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FILE NO. S-877

OFFICERS:
County Board Member Resigning to be Appointed by County Board to an Otherwise Forbidden Public Office. Compatibility of Offices of County Board Member With the Offices of President and Member of Forest Preserve Commission, Member of Board of Review, and Township Supervisor.

Honorable Jack Hoogasian
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Dear Mr. Hoogasian:

I have your letter wherein you state:

"Chapter 102, Section 1, Illinois Revised Statutes, 1971, states:

'§ 1. No member of a county board, during the term of office for which he is elected, may be appointed to, accept or hold any office other than chairman of the county board or member of the regional planning commission by appointment or election of the board of which he is a member. Any such prohibited appointment or election is void. . . .'

> Several questions arise. Other sections in the statutes authorize appointment of county board members to other positions, for example: Forest Preserve Commission, Chairman of the Forest Preserve, Board of Review, Township Supervisors and the like.
>
> It is to be noted that this specific section became effective August 17, 1971, and presumably indicates the latest legislature and intent. The following questions, therefore, arise:
>
> 1. May a county board member serve in any other capacity other than chairman of the county board or as member of the regional planning commission.
>
> 2. May a county board member, during the term of office for which he is elected, resign and be appointed by that county board to a position he otherwise could not serve if he continued as a county board member."

Responding to your second question first, I direct your attention to the general rules of statutory construction applicable in Illinois. In construing statutes to give effect to the intent of the General Assembly, courts will look to the object and purpose to be subserved by the statute. (Application of County Collector, 70 Ill. App. 2d 180, 229 N.E. 2d 497.) The primary object of statutory construction is to give effect to the legislative intent and courts will consider the reason or necessity for an enactment, the contemporaneous conditions,

existing circumstances and the object sought to be achieved by the statute. (Lincoln National Life Insurance Co. v. McCarthy, 10 Ill. 2d 489.) Section 1 of "AN ACT to prevent fraudulent and corrupt practices in the making or accepting of official appointments and contracts by public officers" (Ill. Rev. Stat. 1973, ch. 102, par. 1) was approved and enacted by the General Assembly of the State of Illinois on April 9, 1872, and has continued in effect with minor modifications since that time. It may be assumed accordingly that the section evidences a long continuing concern of the General Assembly far predating 1971 that honest and efficient local governmental units be maintained. In construction of statutes words should be given the meaning intended by the lawmakers. (McCarthy, supra.) It is my opinion that the language "during the term of office for which he is elected", contained in the Act, prohibits appointment of a county board member who has resigned for the purpose of accepting a position to which he could not have been appointed if he had remained a county board member. The statute, construed in its entirety,

clearly proscribes use of the power of one public office to gain access to another public office.

The test of whether a statute is complete as enacted by the General Assembly is whether it is sufficiently definite to enable one reading it to know his rights and obligations thereunder. (Arnolt v. City of Highland Park, 52 Ill. 2d 27.) The language of section 1 of the Act is sufficiently definite to give notice of its prohibitions and sanctions to both county boards and individual board members. The phrase "during the term of office for which he is elected" would be superfluous if the General Assembly did not intend to include within the statute the situation which your question suggests. The language reflects the concern of the Assembly that public duties be discharged efficiently and impartially. A public office is a public trust and the legislature may impose on those to whom public office is entrusted such conditions as it sees fit to secure efficient and impartial discharge of public duties. (People v. Murray, 301 Ill. 349.)

It is consequently my opinion that a county board member may not, during the term of office for which he is elected, resign and be appointed by that county board to a position to which he could not be appointed if he continued as a county board member.

In your first question you have asked whether a county board member may serve in any capacity other than chairman of the county board or member of the regional planning commission. My answer to your question will be limited to a discussion of the offices which you have specifically mentioned in your letter, i.e., forest preserve commissioner, president of the forest preserve commission, member of the board of review, and township supervisor.

First, with respect to the office of forest preserve commissioner, in counties such as yours where the boundaries of the forest preserve district and the county are co-extensive, the members of the county board automatically exercise the powers and duties of the forest preserve commissioners. This power extends specifically from section 3a of "AN ACT to provide for the creation and management

of forest preserve districts" (Ill. Rev. Stat. 1973, ch. 57 1/2, par. 3a) which provides in relevant part:

> "* * * In case the boundaries of any such district are co-extensive with the boundaries of any county, city, village, incorporated town or sanitary district, the corporate authorities of such county, city, village, incorporated town or sanitary district shall have and exercise the powers and privileges and perform the duties and functions of the commissioners provided for herein and in such case no commissioner shall be appointed for such district. * * *"

With respect to the president of the forest preserve commission, I have previously held in opinion S-608, August 20, 1973, addressed to you, that in counties under one million population where the boundaries of the forest preserve district and the county are coextensive, the president of the forest preserve commission is chosen by the forest preserve commissioners. Of course, in your county, the forest preserve commissioners are by the force of statute the members of the county board. However, it should be noted that in choosing the president of the commission, the commissioners act as officers of the forest preserve district, a municipal corporation separate and distinct from the county, and do not

act as county board members. See, Peabody v. Forest Preserve District, 320 Ill. 454, 462.

Incompatibility between offices arises where the Constitution, or a statute, specifically prohibits the occupant of either of the offices from holding the other, or where because of the duties of either office a conflict of interest may arise, or where the duties of either office are such that the holder of one cannot in every instance properly and faithfully perform all the duties of the other. People ex rel. Meyer v. Haas, 145 Ill. App. 283.

The only statutory provision which might forbid a county board member from holding either of these two positions is section 1 of "AN ACT to prevent fraudulent and corrupt practices * * *" (Ill. Rev. Stat. 1973, ch. 102, par. 1) which reads:

> "§ 1. No member of a county board, during the term of office for which he is elected, may be appointed to, accept or hold any office other than chairman of the county board or member of the regional planning commission by appointment or election of the board of which he is a member. Any such prohibited appointment or election is void. This Section shall not preclude a member

> of the county board from being selected or from serving as a member of the County Personnel Advisory Board as provided in Section 12-17.2 of 'The Illinois Public Aid Code', approved April 11, 1967, as amended, or as a member of a County Extension Board as provided in Section 7 of the 'County Cooperative Extension Law', approved August 2, 1963, as amended." (emphasis added.)

It must be emphasized that section 1 prohibits a county board member from being appointed or elected to another office (with the stated exceptions) where such appointment or election is made by the county board of which he is a member. The positions of forest preserve commissioner and president of the forest preserve commission are not filled by election or appointment by the county board. The county board members constitute the forest preserve commission by legislative action without election or appointment by the county board. Also, in the selection of the president of the forest preserve commission, the county board members are not performing a duty of the county board, but rather a duty of the forest preserve commission.

With respect to the members of the board of review, however, a different type of problem is presented. Section 8

of the Revenue Act of 1939 (Ill. Rev. Stat. 1973, ch. 120, par. 489) provides:

> "§ 8. In counties under township organization containing less than 150,000 inhabitants, and in such counties which have by the last preceding federal census reached or exceeded a population of 150,000 but in which no board of review has heretofore been elected pursuant to Section 10 of this Act or authorized by referendum as provided in Section 10a, there shall be a board of review to review the assessments made by the supervisor of assessments. Until June 1, 1974, or the completion of the review of 1973 assessments, whichever is later, ~~the chairman of the county~~ board shall be ex-officio chairman of the board of review but the county board is authorized to delegate some member other than the chairman of the county board as chairman of the board of review when the chairman of the county board so requests. The terms of all members of a board of review appointed before the effective date of this amendatory Act of 1973 expire on June 1, 1974, or upon completion of the review of 1973 assessments, whichever is later. Before June 1, 1974, the chairman of the county board shall appoint, with the approval of the county board, 3 citizens of the county to comprise the board of review for that county, 2 to serve for a one year term commencing June 1, 1974, and one to serve for a 2 year term commencing June 1, 1974. Thereafter, their respective successors shall be appointed and qualified in like manner to serve for terms of 2 years commencing on June 1 of the year of appointment. Vacancies on the board shall be filled in like manner as original appointments, for the balance of the unexpired term. Members of the county board may, but are not required to, be appointed to the board of review. Nothing in this Act prohibits the reappointment of a member of the board of review." (emphasis added.)

By the plain language of section 8, a county board member may be appointed to the board of review by the county board chairman with the advice and consent of the county board. Thus, section 8 is inconsistent with the prohibition contained in section 1 of "AN ACT to prevent fraudulent and corrupt practices * * *".

Where there are two statutes, one dealing with a subject in general and comprehensive terms, and the other dealing with the same subject in a narrow and definite way, the two statutes should be read together with a view toward a consistent legislative policy. (Rosehill Cemetery v. Leuder, 406 Ill. 408.) To the extent the two are in conflict, the special statute will prevail over the general one. (People ex rel. Southfield Apartment Co. v Jarecki, 408 Ill. 266.) The result is reinforced where, as here, the special Act is enacted at a later date. Bowes v. City of Chicago, 3 Ill. 2d 175; see, Op. Atty. Gen. NP-866, February 4, 1975.

To the extent, therefore, that section 8 of the Revenue Act of 1939 provides that a county board member may be appointed by the county board to serve as a member of the

board of review, it stands as an exception to the general rule stated in section 1 of "AN ACT to prevent fraudulent and corrupt practices, etc." Consequently, it is my opinion that a county board member may be appointed to the board of review in counties with a population in excess of 150,000, but less than one million.

To summarize, with respect to the positions of member and president of the forest preserve commission, section 1 of "AN ACT to prevent fraudulent and corrupt practices * * *" does not apply since those positions are not elected or appointed by county board action. Concerning a member of the board of review, the specific statute governing that office which allows the county board member to fill the office by appointment of the county board provides an exception to the general, earlier enacted statute prohibiting such dual office holding.

As there are specific statutory provisions which allow a county board member to serve simultaneously in the capacity of forest preserve commissioner, president of the forest preserve commission or member of the board of review,

it is not necessary to discuss the common law rule of incompatibility. Since incompatibility is founded upon principles of public policy, it is unquestionably within the power of the legislature to provide that two offices may be held by the same individual even though such offices might be held to be incompatible at common law. Marini v. Holster, (N.J.) 218 A. 2d 887; Ahto v. Weaver, (N.J.) 89 A. 2d 27; Childs v. Moses, (S. Ct. N.Y.) 26 N.Y.S. 2d 574, affirmed 38 N.Y.S. 2d 704; 3 McQuillin "Municipal Corporations", 3rd Ed. Revised, sec. 12.67, at 296.

I will next turn my attention to the question whether a county board member may also serve in the capacity of township supervisor. For over 100 years the powers of the county board in counties under township organization have been exercised by a board of supervisors composed of township supervisors and assistant township supervisors. However, because of the U.S. Supreme Court decisions in Baker v. Carr, 369 U.S. 186, and Avery v. Midland County, Texas, 390 U.S. 470, it became necessary to correct the "one man, one vote" imbalance on the county board in counties under township organization. See,

Taylor v. County of St. Clair, 57 Ill. 2d 367; People ex rel. Maro v. The Bd. of Town Auditors, Rock Island Township, 48 Ill. 2d 202.

Therefore, in keeping with those decisions, the General Assembly enacted Public Acts 76-1650 through 76-1654, and in particular 76-1652, effective October 2, 1969, which amended section 23 of "AN ACT to revise the law in relation to counties" (Ill. Rev. Stat. 1973, ch. 34, par. 302) to read as follows:

> "§ 23. The powers of the county as a body corporate or politic, shall be exercised by a county board, to wit: In counties under township organization (except the County of Cook), by the board of supervisors, which shall be composed of the town and such other supervisors as are or may be elected pursuant to law, until the first Monday in May, 1972, and, commencing with that date, shall be composed of the county board members elected under 'An Act relating to the composition and election of county boards in certain counties', enacted by the 76th General Assembly; in the County of Cook, by a board of county commissioners, pursuant to section 7, article 10 of the constitution; in counties not under township organization, by the board of county commissioners."

In an opinion issued February 13, 1970 (S-130), I determined that the holding of the office of county board member

elected from districts, or at large, in accordance with Public Acts 76-1650 through 76-1653 was not incompatible with holding the office of township supervisor. That opinion was based upon the historical practice, unwavering through 100 years, that the legislature had at all times viewed the duties and functions of the two offices as compatible. Since there was a statutory history of interwoven functions between the offices, and since it did not appear that the legislature had amended section 23 in the belief that the offices were incompatible, it was my view that legislative judgment with respect to proper public policy should be left to stand.

However, the cumulative effect of recent developments in local governmental law which have taken place since the issuance of S-130, and in particular the adoption of a new State Constitution, and the expansion of the powers and functions of townships as a separate entity apart from the powers and functions of counties, leads me to the unavoidable conclusion that the offices of township supervisor and county board member must now be considered incompatible.

Specifically, the chief area of movement in the development of the law since 1970, and the chief reason for my concern with respect to possible conflicts of interest, involves the increased powers of counties and townships to contract with each other, and the expanded subjects and purposes of such contracts. These additional powers and overlapping functions assigned to townships and counties of recent date invite a clash of obligations each unit of government owes to its respective citizens which is far greater in intensity and scope than that which existed under the prior statutory scheme. My concern is focused on the fact that a person acting in the dual capacity of county board member and township supervisor cannot fully nor fairly represent the interests of both governments with respect to contracts between such governmental units.

The corporate powers of the county are exercised by the county board. (Ill. Rev. Stat. 1973, ch. 34, par. 302.) The county board is empowered to manage the county funds and county business (Ill. Rev. Stat. 1973, ch. 34, par. 403), and make on behalf of the county all contracts in relation to the property and concerns of the county necessary to the exercise

of its corporate powers. (Ill. Rev. Stat. 1973, ch. 34, par. 303.) A member of the county board, of course, takes part in the formulation, acceptance and ratification of such contracts.

Section 1 of article XIII of "AN ACT to revise the law in relation to township organization" (Ill. Rev. Stat. 1973, ch. 139, par. 117) provides in part:

> "§ 1. In each town the supervisor, town clerk and three other members elected at large from the town as provided in Section 1 of Article VII of this Act, shall constitute a board of auditors until the 20th day after the 1973 township election. Commencing with the 20th day after the 1973 election, the board of auditors shall consist of the supervisor and 4 other members elected at large from the town as provided in Section 1 of Article VII of this Act, and the town clerk shall be the clerk of the board of auditors but not a voting member thereof. Each person on the board of auditors shall cast but one vote and the supervisor shall be the chairman of such board. * * *"

Thus, the township supervisor is a voting member of the board of auditors, and like the county board member, participates in the decision making process in the exercise of the powers vested in the board of town auditors.

The first important development which has bearing

on the present issue was the inclusion of the section on Intergovernmental Cooperation within the Illinois Constitution of 1970 (Ill. Const., art. VII, sec. 10), and the enactment of the Intergovernmental Cooperation Act. (Ill. Rev. Stat. 1973, ch. 127, pars 741 et seq.) Section 2 of that Act (Ill. Rev. Stat. 1973, ch. 127, par. 742) provides:

> "For the purpose of this Act:
>
> (1) The term 'public agency' shall mean any unit of local government as defined in the Illinois Constitution of 1970, * * *"

Section 3 of the Intergovernmental Cooperation Act (Ill. Rev. Stat. 1973, ch. 127, par. 743) provides:

> "Any power or powers, privileges or authority exercised or which may be exercised by a public agency of this State may be exercised and enjoyed jointly with any other public agency of this State and jointly with any public agency of any other state or of the United States to the extent that laws of such other state or of the United States do not prohibit joint exercise or enjoyment."

Section 5 of the same Act (Ill. Rev. Stat. 1973, ch. 127, par. 745) provides:

> "Any one or more public agencies may contract with any one or more other public agencies to perform

> any governmental service, activity or undertaking which any of the public agencies entering into the contract is authorized by law to perform, provided that such contract shall be authorized by the governing body of each party to the contract. Such contract shall set forth fully the purposes, powers, rights, objectives and responsibilities of the contracting parties."

It is thus clear that a member of the county board, in the exercise of the corporate authority of the county, would be required, as part of his statutory duties, to vote upon contracts with the township of which he is the supervisor. Whereas prior to the adoption of the new Constitution and the enactment of the Intergovernmental Cooperation Act, the power of the county and township to enter into contracts was restricted to statutorily specified objects and purposes in limited areas, it is now clear that the two units of government may contract in extremely broad areas of activity not recognized prior to 1970.

It should be pointed out that the general corporate powers of the township to make contracts are exercised by the town electors at the town meeting. (Ill. Rev. Stat. 1973, ch. 139, pars. 38 and 39; Gregg v. Bourbonnais, 327 Ill. App. 253.)

Since township officers and boards have only those powers which are conferred on them by statute, (Anders v. Town of Danville, 45 Ill. App. 2d 104), it would appear that the board of town auditors do not have the power to enter into intergovernmental agreements pursuant to the Intergovernmental Cooperation Act.

However, in addition to the broad powers to enter into intergovernmental agreements granted to county boards and thus to county board members by the Intergovernmental Cooperation Act, recent amendments have also granted broad powers directly to the board of town auditors. Specifically, Public Act 78-1189 amended section 20 of article XIII of "AN ACT to revise the law in relation to township organization" (Ill. Rev. Stat. 1973, ch. 139, par. 126.10) and as amended reads as follows:

> "The board of town auditors may enter into any cooperative agreement or contract with any other governmental entity, not-for-profit corporation, or non-profit community service association with respect to the expenditure of township funds, or funds made available to the township under the federal State and Local Fiscal Assistance Act of 1972, to provide any of the following services to the residents of the township:
>
> 1. Ordinary and necessary maintenance and operating expenses for:

(a) public safety (including law enforcement, fire protection, and building code enforcement),
(b) environmental protection (including sewage disposal, sanitation, and pollution abatement),
(c) public transportation, (including transit systems and streets and roads),
(d) health,
(e) recreation,
(f) libraries, and
(g) social services for the poor and aged; and

2. Ordinary and necessary capital expenditures authorized by law.

In order to be eligible to receive funds from the township under this Section any private not-for-profit corporation or community service association shall have been in existence at least one year prior to the receipt of the funds."

It should be underscored that the above amendment has granted the power to the board of town auditors to expend not only Federal revenue sharing funds, but also its own township funds in areas where previously the township had no such power. (See, Op. Atty. Gen. S-693, February 7, 1974; Op. Atty. Gen. S-838, November 26, 1974.) Note also that the board of town auditors are, in the first instance, authorized to enter into the specified agreements, bypassing the town electors.

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, the following 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 (Ill. Rev. Stat. 1973, ch. 34, pars. 5671 et seq.); contracts for police (Ill. Rev. Stat. 1973, ch. 34, par. 3601) and fire (Ill. Rev. Stat. 1973, ch. 139, par. 39.32) protection between counties and townships; eradication of dangerous and unsafe buildings (Ill. Rev. Stat. 1973, ch. 34, par. 429.8).

(2) Environmental protection: Sewage disposal, sanitation and waterworks systems (Ill. Rev. Stat. 1973, ch. 34, pars. 3101 et seq.); garbage disposal, landfills (Ill. Rev. Stat. 1973, ch. 34, pars. 413, 418); conservation (Ill. Rev. Stat. 1973, ch. 34, par. 303 9th, 12th and 14th); air contamination control (Ill. Rev. Stat. 1973, ch. 34, par. 421.2).

(3) Public transportation: Acquisition and construction of parking facilities (Ill. Rev. Stat. 1973, ch. 34, par. 3502).

(4) Health: Clinics for alcoholics (Ill. Rev. Stat. 1973, ch. 34, par. 429.17); hospitals (Ill. Rev.

Stat. 1973, ch. 34, par. 303 7th); community mental health boards (Ill. Rev. Stat. 1973, ch. 34, par. 419.2); care and treatment of tuberculosis (Ill. Rev. Stat. 1973, ch. 34, pars. 303 15th, 413, 5101 et seq.); public health departments (Ill. Rev. Stat. 1973, ch. 34, par. 419; Ill. Rev. Stat. 1973, ch. 111 1/2, pars. 20(c) et seq.); ambulance services (Ill. Rev. Stat. 1973, ch. 34, par. 419.1); creation of boards of health (Ill. Rev. Stat. 1973, ch. 34, pars. 5001 et seq.); County Hospital Governing Commission (Ill. Rev. Stat. 1973, ch. 34, pars. 5011 et seq., 5022); county sheltered care and nursing homes for infirm and chronically ill (Ill. Rev. Stat. 1973, ch. 34, par. 416).

(5) Recreation: Park and recreational areas (Ill. Rev. Stat. 1973, ch. 34, par. 303 19th).

(6) Social Services for the poor and aged: Community action agencies (Ill. Rev. Stat. 1973, ch. 34, par. 429.19); homes for the aged (Ill. Rev. Stat. 1973, ch. 34, pars. 3561 et seq.).

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. (Ill. Rev. Stat. 1973, ch. 34, par. 403-1.) 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 to negotiate a contract most advantageous to, the interest of both parties to the bargain.

In McDonough v. Roach, 35 N.J. 153, 171 A. 2d 307, the Supreme Court of New Jersey held that the offices of mayor of a town and member of a Board of Chosen Freeholders of a county were incompatible. After discussing the various statutory provisions which authorize the county to contract with the town, the court stated at 171 Id. 309:

> "In all of these matters the terms upon which the project is to be pursued are left to the agreement of the public bodies. In the negotiations the county board is bound to consider the interests of all of its citizens while the local governing body has a like obligation to the citizenry of the municipality alone. No man, much less a public fiduciary, can sit on both sides of a bargaining table. He cannot in one capacity pass with

> undivided loyalty upon proposals he advances in his other role. * * *" (See, also, People ex rel. Kraemer v. Bagshaw, Cal. App., 130 P. 2d 243.)

In a previous opinion, involving an analogous situation, I held that an individual holding the offices of alderman of a municipality and county board member could not fully represent the interests of both governments when they are contracting with each other. (1972 Op. Atty. Gen. 45.) See, also, NP-731, April 2, 1974, (county board member and director of soil and water conservation district); NP-522, October 27, 1972, (county board member and trustee of sanitary district); UP-1342, February 17, 1965, (county board member and city council member).

From the foregoing, I must conclude that the offices of county board member and township supervisor are incompatible.

It is well settled in Illinois that the acceptance of an incompatible office by the incumbent of another office will be regarded as a resignation or vacation of the first office. (People v. Bott, 261 Ill. App. 261; People ex rel. Myers v. Haas, 145 Ill. App. 283.) Formal resignation, or

ouster by legal proceeding is not required. Packingham v. Parker, 66 Ill. App. 96, 100.

I am, of course, mindful that presently there are a large number of individuals throughout the State who simultaneously hold both the office of township supervisor and county board member. In order to determine to what extent the rule of automatic vacation of office applies to these individuals, it is first necessary to determine at what point in time the offices legally became incompatible. As I have stated, my opinion that the offices must now be considered incompatible is largely based upon the cumulative development of the law with regard to townships and counties since 1970. It is not clear, and I need not decide herein, whether at the time of the adoption of the Local Government article in the Constitution of 1970, and the enactment of the Intergovernmental Cooperation Act, a sufficient conflict of interest arose between the offices so as to warrant a holding of incompatibility. It is abundantly clear that the combination of these developments, plus the recent enactment

of Public Act 78-1189 granting additional and broader powers and functions to townships in areas which overlap the already existing powers and functions of counties, requires the conclusion that on the effective date of Public Act 78-1189 (September 5, 1974) the offices were incompatible.

Statutes should be construed so as to give them prospective operation only, unless legislative intention to given them retrospective operation is clear and undoubtable. (Quincy Training Post, Inc. v. The Dept. of Revenue, 12 Ill. App. 3d 725; Kersten v. Voight, 164 Ill. 314; Capone v. The U.S., 51 F. 2d 609.) It has been held that if a person holding an office is not ineligible for another office at the time he is elected to the latter, he is not rendered ineligible by a subsequent statute which makes the holding of the other office grounds for ineligibility. The statute must not be given the drastic effect of retroactively removing an officer who was competent to serve in an office at the time of the election or appointment under the previous statute.

Tucker v. The State (Miss.) 42 So. 798; accord, Baillie v. The Town of Medley (Fla.) 262 So. 2d 693, 697; State v. Mucci, (Ohio) 225 N.E. 2d 238, 241.

Therefore, it is my opinion that those who have taken up the duties of both the offices of township supervisor and county board member prior to September 5, 1974, may retain both offices until either the duration of the term, or actual vacation of, either office. It is my further opinion, and I believe a court would hold, that any township supervisor who has assumed the office of county board member, or any county board member who has assumed the office of township supervisor, by election or appointment, after September 5, 1974, has ipso facto resigned and vacated the prior held office.

Very truly yours,

ATTORNEY GENERAL