



**ROLAND W. BURRIS**

ATTORNEY GENERAL  
STATE OF ILLINOIS



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FILE NO. 91-028

COMPATIBILITY OF OFFICES:  
The Offices of County Board Member  
and County Emergency Telephone System  
Board Member Are Incompatible

Honorable Charles M. Colburn  
State's Attorney, Morgan County  
Morgan County Court House  
Jacksonville, Illinois 62650

Dear Mr. Colburn:

I have your letter wherein you inquire whether one person may simultaneously hold the offices of county board member and member of an emergency telephone system board established by the county. For the reasons hereinafter stated, it is my opinion that one person may not simultaneously hold both offices.

In your letter, you refer to section 1 of the Public Officer Prohibited Activities Act (Ill. Rev. Stat. 1989, ch. 102, par. 1), which provides 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 of a County Extension Board as provided in Section 7 of the 'County Cooperative Extension Law', approved August 2, 1963, as amended."

This provision clearly prohibits the appointment of a county board member to another office, except as therein provided, when the appointment is made by the county board of which he or she is a member. See, 1972 Ill. Att'y Gen. Op. 205, 206.

Pursuant to subsection 15.4(a) of the Emergency Telephone System Act (Ill. Rev. Stat. 1990 Supp., ch. 134, par. 45.4(a)), the members of a county emergency telephone system board (hereinafter county ETS board) may be appointed by the county board:

"(a) The corporate authorities of any county or municipality that imposes a surcharge under Section 15.3 shall establish an Emergency Telephone System Board. The corporate authorities shall provide for the manner of appointment and the number of members of the Board, provided that the board shall consist of not fewer than 5 members, one of whom may be a public member who is a resident of the local exchange service territory included in the 9-1-1 coverage area and others who shall be representative of the public safety agency 9-1-1 users and appointed on the basis of their ability or experience. \* \* \*

\* \* \*

(Emphasis added.)

"

Indeed, in Morgan County, the members of the ETS board are appointed by the board of county commissioners. Where the positions on a county ETS board are filled by appointment of the county board, the appointment of a county board member to such a position would violate section 1 of the Public Officer Prohibited Activities Act. Accordingly, it is my opinion that in these circumstances, a county board member is ineligible to serve on a county ETS board during his term of office on the county board.

Moreover, I note that the common law doctrine of incompatibility of offices is applicable 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 the duties of the other. (People ex rel. Myers v. Haas (1908), 148 Ill. App. 283, 286; see generally People ex rel. Teros v. Verbeck (1987), 155 Ill. App. 3d 81.) The duties of the offices of county board member and county ETS board member are such that a conflict in duties could arise.

For example, the level of funding of a county ETS board is dependent upon the county since the ETS board has no independent powers of taxation. Although the rate of the 9-1-1

surcharge is approved by referendum (Ill. Rev. Stat. 1990 Supp., ch. 134, par. 45.3(c)), the county board is not required to levy the full amount of the surcharge, but may determine at its own discretion the amount to be raised:

" \* \* \*

(e) A municipality or county may at any time by ordinance change the rate of the surcharge imposed under this Section if the new rate does not exceed the rate specified in the referendum held pursuant to subsection (c).

\* \* \* " (Ill. Rev. Stat. 1990 Supp., ch. 134, par. 45.3(e).)

A county board member is under duty to represent and protect the interests of the county, while an ETS board member is under duty to represent and protect the interests of the 9-1-1 system. Because of the funding relationship between the county and the ETS board, and the possibility that the interests of the county and the ETS board in this regard may be divergent and contrary, a person holding these two offices could not fully and impartially represent the interests of both governmental units. Therefore, it is my opinion that the office of county board member is also incompatible with the office of county ETS board member, and, therefore, one person cannot simultaneously hold both offices.

It should be noted, however, that the General Assembly has passed, and sent to the Governor, House Bill 69, which, if enacted, would expressly permit one member of a county board in

Honorable Charles M. Colburn - 5.

counties with a population under 100,000 to serve on an ETS board. Since incompatibility is founded upon principles of public policy, it is unquestionably within the power of the General Assembly to provide that two offices may be held by the same individual even though such offices might be incompatible at common law. (See 1975 Ill. Att'y Gen. Op. 37, 41.) If the Governor signs this bill into law in its current form, county board members in counties with a population over 100,000 would, in my opinion, still be prohibited from serving on a county ETS board.

Respectfully yours,

A handwritten signature in cursive script, reading "Roland W. Burris". The signature is written in dark ink and is positioned above the typed name.

ROLAND W. BURRIS  
ATTORNEY GENERAL