App. 283, 286.) It has similarly been stated in Ahto v. Weaver, 189 A. 2d 27 (N.J. 1963) where the court quoted Sir Francis Bacon:

"* * * Where there is no express [constitutional or statutory] provision, the true test is, whether the two offices are incompatible in their natures, in the rights, duties, or obligations connected with or flowing out of them. Offices, says Bacon, are incompatible or inconsistent, when they cannot be executed by the same person; or when they cannot be executed with care, and ability; or where one is subordinate to, or interferes with another, Bac. Abr. Tit. 'Office' K."

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The doctrine has also been summarized in 63 Am. Jur. 2d, Public Officers and Employees, sec. 73, in part as follows:

"* * * Incompatibility of offices does not, it has been said, depend upon the incidents of the offices. For instance the courts generally hold that mere physical inability to perform the duties of both offices personally does not constitute incompatibility. It is to be found in the character of the offices and their relation to each other, in the subordination of the one to the other, and in the nature of the duties and functions which attach to them.

Incompatibility of offices exists where there is a conflict in the duties of the offices, so that the performance of the duties of the one interferes with the performance of the duties of the other. They are generally considered incompatible where such duties and functions are inherently inconsistent and repugnant, so that because of the contrariety and antagonism which would result from the attempt of one person to discharge faithfully, impartially, and efficiently the duties of both offices, considerations of public policy render it improper for an incumbent to retain both.

"* * * There is no incompatibility between offices in which the duties are sometimes the same, and the manner of discharging them substantially the same. Nor are offices inconsistent where the duties performed and the experience gained in the one would enable the incumbent the more intelligently and effectually to do the duties of the other."

I am of the opinion that under the common law these two offices are not incompatible. The two bodies will not enter into contracts with each other and I know of no instance where a member of a county board could not fully and faith-

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fully perform all of these duties as a member of the General Assembly.

It might be argued that a person as a member of the General Assembly would be supervising himself as a member of the county board. Of course, as a member of the General Assembly he will be voting on bills which will affect his duties and powers as a member of the county board. Admittedly, it has been decided in the case of Weza v. Auditor General et al., 298 N.W. 368 (Mich. 1941) that this legislative control amounts to supervision and thus renders the two offices incompatible. I note, however, there was a dissent in that case based on the reasoning that a local governmental officer was no more subject to the supervisory power of the State legislature than citizens are in general. The case has been specifically rejected by the New Jersey Supreme Court in Reilly v. Ozzard, 166 A. 2d 360 (N.J. 1960).

Whether or not two offices are incompatible is a matter of public policy. (Perkins v. Mannings, 122 P. 2d 857 (Ariz. 1942).) Based on existing Illinois constitutional provisions, statutes and court cases, there is no strong public policy for holding these offices incompatible. As

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noted above, the Sixth Illinois Constitutional Convention specifically rejected a provision which would have made them incompatible. In rejecting this provision it rejected arguments that it would not be in the public interest for the same person to hold a local office and membership in the General Assembly.

Very truly yours,

A T T O R N E Y G E N E R A L