



WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD

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FILE NO. S-500

OFFICERS:

Compatability

Regional planning commission -
County board, etc.

Honorable Robert J. Lehnhausen
Director
Department of Local Government Affairs
325 West Adams Street, Room 206
Springfield, Illinois 62706

Dear Director Lehnhausen:

I have your letter wherein you state, in part, as follows:

"Your Opinion No. S-419, in which you stated that the office of county board member is incompatible with the office of member of a city or village planning commission, has been brought to our attention.

"In view of your prior opinion, the Office of Research and Planning of this Department has raised the following questions:

1. May a county board member serve as a member of a regional planning commission?

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2. May a mayor, village president, or member of a city council or village board serve as a member of a regional planning commission -- either ex officio or as an individual appointee?
3. In the event that it is determined that any or all of the above cited elected officials cannot serve as members of a regional planning commission, would any of the following alternative structures be permissible?
 - a) mayors or other elected officials serving on a regional planning commission ex officio but without voting privileges.
 - b) mayors or other elected officials serving on an advisory committee to the regional planning commission.

* * * *

Section 1 of AN ACT to provide for regional planning and for the creation, organization and powers of regional planning commissions" (Ill. Rev. Stat., 1971, ch. 34, par. 3001) reads, in part, as follows:

"Whenever in the judgment of the county board of any county, a portion or all of said county as a region, should have a plan made for the general purpose of guiding and accomplishing a co-ordinated, adjusted and harmonious development of said region, and of public improvements

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and utilities therein, * * * the county board is hereby empowered by resolution of record to define the boundaries of such region and to create a regional planning commission for the making of a regional plan for such region so defined. The number of members of such commission, their method of appointment, and their power and authority in the making of such plan, shall be such as the county board may deem proper and not in conflict with law. Said Commission shall be a fact finding body and shall make such investigations and gather such statistics as it shall deem necessary for the planning and development of said region, and shall make a plan of said region to include all matter which it may deem necessary for the development of the region as provided above."

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 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.

There are no constitutional or statutory provisions prohibiting a county board member from simultaneously serving

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as a member of a regional planning commission. On the contrary, 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., 1971, ch. 102, par. 1) specifically grants to the county board the power to appoint or elect one or more of its members to serve on the regional planning commission. Said section 1 reads as follows:

"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 or a County Extension Board as provided in Section 7 of the 'County Co-operative Extension Law', approved August 2, 1963, as amended."

Furthermore, I am of the opinion that there is no conflict of interest created by a member of the county board serving on the regional planning commission. In my opinion No. S-419, dated March 13, 1972, I held that, due to

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the possibility of a conflict of interest, a member of a county board could not simultaneously serve on a village or city planning commission. I based my holding on the fact that the interests of the city and county are sometimes contrary and divergent. A city or village planning commission is only advisory in nature; it has no ordinance powers. (Ill. Rev. Stat., 1971, ch. 24, par. 11-12-5; Frey, Subdivision Control and Planning, 1961 Ill. L. F., 411, 418). However, in preparing its plan, it does have jurisdiction over contiguous territory one and one-half miles beyond the corporate limits and not included in any municipality. (Ill. Rev. Stat., 1971, ch. 24, par. 11-12-5(1)). Once the city or village adopts the planning commission's recommended plan, the one and one-half miles of unincorporated territory would, for planning purposes, come under the jurisdiction of the city or village. Obviously, there is a possibility of a conflict of interest between the county and a village or city planning commission. A member of the village or city planning commission must be concerned with utilizing this one and one-half miles of unincorporated territory to the best interests of the city or village, which, may not be in the best interest of the county.

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Basically, the regional planning commission conducts fact finding investigations, utilizes the results of its investigations to devise a plan for the region, and then presents the plan to the county board. The commission cannot implement its own plan; it has no ordinance powers. Its members receive no pay. (Ill. Rev. Stat., 1971, ch. 34, par. 3004). Its funds are provided, in part, by appropriations from the county board. Ill. Rev. Stat., 1971, ch. 34, par. 3002.

The regional planning commission serves to advise the county board. (Ill. Rev. Stat., 1971, ch. 34, par. 3004; see, also, Galt v. County of Cook, 405 Ill. 396, 402; Frey, Subdivision Control and Planning, 1961 Ill. L. F., 411, 418). There is no conflict of interest in a member of the county board serving on a commission that advises the county board.

I find nothing in the statutes to indicate that 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. This is, however, basically, a factual determination which must be made locally. A determination of

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this question involves the amount of time required to adequately fulfill the duties of both offices and other facts pertinent to whether or not it is possible to simultaneously fulfill the duties of both offices.

The answer to your first question is in the affirmative; a member of a county board may simultaneously serve as a member of the regional planning commission.

With regard to your second question, I find no constitutional or statutory restraints in simultaneously holding one of the city or village offices mentioned in your letter and serving on the regional planning commission.

Next, let us consider the problem of whether the duties of either office may cause a conflict of interest to arise. The basic task of the regional planning commission is to formulate a plan "for the general purposes of guiding and accomplishing a coordinated, adjusted and harmonious development of said region, and of public improvements and utilities therein . . ." (Ill. Rev. Stat., 1971, ch. 34, par. 3001). The region will obviously include municipalities.

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However, the county board by adopting a plan for the region cannot affect these municipalities. It will be necessary to persuade the municipalities that have planning commissions to adopt the regional plan. Ill. Rev. Stat., 1971, ch. 34, par. 3004; Frey, Subdivision Control and Planning, 1961 Ill. L. F., 411, 429.

This problem of coordination between municipal and regional plans is touched upon by section 5 of AN ACT to provide for regional planning and for the creation, organization and powers of regional planning commissions. (Ill. Rev. Stat., 1971, ch. 34, par. 3005). Said section 5 reads as follows:

"The county planning commission or regional planning commissions created under the provisions of this Act shall encourage the cooperation of the political subdivisions within their respective territories in any matters whatsoever which may concern the county or regional plan or maps prepared by such commission as an aid toward coordination of municipal plans with county and regional plans."

Thus, a member of a city council or a village board of trustees would in all likelihood be an asset to the regional

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planning commission in helping to coordinate municipal and regional plans. Also, such a person could aid in the persuasion of the city or village in adopting a plan that is harmonious with the regional plan. Thus, I am of the opinion that there is no conflict of interest created by a mayor, member of a city council, village president, or member of a village board of trustees serving on the regional planning commission.

I find nothing in the statutes to indicate that 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. This is, however, basically a factual determination which must be made locally. A determination of this question involves the amount of time required to adequately fulfill the duties of both offices and other facts pertinent to whether or not it is possible to simultaneously fulfill the duties of both offices.

The answer to your second question is in the affirmative; a mayor, village president, member of the city council, or a member of a village board may simultaneously serve as a member of a regional planning commission.

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Because I have answered your first two questions in the affirmative, I find it unnecessary to comment on the third question.

Very truly yours,

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