

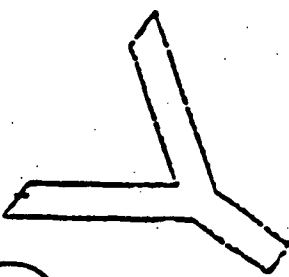


TYRONE C. FAHNER
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

July 28, 1981

FILE NO. 81-025

**GOVERNMENTAL ETHICS AND
CONFLICT OF INTEREST;
Fire Protection District Trustee
Interest in Depository**

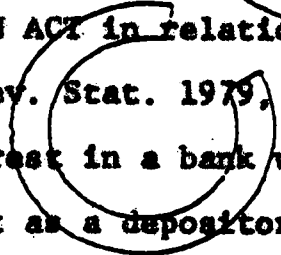
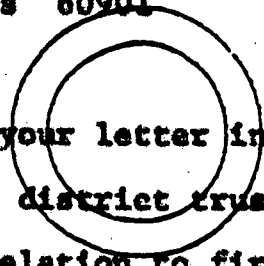


Honorable L. Patrick Power
State's Attorney
Kankakee County
Courthouse
450 East Court Street
Kankakee, Illinois 60901



Dear Mr. Power:

I have your letter in which you inquire whether a fire protection district trustee is prohibited by section 4 of "AN ACT in relation to fire protection districts" (Ill. Rev. Stat. 1979, ch. 127 1/2, par. 24) from having an interest in a bank which is used by the fire protection district as a depository. You also inquire whether section 3.2 of "AN ACT to prevent fraudulent and corrupt practices, etc." [Corrupt Practices Act] (Ill. Rev. Stat. 1979, ch. 102, par. 3.2), which permits deposits in financial institutions



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in which members of the governing bodies of units of local government have less than a 7 1/2% ownership interest, would make contracts of deposit between the fire protection district and a financial institution in which one of its trustees has less than a 7 1/2% ownership interest permissible. For the reasons hereinafter stated, it is my opinion that a contract for deposit between a fire protection district and a financial institution in which one of its trustees has an interest, regardless of the extent of that interest, is prohibited by section 4 of "AN ACT in relation to fire protection districts".

Section 4 of "AN ACT in relation to fire protection districts" provides in pertinent part as follows:

" * * * No trustee or employee of such district shall be directly or indirectly interested financially in any contract work or business or the sale of any article, the expense, price or consideration of which is paid by the district; * * * ."

A deposit of funds in a financial institution creates a contractual relationship between the institution and the depositor. (1973 Ill. Att'y Gen. Op. 45.) As an owner of an interest in a financial institution used as a depository, a fire protection district trustee would clearly have an interest in the contract of deposit. Language comparable to that contained in section 4 has been construed to prohibit contracts

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for the deposit of funds when a member or members of a governing body of a governmental unit have been interested financially in a particular depository. (Ill. Att'y Gen. Op. NP-596, issued May 31, 1973; 1973 Ill. Att'y Gen Op. 45.)

There are numerous statutory conflict of interest provisions. One of these is the Corrupt Practices Act (Ill. Rev. Stat. 1979, ch. 102, par. 1 et seq.), which applies to all persons holding office, whether by election or appointment, under the laws or Constitution of this State. Other similar provisions apply specifically to municipal officers (Ill. Rev. Stat. 1979, ch. 24, pars. 3-14-4, 4-8-6), to school board members (Ill. Rev. Stat. 1979, ch. 122, par. 10-9), and to community college board members (Ill. Rev. Stat. 1979, ch. 122, par. 103-48).

The General Assembly, in a revision of various conflict of interest provisions, enacted Public Act 80-376, effective October 1, 1977, and Public Act 80-938, effective July 1, 1978, which defined various interests regarded by the General Assembly as de minimus and exempted persons with such interests from the provisions of several conflict of interest statutes. One of the provisions enacted as part of Public Act 80-376 is section 3.2 of the Corrupt Practices Act which has counterparts in sections 3-14-4 and 4-8-6

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of the Illinois Municipal Code (Ill. Rev. Stat. 1979, ch. 24, pars. 3-14-4, 4-8-6) and section 10-9 of The School Code (Ill. Rev. Stat. 1979, ch. 122, par. 10-9). All such provisions, however, only exempt the officers in question from the prohibitions of the Act or sections in which the exemption provisions are contained.

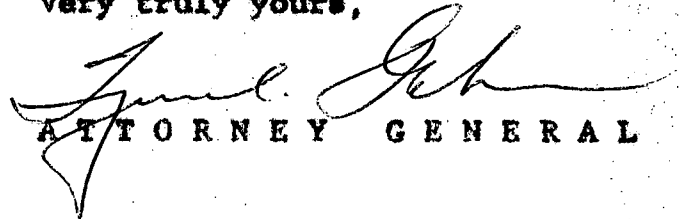
A fire protection district trustee is the holder of an office under the laws of the State of Illinois and thus, is subject to the Corrupt Practices Act, a general provision. If he is the holder of less than a 7 1/2% interest in a financial institution, a contract between his fire protection district and such institution is not prohibited by section 3 of the Corrupt Practices Act (Ill. Rev. Stat. 1979, ch. 102, par. 3) by virtue of the exemption contained in section 3.2 of the same Act.

The controlling provision in determining whether or not a fire protection district trustee may have an interest in a financial institution used by his district as a depository, however, is section 4 of "AN ACT in relation to fire protection districts". Section 4 is a specific provision pertaining only to fire protection district trustees and, as such, prevails over the general provisions of the Corrupt Practices Act. (People ex rel. Oller v. Cairo &

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Thebes R. Co. (1936), 364 Ill. 329, 333; People ex rel. Village of Northbrook v. City of Highland Park (1976), 35 Ill. App. 3d 435, 448.) Further, since the exemption contained in section 3.2 is limited by its own language to prohibited interests arising under the Corrupt Practices Act, it cannot be construed as an exemption to section 4 of "AN ACT in relation to fire protection districts".

Very truly yours,


ATTORNEY GENERAL