



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Jim Ryan
ATTORNEY GENERAL

January 15, 1998

FILE NO. 98-002

COMPATIBILITY OF OFFICES:
City Treasurer and City
Library Board Trustee

The Honorable Joseph E. Birkett
State's Attorney, DuPage County
505 North County Farm Road
Wheaton, Illinois 60187

Dear Mr. Birkett:

I have your letter wherein you inquire whether one person may hold the offices of city treasurer and city library board trustee simultaneously. For the reasons hereinafter stated, it is my opinion that the offices of city treasurer and city library board trustee are not incompatible, and one person may, therefore, hold both offices simultaneously.

The common law doctrine of incompatibility of offices precludes simultaneous tenure in two offices where the constitution or a statute specifically prohibits the occupant of either office from holding the other, or where the duties of the two offices conflict so that the holder of one cannot, in every instance, properly and faithfully perform all of the duties of

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the other. (People ex rel. Fitzsimmons v. Swailes (1984), 101 Ill. 2d 458, 465; Rogers v. Village of Tinley Park (1983), 116 Ill. App. 3d 437, 440-41; People ex rel. Myers v. Haas (1908), 145 Ill. App. 283, 286.) Although no statutory provision expressly prohibits simultaneous tenure in the offices of city treasurer and city library board trustee, section 3.1-15-15 of the Illinois Municipal Code (65 ILCS 5/3.1-15-15 (West 1996)) generally prohibits a city treasurer from holding another municipal office:

"Holding other offices. A mayor, president, alderman, trustee, clerk, or treasurer shall not hold any other office under the municipal government during the term of that office, except when the officer is granted a leave of absence from that office or except as otherwise provided in Sections 3.1-10-50 and 3.1-35-135. Moreover, an officer may serve as a volunteer fireman and receive compensation for that service."
(Emphasis added.)

Sections 3.1-10-50 and 3.1-35-135 of the Municipal Code (65 ILCS 5/3.1-10-50 (West 1996), as amended by P.A. 90-429, effective August 15, 1997; 5/3.1-35-135 (West 1996)), to which reference is made in section 3.1-15-15, are not applicable to this situation.

Under section 3.1-15-15 of the Code, a city treasurer is prohibited from holding "any other office under the municipal government" during his or her term as city treasurer. In determining whether the position of city library board trustee is considered to be an "office under the municipal government", it is necessary to review the provisions of the Illinois Local Library Act (75 ILCS 5/1-0.1 et seq. (West 1996)).

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The Illinois Local Library Act governs the organization and operation of public libraries established by cities, villages, incorporated towns and townships. (75 ILCS 5/1-2; 1-4 (West 1996).) Under the terms of the Act, as well as its precursors, a library board is created by the city's corporate authorities (75 ILCS 5/4-1 (West 1996)). Its members are appointed by the mayor with the approval of the city council (75 ILCS 5/4-1 (West 1996)) and may be removed by the mayor (75 ILCS 5/4-1.1(b) (West 1996)). The library board has no independent authority to levy taxes, but rather is dependent upon the city council for funding (75 ILCS 5/3-1 and 3-5 (West 1996)). Based upon these factors, it was held in Board of Library Directors v. Snigg (1939), 303 Ill. App. 340, 346, that a library board organized and existing under "AN ACT to authorize cities, villages, incorporated towns, and townships to establish and maintain free public libraries and reading rooms" (see Ill. Rev. Stat. 1937, ch. 81, par. 1 et seq.) was but a part of city government. Because of the significant expansion of the powers of library boards and changes in local governmental law generally since the decision in Board of Library Directors v. Snigg, however, it is my opinion that its holding is not properly applied to a local library under the current law.

Firstly, I note that the General Assembly has granted additional powers to library boards the nature of which militates against considering such boards to be mere instrumentalities of the municipalities that create them. For example, city library

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boards have been granted the power to sue and be sued in their own names, the authority to hire their own attorneys and the authority to exercise the power of eminent domain. (See 75 ILCS 5/4-7, clauses 7, 10, 13 (West 1996).) These are all significant attributes of political autonomy, and clearly demonstrate that the General Assembly did not intend for city library boards to be dependent upon powers derived indirectly from the cities that create them.

Secondly, the analysis of the nature of units of local government other than counties, municipalities and townships has changed in the intervening years, primarily due to the recognition of "special districts" as a distinct class of local government in the Illinois Constitution of 1970 (Ill. const. 1970, art. VII, sec. 1). Prior to the effective date of the Constitution, both the General Assembly and the courts had categorized limited purpose units of local government by a myriad of titles, including municipal corporations, quasi-municipal corporations, involuntary corporations and bodies corporate and politic. These classifications were imprecise and defied definition. Under the 1970 Constitution, all units of local government which are not counties, municipalities, townships or units specifically designated by law as units of local government, are "special districts" regardless of what title might otherwise be used to describe them. Because the framers of the Constitution did not further delineate the criteria which are necessary for an entity

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to be considered a special district, however, it has been left to the courts to do so.

These criteria were discussed at length in Chicago Transit Authority v. Danaher (1976), 40 Ill. App. 3d 913. In that case, the court was called upon to determine whether the Chicago Transit Authority (CTA) and the Chicago Housing Authority (CHA) are special districts, for purposes of the Constitution. Both the CTA and the CHA are established pursuant to statute, are designated by statute as municipal corporations, have the power to contract and to purchase and dispose of land, have eminent domain powers and possess "considerable autonomy", according to the court. Neither has the power to tax, but each has the power to issue bonds and to solicit and accept Federal and State grants. The CTA's statutory duty is to acquire, construct, own, operate and maintain, for public service, a public transportation system within Cook County. The CHA's duty is to prepare, carry out, construct and operate low income housing projects. The court held:

" * * *

* * * The words 'special district,' so far as they are used in reference to units of government, have a technical meaning. A 'special district' is a relatively autonomous local government which provides a single service. They have also been characterized as 'possessing a structural form, an official name, perpetual succession, and the right to make contracts and to dispose of property.' (See 1973 Illinois Attorney General's Opinions, 102, 104, No. S-601, dated June 27, 1973.) Although there is nothing in the record of the 1970 convention to which we

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have been referred which defines 'special districts,' we are firmly convinced that both CTA and CHA possess those features which bring each within the technical meaning of the term 'special district,' as commonly understood."

* * *

Chicago Transit Authority v. Danaher, 40 Ill. App. 3d at 917.

Section 4-7 of the Local Library Act (75 ILCS 5/4-7 (West 1996)) sets forth the powers and duties of a library board. Although it does not have the power to tax, the board of library trustees has exclusive control of the expenditure of all moneys collected for the library and deposited to the credit of the library fund. (75 ILCS 5/4-7, clause 2 (West 1996).) The library board has exclusive control of the construction of library buildings and the care and custody of library property. (75 ILCS 5/4-7, clause 3 (West 1996).) The library board may sell personal or real property belonging to the library, subject only to a right of first refusal in the city. (75 ILCS 5/4-7, clause 6 (West 1996).) Moreover, the board is statutorily authorized to enter into contracts, to take title to any property acquired for library purposes and to sue and be sued. (75 ILCS 5/4-7, clause 10 (West 1996).) Based upon these factors, and considering the analysis in Chicago Transit Authority v. Danaher, Attorney General Fahner concluded in opinion No. 81-012, issued May 8, 1981 (1981 Ill. Att'y Gen. Op. 27) that a local library was a special district and a separate "governmental body", as that term was used in section 12 of the State Revenue Sharing Act

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(see Ill. Rev. Stat. 1980 Supp., ch. 85, par. 616, now codified at 30 ILCS 115/12 (West 1996)).

Library boards possess the key indicia of special districts. They possess structural form, an official name, perpetual succession and the right to make contracts and to dispose of property. They may sue and be sued independently of the city which creates them. Although library boards do require city approval for some functions, such as borrowing money (75 ILCS 5/5-6 (West 1996)) or the accumulation of funds for the construction or repair of a library building (75 ILCS 5/5-2 (West 1996)), they are nonetheless "relatively autonomous". I concur with my predecessor's opinion that under the Illinois Constitution of 1970, a public library board is a "special district", and not merely an agency or instrumentality of the city which creates it. Therefore, because the office of public library board trustee is an office of a special district and not an "office under the municipal government", section 3.1-15-15 of the Illinois Municipal Code does not prohibit a city treasurer from also holding the office of city library board trustee. Having concluded that there is no statutory prohibition upon the holding of these offices simultaneously, it is necessary to determine whether the duties of the offices may conflict and thereby render the offices incompatible.

Clearly, a public library board exercises a variety of discretionary functions in the operation of the library. A

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trustee, consequently, may be called upon to vote or otherwise to act upon any of the matters that may come before the board.

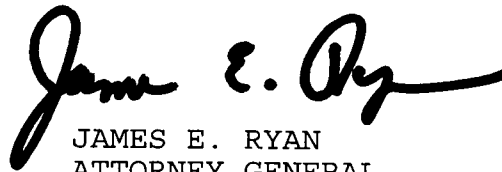
The powers and duties of a city treasurer are governed by sections 3.1-35-40 through 3.1-35-85 of the Municipal Code (65 ILCS 5/3.1-35-40 through 3.1-35-85 (West 1996)). Those duties include the receipt, deposit and investment of money belonging to the municipality; the payment of funds upon lawfully drawn warrants; the keeping of accounts and reporting upon them to the corporate authorities; and the filing of certain reports and accounts with the municipal clerk and town or county collectors. The duties of the treasurer are purely ministerial in nature, and confer upon the treasurer no discretionary authority with respect to any matter coming before the corporate authorities of the city. I perceive of no circumstances in which the discretionary duties of a library board trustee and the ministerial duties of a city treasurer would conflict.

It must be noted that in cities of less than 500,000 population, the city treasurer may be designated by the library board as the custodian of library funds. (75 ILCS 5/4-9 (West 1996).) Even if the treasurer in these circumstances was to serve as the public library's treasurer, his or her duties with respect to library funds would be no different than those exercised with respect to city funds. They are purely ministerial in nature, and would not conflict with the exercise of the discretionary powers of the library board.

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Therefore, it is my opinion that the offices of city public library board trustee and city treasurer are not incompatible, and one person may lawfully hold both offices simultaneously.

Sincerely,

A handwritten signature in black ink, reading "James E. Ryan". The signature is written in a cursive style with a long, sweeping tail on the "y".

JAMES E. RYAN
ATTORNEY GENERAL