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SPRINGFIELD



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FILE NO. S-1057

COMPATIBILITY OF OFFICES:
Compatibility of Offices
of Township Auditor and
Park District Commissioner

Honorable C. Joseph Cavanagh
State's Attorney
Sangamon County
Room 404 County Building
Springfield, Illinois 62701

Dear Mr. Cavanagh:

This responds to your request for an opinion as to whether the offices of township auditor and park district commissioner are compatible when both the district and the township have substantially similar geographic boundaries. You further inquire as to whether the town board of auditors, which has as a member an individual who is also a commissioner of the park district, may expend Federal Revenue Sharing funds by contracting with the park district to provide funds for

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certain ordinary and necessary maintenance and operating expenses of parks located within the township.

Incompatibility of offices arises "where the duties of either office are such that the holder of the office cannot in every instance, properly and fully, faithfully perform all the duties of the other office". (People v. Haas, 145 Ill. App. 283, 286.) Applying this rule, it is clear that the two offices are incompatible. Under the Intergovernmental Cooperation Act (Ill. Rev. Stat. 1973, ch. 127, pars. 741 et seq.) the township and the park district could enter into contracts. It is clear from your letter that is, in fact, what is contemplated. The officer as a district commissioner is under a duty to promote the development of parks. However, as a township auditor, he is under a duty to determine how township funds should be spent to best meet the needs of the citizens of the township and as such, must set priorities for the use of township funds, only one of which would be for the maintenance of parks. It is clear he could not properly and faithfully perform all the duties of each of the offices.

When an officer accepts a second incompatible office he automatically vacates the first. (People v. Bott, 261 Ill.

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App. 261.) Since this is the case here, the condition of your second question will not arise. Under section 20 of article XIII of "AN ACT to revise the law in relation to township organization" (Ill. Rev. Stat. 1975, ch. 139, par. 126.10) the board of town auditors is authorized to expend funds for the ordinary and necessary maintenance and operating expenses for recreation. Thus, the board and the park district commissioners could enter into the proposed contract.

Very truly yours,

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