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July 13, 2015

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**RE: Bailiff – Incompatible Office with County Board Member**

Dear Mike:

**Question:**

Is it a conflict of interest for a county board member to serve as a “bailiff” in either of the following situations: where (1) the Sheriff provides bailiffs for the circuit court, or (2) the circuit clerk provides bailiffs for the associate court? Further, can any conflict of interest be cured by serving as volunteer “bailiff?”

**Analysis:**

Initially, we note that the Counties Code does not contain any reference to “bailiff.” Public Act 89-685 (effective June 1, 1997) amended the Illinois Counties Code authorizing county sheriffs to employ court security officers in addition to deputy sheriffs as courthouse security.<sup>1</sup> Court security officers are employees of the county sheriff’s department.<sup>2</sup> However, the question posed to us indicates that the circuit clerk provides “bailiffs” for the Associate Court and the Sheriff provides “bailiffs” for the Circuit Court.

Our research did not lead to any cases or Attorney General Opinions involving the issue of whether the office of county board member was incompatible with the position of bailiff or court security officer or whether there would be a conflict of interest between the two offices.

<sup>1</sup> *County of Peoria v. Illinois State Labor Rels. Bd.*, 305 Ill. App. 3d 827, 830 (3rd Dist. 1999), citing 55 ILCS 5/3-6012.1 (West 1996).

<sup>2</sup> *People v. Howell*, 388 Ill. App. 3d 338, 344 (4th Dist. 2009).

Technically, the common law doctrine of incompatibility does not apply here as it applies in the context of an individual who holds two public offices. We are aware of no authority that states a bailiff is a public office. However, the principles of the doctrine of incompatibility can be applied to the question before us. When applying these principles, it becomes clear that a county board member serving as a bailiff will have a conflict of interest.

The doctrine of incompatibility has been explained as follows:

“Incompatibility [of offices] is said to be found in the character of the offices and their relation to each other, in the subordination of the one to the other, and in the nature of the duties and functions which attach to them. In this regard, it has been said that, in determining whether incompatibility exists, the test is incompatibility in the functions or duties of office rather than a mere possibility of a conflict of interest. Offices are generally considered incompatible where such duties and functions are inherently inconsistent and repugnant, so that because of the contrariety and antagonism which would result from the attempt of one person to discharge faithfully, impartially, and efficiently the duties of both offices, considerations of public policy render it improper for an incumbent to retain both.” (Internal quotation marks omitted.)<sup>3</sup>

In Verbeck<sup>4</sup>, the court stated 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.<sup>5</sup> 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.<sup>6</sup>

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<sup>3</sup> People v. Claar, 293 Ill. App. 3d 211, 216-17 (3rd Dist.) (quoting 63C Am. Jur. 2d Public Officers and Employees § 58, at 501-02 (1997)).

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

<sup>5</sup> 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.”

<sup>6</sup> People ex rel. Teros v. Verbeck, 155 Ill. App. 3d 81, 83-84 (3rd Dist. 1987).

In that case, the defendant suggested he could resolve this inherent conflict between the two offices by refraining from participating 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.'"<sup>7</sup> The court also rejected the argument that the potential for conflicts of interest was small by stating: "The possible and direct conflict inherent in defendant's county board duties of voting on his immediate supervisor's salary and the budget from which defendant's salary is fixed renders the two positions incompatible as a matter of law."<sup>8</sup>

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 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."<sup>9</sup>

The concerns raised by the court in Verbeck are present in the situation where a county board member also serves as a court security officer or "bailiff."

County Board Member Servings as Bailiff or Court Security Officer Hired By The Sheriff

Section 3-6012.1 of the Counties Code authorizes a sheriff of a county with less than 3,000,000 inhabitants to "hire court security officers in such number as the county board shall from time to time deem necessary."<sup>10</sup> While the sheriff controls the internal operations of his office, the sheriff's budget is subject to the applicable county appropriation ordinance.<sup>11</sup> Finally, the county board, in all counties of less than 2,000,000, shall fix the compensation of sheriffs.<sup>12</sup> Thus, a bailiff or court security officer who is on the county board would be called upon to vote on his or her boss', *i.e.*, the sheriff's, salary and budget who, in turn, would determine the county board member's salary as bailiff. Moreover, in the context of county board member also serving

<sup>7</sup> 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).

<sup>8</sup> People ex rel. Teros v. Verbeck, 155 Ill. App. 3d 81, 84 (3rd Dist. 1987)

<sup>9</sup> Ill. Att'y Gen. Op. No. I-96-028, at pg. 4 (May 28, 1996).

<sup>10</sup> 55 ILCS 5/3-6012.1.

<sup>11</sup> See 55 ILCS 5/3-6018.

<sup>12</sup> 55 ILCS 5/4-6003.

as a court security officer, the board member could, from time to time, be called upon to determine whether his position is necessary.

County Board Member Serving as Bailiff Hired By The Circuit Clerk

The Clerks of Courts Act provides that “[t]he county board shall provide the compensation of Clerks of the Circuit Court, and the amount necessary for clerk hire, stationery, fuel and other expenses.”<sup>13</sup> Thus, a county board member serving as a “bailiff” hired by the Circuit Clerk could be called upon to vote on his or her boss’, *i.e.*, the circuit clerk’s, salary and the amount the circuit clerk has for clerk hire, stationery, fuel and other expenses. The Circuit Clerk, in turn, would determine the county board member’s salary as bailiff, if any.

Conclusion:

In our opinion, a county board member serving as a bailiff or court security officer would have an inherent conflict of interest.<sup>14</sup> The bailiff or court security officer would be called upon, while serving as county board member, to vote on his superior’s compensation/salary. “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.”<sup>15</sup> County boards fix the compensation of sheriffs<sup>16</sup> in counties of less than 2,000,000 and provide the compensation for circuit clerks.<sup>17</sup> The county board also has authority over the budget of the sheriff’s office. It is for these reasons that we believe one should not serve simultaneously as county board member and as a bailiff or court security officer.

We recognize the common law doctrine of incompatibility may not technically apply to this scenario since the doctrine applies in the context of an individual who holds two public offices and bailiff is not a public office. However, the case law and Attorney General Opinions discussing the principles underlying the doctrine are instructive. Following these principles in this instance guards against the underlying concerns raised by the courts and in Attorney General Opinions with regard to conflicts of interest and the appearance of impropriety.

The fact a particular “bailiff” may choose to not be compensated does not affect our opinion because of the reasons expressed in Illinois Attorney General Opinion No. I-96-028 and discussed above.

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<sup>13</sup> 705 ILCS 105/27.3.

<sup>14</sup> This opinion applies to “bailiffs” hired by either the circuit clerk or sheriff.

<sup>15</sup> Verbeck, 155 Ill. App. 3d at 83.

<sup>16</sup> 55 ILCS 5/4-6003.

<sup>17</sup> 705 ILCS 105/27.3


*Mr. Michael McCreery*  
*July 13, 2015*  
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Please feel free to call if you should have any questions.

Sincerely,

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

  
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HGB/MRT:pa

**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.