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Mr. Michael McCreery
United Counties Council of Illinois
217 East Adams Street, Suite 101
Springfield, IL 62701

RE: Deputy Coroner or Deputy Sheriff Incompatible Office with County Board Member

Dear Mike:

Question:

Is it a conflict of interest for a county board member to serve as a non-paid deputy coroner or a non-paid auxiliary deputy sheriff?

Analysis:

Deputy Coroner

“Each coroner may appoint one or more deputies as the coroner, in his or her sole discretion, determines necessary and appropriate, subject to county board appropriations. The appointment shall be in writing and signed by the coroner. A deputy’s compensation shall be determined by the county board.”¹

The issue of whether one may serve simultaneously in the offices of county board member and deputy coroner has been addressed by the appellate court in People ex rel. Teros v. Verbeck² and in an informal opinion³ by the Office of the Attorney General.

¹ 55 ILCS 5/3-3040.

² People ex rel. Teros v. Verbeck, 155 Ill. App. 3d 81 (3rd Dist. 1987).

³ Ill. Att’y Gen. Op. No. I-96-028 (May 28, 1996).

In Verbeck⁴, the appellate court addressed the issue of whether the position of deputy coroner was legally incompatible with the elected position of county board member. The court analyzed the issue as follows:

Common law incompatibility may be established where defendant in one position has authority to act upon the appointment, salary and budget of his superior in a second position. In the present case, it is undisputed that the county board is charged with the duty to fix the compensation of the county coroner within statutory limitations and to provide for reasonable and necessary operating expenses for the coroner's office. It is further undisputed that the deputy county coroner's compensation is fixed by the coroner, subject to budgetary limitations established by the county board.⁵ Thus, under the statutory scheme, defendant's two offices are fiscally incompatible since defendant as a member of the county board has authority to act upon the salary and budget of the county coroner who, in turn, determines defendant's salary as deputy county coroner. The potential for influencing his superior's salary and budget and, ultimately, his own salary, without more, renders defendant's offices incompatible.⁶

In that case, the defendant suggested he could resolve this inherent conflict between the two offices by refraining to participate in those matters brought before the county board that involved the coroner's office. The court rejected that solution because "the public interest is not well served when a member of the county board declines to participate in areas of conflict. '[T]he common law doctrine of incompatibility * * * insure[s] that there be the appearance as well as the actuality of impartiality and undivided loyalty.'"⁷

In Opinion No. I-96-028, the Office of the Attorney General concluded the reasoning in Verbeck was applicable to the situation where the deputy coroner did not receive compensation for his services because there was no requirement that the practice of a deputy coroner not receiving compensation would be continued:

"Thus, a county board member who also serves as a deputy coroner would be called upon to vote upon the budget from which his compensation, if any, would be paid. This creates competing duties of loyalty. Consequently, it does not

⁴ People ex rel. Teros v. Verbeck, 155 Ill. App. 3d 81 (3rd Dist. 1987).

⁵ It should be noted that the present version of section 3-3040 of the Counties Code (55 ILCS 5/3-3040) states that "[a] deputy's compensation shall be determined by the county board" while section 3-3003 (55 ILCS 5/3-3003) states that "[c]ompensation of deputies and employees shall be fixed by the coroner, subject to budgetary limitations established by the county board."

⁶ Verbeck, 155 Ill. App. 3d at 83-84.

⁷ Verbeck, 155 Ill. App. 3d 81, 84 (quoting Rogers v. Village of Tinley Park, 116 Ill. App. 3d 437, 442 (1st Dist. 1983) (quoting O'Connor v. Calandrillo (1971), 117 N.J. Super. 586, 285 A.2d 275).

appear that a county board member may serve as a deputy coroner, even in those circumstances in which the deputy coroner does not receive compensation for carrying out his duties.”⁸

Auxiliary Deputies

While we were unable to find a case or Attorney General opinion addressing whether the offices of county board member and auxiliary deputy sheriff are incompatible, Opinion No. I-96-028 did address whether one may serve simultaneously as county board member and deputy sheriff. In that opinion, the Attorney General’s Office reviewed the provisions of the Counties Code, specifically citing sections 3-6008, 4-6003, and 5-1106. These provisions, respectively, authorize the county board to establish the number of deputy sheriffs to be appointed⁹, fix the compensation of the county sheriff¹⁰, and provide for reasonable and necessary operating expenses for the sheriff’s office¹¹. The opinion noted that a county board member who also serves as a deputy sheriff would be called upon to determine whether his position as deputy sheriff was necessary.¹² Similarly, a county board member who also serves as a deputy sheriff would be required, when voting on the budget of the county sheriff, to act annually upon the budget from which the sheriff’s personal service contracts are satisfied.¹³ This “could create the appearance as well as the actuality of competing interests and divided loyalties which could hamper a county board member in the full and faithful performance of his duties. Consequently, it does not appear that one person may serve simultaneously as a county board member and a deputy county sheriff.”¹⁴

Similar concerns regarding the compatibility of the offices of county board member and auxiliary deputy sheriff exist. Section 3-6012 of the Counties Code authorizes the sheriff to, “with the advice and consent of the county board appoint auxiliary deputies in such number as the county board shall from time to time deem necessary.”¹⁵ Moreover, “[a]uxiliary deputies may receive such compensation as is set by the County Board, with the advice and consent of the Sheriff, not to exceed the lowest hourly pay of a full-time sworn member of the regular county

⁸ Ill. Att’y Gen. Op. No. I-96-028, at pg. 4 (May 28, 1996)

⁹ 55 ILCS 5/3-6008.

¹⁰ 55 ILCS 5/4-6003.

¹¹ 55 ILCS 5/5-1106.

¹² Ill. Att’y Gen. Op. No. I-96-028, at pg. 5 (May 28, 1996).

¹³ Ill. Att’y Gen. Op. No. I-96-028, at pg. 5 (May 28, 1996).

¹⁴ Ill. Att’y Gen. Op. No. I-96-028, at pg. 5-6 (May 28, 1996).

¹⁵ 55 ILCS 5/3-6012.

police or sheriff's department and not be paid a salary, except as provided in Section 3-6036 [55 ILCS 5/3-6036], but may be reimbursed for actual expenses incurred in performing their assigned duty. The County Board must approve such actual expenses and arrange for payment.”¹⁶

Section 1 of the Public Officer Prohibited Activities Act

It is also possible that section 1 of the Public Officer Prohibited Activities Act¹⁷ prohibits a county board member from simultaneously serving as a deputy coroner or auxiliary deputy sheriff. Section 1 states as follows:

No member of a county board, during the term of office for which he or she is elected, may be appointed to, accept, or hold any office other than (i) chairman of the county board or member of the regional planning commission by appointment or election of the board of which he or she is a member, (ii) alderman of a city or member of the board of trustees of a village or incorporated town if the city, village, or incorporated town has fewer than 1,000 inhabitants and is located in a county having fewer than 50,000 inhabitants, or (iii) trustee of a forest preserve district created under Section 18.5 of the Conservation District Act [70 ILCS 410/18.5], unless he or she first resigns from the office of county board member or unless the holding of another office is authorized by law. 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 a County Extension Board as provided in Section 7 of the County Cooperative Extension Law [505 ILCS 45/7], as a member of an Emergency Telephone System Board as provided in Section 15.4 of the Emergency Telephone System Act [50 ILCS 750/15.4], or as appointed members of the board of review as provided in Section 6-30 of the Property Tax Code [35 ILCS 200/6-30]. Nothing in this Act shall be construed to prohibit an elected county official from holding elected office in another unit of local government so long as there is no contractual relationship between the county and the other unit of local government. This amendatory Act of 1995 is declarative of existing law and is not a new enactment.

While we have been unable to find a case applying this statute to either deputy coroners or auxiliary deputy sheriffs, it is possible the statute could prohibit serving as a county board member and deputy coroner or auxiliary deputy sheriff simultaneously. Nevertheless, as discussed above, the common law doctrine of incompatibility of offices bars a county board member from serving as either a deputy coroner or auxiliary deputy sheriff.

¹⁶ 55 ILCS 5/3-6013.

¹⁷ 50 ILCS 105/1.

Conclusion:

It is our opinion the common law doctrine of incompatibility prohibits a county board member from simultaneously serving as a deputy coroner or auxiliary deputy sheriff. “Common law incompatibility may be established where defendant in one position has authority to act upon the appointment, salary and budget of his superior in a second position.”¹⁸ County boards fix the compensation of coroners¹⁹ and sheriffs²⁰ in counties of less than 2,000,000. The county board also has authority over the budget of both the coroner’s office and the sheriff’s office. It is for these reasons that one cannot serve simultaneously as county board member and either deputy coroner or auxiliary deputy sheriff. This opinion, with respect to auxiliary deputies, is further supported by the fact the sheriff appoints auxiliary deputies with the advice and consent of the county board²¹ and that auxiliary deputies’ compensation is set by the county board with the advice and consent of the sheriff²². With respect to deputy coroners, further support is found in the fact that section 3-3040 states that a “deputy’s compensation shall be determined by the county board.”²³

The fact a deputy coroner or auxiliary deputy sheriff is not compensated does not affect the opinion. Moreover, it is also important to note that a county board member cannot purge himself or herself of the potential conflict by refraining from participating in matters relating to the other office. Opinion No. I-96-028 noted that when confronted with the issue of whether any potential conflict in duties which may exist can be resolved by the county board member refraining from participation in matters brought before the county board involving a school district, the county coroner’s office, or the county sheriff’s office, courts have consistently held that abstention will not avoid application of the doctrine of incompatibility of offices.²⁴ The Attorney General’s Office noted that the court in Rogers had stated that “[t]he common law doctrine of incompatibility * * * insure[s] that there be the appearance as well as the actuality of impartiality and undivided loyalty.”²⁵

¹⁸ Verbeck, 155 Ill. App. 3d at 83.

¹⁹ 55 ILCS 5/4-6002.

²⁰ 55 ILCS 5/4-6003.

²¹ 55 ILCS 5/3-6012.

²² 55 ILCS 5/3-6013.

²³ 55 ILCS 5/3-3040.

²⁴ Ill. Att’y Gen. Op. No. I-96-028 (May 28, 1996), citing Verbeck, 155 Ill. App. 3d 81, 84; Rogers v. Village of Tinley Park, 116 Ill. App. 3d 437 (1st Dist. 1983).

²⁵ Ill. Att’y Gen. Op. No. I-96-028 (May 28, 1996), citing Rogers, 116 Ill. App. 3d at 442.

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Please feel free to call if you should have any questions.

Sincerely,

GIFFIN, WINNING, COHEN & BODEWES, P.C.



Matthew R. Trapp



Herman G. Bodewes

MRT/HGB/lrg

Disclaimer: This opinion was prepared by Giffin, Winning, Cohen & Bodewes, P.C. at the request of UCCI and is to be used solely by UCCI and its members. The State's Attorney is the attorney for the County. Legal advice, if requested, should be sought from the State's Attorney.