



ROLAND W. BURRIS  
ATTORNEY GENERAL  
STATE OF ILLINOIS

May 25, 1993

FILE NO. 93-011

COMPATIBILITY OF OFFICES:  
Offices of School Board Member  
and County Board Member

Honorable John B. Huschen  
State's Attorney, Woodford County  
115 North Main Street, Suite 305  
Eureka, Illinois 61530

Dear Mr. Huschen:

I have your letter wherein you state that a person who was elected to the Woodford County Board in 1992 was, at the time of her qualification for that office, also a member of the Metanora Township School Board, and continues to serve in both capacities. As you have noted, in opinion No. S-590, issued May 22, 1973 (1973 Ill. Att'y Gen. Op. 83), my predecessor advised that the offices of school board member and county board member were incompatible. You have requested my review of this opinion to determine whether that conclusion is still valid. For the reasons hereinafter stated, it is my opinion that the two offices are incompatible.

Offices are deemed to be incompatible where the Constitution or a statute specifically prohibits the occupant of one 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 the other. (People ex rel. Myers v. Haas (1908), 145 Ill. App. 283, 286; see generally People ex rel. Teros v. Verbeck (1987), 155 Ill. App. 3d 81.) There are no constitutional or statutory provisions which prohibit simultaneous tenure in the offices of county board member and school board member. Therefore, the issue to be resolved is whether a conflict of duties could arise if one individual was to serve in both capacities simultaneously.

Opinion No. S-590 cited the provisions of the State Revenue Sharing Act (see Ill. Rev. Stat. 1991, ch. 85, par. 610 et seq.; 30 ILCS 115/0.1 et seq. (West 1992)) in concluding that the duties of a person who served as both a county board member and a school board member could conflict with respect to the allocation of revenue sharing funds. Except for the addition of section 1a to the Act (Ill. Rev. Stat. 1991, ch. 85, par. 611a; 30 ILCS 115/1a (West 1992)), which refers to the Income Tax Surcharge Local Government Distributive Fund, these provisions have remained essentially unchanged since 1973. As amended, the Act establishes funds to be created from State income tax revenue, which funds are to be paid to municipalities

and counties in Illinois, to be used for the general welfare of the people of Illinois. Section 3 of the Act (Ill. Rev. Stat. 1991, ch. 85, par. 613; 30 ILCS 115/3 (West 1992)) provides:

"Use of Fund. 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, and also including, but not limited to, mental health programs, wastewater projects, road and bridge construction and repair and social service programs."  
(Emphasis added.)

A school board member is under a duty to provide for the revenue necessary to maintain the schools in his or her district. (Ill. Rev. Stat. 1991, ch. 122, par. 10-20.3; 105 ILCS 5/10-20.3 (West 1992).) Attorney General Scott concluded that since a school district which was located within a county would be eligible for unrestricted grants from the county under section 3 of the State Revenue Sharing Act, a conflict could arise between a dual officeholder's duty as a county board member to determine how county funds should best be spent to serve the needs of the county, and his or her duty as a member of a board of education to provide for the revenue necessary to maintain the district's schools. This potential conflict of duties was deemed sufficient to render the offices of county board member and school board member incompatible. I concur in that conclusion.

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In addition, there are several other statutes which were not cited by my predecessor which also create circumstances in which the duties of a school board member could conflict with those of a county board member. For example, under sections 5-1041 and 5-1041.1 of the Counties Code (Ill. Rev. Stat. 1991, ch. 34, pars. 5-1041, 1041.1; 55 ILCS 5/1041, 1041.1 (West 1992)), a county board is granted authority to act with respect to subdivision maps and plats and related donations of land for school purposes. Section 29-16 of the School Code (Ill. Rev. Stat. 1991, ch. 122, par. 29-16; 105 ILCS 5/29-16 (West 1992)) authorizes a school district to lease buses which it may own to a county for public transportation purposes. Sections 5-1060 and 3-6036 of the Counties Code (Ill. Rev. Stat. 1991, ch. 34, pars. 5-1060, 3-6036; 55 ILCS 5/3-6036, 5-1060 (West 1992)) authorize a county and a school district to negotiate a contract with respect to parking regulations and enforcement thereof. Section 5-12019 of the Counties Code (Ill. Rev. Stat. 1991, ch. 34, par. 5-12019; 55 ILCS 5/5-12019 (West 1992)) grants to a school district the right to be heard on county zoning matters. Lastly, section 10 of the County Economic Development Project Area Tax Increment Allocation Act (Ill. Rev. Stat. 1991, ch. 34, par. 8010; 55 ILCS 90/10 (West 1992)) requires that a county enter into an agreement with any school district within a TIF district with respect to certain economic development project costs.

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There is a potential that the interests of the school district and those of the county may be different with respect to each of the several areas of activity covered by the cited statutes. Consequently, a person who served as a member of the governing boards of both entities could not fully and faithfully perform all of the duties of each office. It is my opinion, therefore, that the offices of school board member and county board are incompatible, and one person may not serve simultaneously in both offices.

Respectfully yours,

A handwritten signature in cursive script, appearing to read "Roland W. Burris".

ROLAND W. BURRIS  
ATTORNEY GENERAL