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FILE NO. S-590

SCHOOLS:
Compatibility of Offices

Honorable Michael J. Bakalis
Superintendent of Public Instruction
302 State Office Building
Springfield, Illinois 62706

Dear Mr. Bakalis:

I have your recent letter wherein you state:

"In the course of the past few months, numerous questions have come to this office concerning the compatibility of the office of school board member and member of a county board of supervisors. Questions have also arisen relative to the compatibility of the offices of school board member and township trustee, the offices of school board member and township tax assessor and the offices of school board member and county commissioner.

"I herewith request your opinion as to the compatibility of the foregoing offices."

In your first question you have asked whether the offices of school board member and member of a county board are compatible.

From the general rules laid down in People v. Haas, 145 Ill. App. 283, it appears that incompatibility between offices arises where the constitution or a statute specifically prohibits the occupant of either one of the offices from holding the office, or where, because of the duties of either office, a conflict of interest may arise, or where the duties of the office are such that the holder of one cannot, in every instance, faithfully perform all the duties of the other.

Your attention is called to Sections 1-4 of "An Act in relation to State revenue sharing with local governmental entities," (Ill. Rev. Stat. 1971, ch. 85, pars. 611-614.) These sections establish a fund from the income tax revenue, which fund is to be paid to municipalities and counties of Illinois, which fund is to be used for the general welfare of the people of Illinois, including

financial assistance to school districts, any part of which lie within the municipality or county. The pertinent provision is Section 3 of said Act, (Ill. Rev. Stat. 1971, ch. 85, par. 613) which reads as follows:

"The amounts allocated and paid to the municipalities and counties of this State pursuant to the provisions of this Act shall be used solely for the general welfare of the people of the State of Illinois, including financial assistance to school districts, any part of which lie within the municipality or county, through unrestricted block grants for school purposes carried out within the municipality or county making the grant."

If a county board member were also a member of a school board of a school district, any part of which was located in the county, the county board member would be in a position to favor his own school board. Although he could not benefit personally, he might not be able to give fair and impartial consideration to the duties of both offices. In view of this, I am of the opinion that the office of county board member is incompatible with that of a school board of a school district, any part of which is located in the same county. See my Opinion No NP-560 which was issued on March 26, 1973.

Secondly, you have asked whether the office of school board member and township trustee are compatible. The statute pertaining to township trustees is Section 5-1, et seq. of Article 5 of The School Code (Ill. Rev. Stat. 1971, ch. 122, pars. 5-1 et seq. Section 5-1.) which provides:

"The territory in each county, exclusive of any school district governed by any special act which requires the district to appoint its own school treasurer, shall constitute a county school unit. County school units of less than 1,000,000 inhabitants shall be known as Class I county school units and the office of township trustees, where existing on July 1, 1962, in such units shall be abolished on that date and all books and records of such former township trustees shall be forthwith thereafter transferred to the county board of school trustees. County school units of 1,000,000 or more inhabitants shall be known as Class II county school units and shall retain the office of township trustees."

Section 5-3 of the aforesaid Act provides:

"No person shall be eligible to the office of trustee of schools who is not a resident of the township and at least 21 years of age. If there are three or more school districts in a township, no two trustees shall reside, when elected, in the same school district; except that in townships in which at least 90% of the electors reside in one school district, this restriction shall not apply. No person shall be eligible to the office of trustee of schools and school director or school board member at the same time."

It can be observed from the foregoing that Section 5-3 expressly prohibits a township trustee from holding the office of member of a school board at the same time. Because of this I am of the opinion that the office of school board member is incompatible with that of township trustee.

Thirdly, you have asked whether the office of school board member is compatible with that of township tax assessor. Your attention is first called to the provision which exempts school property from taxation. It is Section 19.1 of The Revenue Act of 1939 (Ill. Rev. Stat. 1971, ch. 120, par. 500.1) which provides:

"All lands donated by the United States for school purposes, not sold or leased; all property of schools, including the real estate on which the schools are located and any other real or personal property used by such schools exclusively for school purposes, not leased by such schools or otherwise used with a view to profit, including, but not limited to, student residence halls, dormitories and other housing facilities for students and their spouses and children, and staff housing facilities; and all lands, moneys, or other property heretofore or hereafter donated, granted, received or used for public school, college, theological seminary, university, or other educational purposes and the proceeds thereof, whether

held in trust or absolutely. The property described in this Section shall be exempt from taxation whether owned by a resident or non-resident of this State or by a corporation, whether incorporated in this or in any other state of the United States, and not leased or otherwise used with a view to profit. The Occupancy, in whole or in part, of a school-owned and operated dormitory or residence hall by students who belong to one or more fraternities, sororities, or other campus organizations shall not defeat the exemption for such property under the terms of this Section."

This statutory provision generally exempts school property from taxation, but if the property is not used by such schools exclusively for school purposes or if it is leased by such schools or otherwise used with a view to profit, the property is subject to taxation. A conflicting situation could arise. The property of a school not exempted by this section would be subject to tax. If a tax assessor were also a member of a school board he could find himself assessing property of a school in his district. He could not in every instance properly and faithfully perform all the duties of each office. A dispute could also arise as to whether certain property of the schools is taxable. I

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am, therefore, of the opinion that the office of a member of a school board is incompatible with that of township tax assessor.

Lastly, you have asked whether the office of school board member is incompatible with that of county commissioner. Previously I discussed the reasons why the office of member of a school board is incompatible with that of member of a county board. For the same reasons I am of the opinion that the office of member of a school board is incompatible with that of county commissioner.

Very truly yours,

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