

STATE OF MICHIGAN

MIKE COX, ATTORNEY GENERAL

INCOMPATIBLE PUBLIC OFFICES  
ACT:

Incompatibility of offices of general law  
township trustee and fire chief of a jointly  
administered fire department

PUBLIC OFFICERS AND EMPLOYEES:

A trustee of a township with a population less than 25,000 that is a party to an intergovernmental agreement creating a joint fire department may not simultaneously serve as the fire chief of the joint fire department.

Opinion No. 7232

May 27, 2009

Honorable Goeff Hansen  
State Representative  
The Capitol  
Lansing, Michigan

You have asked if a trustee of a general law township with a population less than 25,000 may simultaneously serve as the fire chief of a fire department jointly administered by the township and a general law village.

Information supplied with your request indicates that the township and a village within that township's boundaries have entered into an intergovernmental agreement for the operation, funding, and maintenance of a joint fire department.<sup>1</sup> The township has a population less than 25,000. A trustee of the township is currently serving as the fire chief of the joint fire department.

---

<sup>1</sup> The agreement is entitled "Intergovernmental Agreement for the Operation, Funding, and Maintenance of the Pentwater Fire Department" and will be referred to in this opinion as the Intergovernmental Agreement.

The Intergovernmental Agreement was created pursuant to the Intergovernmental Contracts Between Municipal Corporations Act (Intergovernmental Contracts Act), 1951 PA 35, MCL 124.1 *et seq.*, and the Police and Fire Protection Act, 1951 PA 33, MCL 41.801 *et seq.* While the Police and Fire Protection Act authorizes the formation of a joint fire administrative board, the Intergovernmental Agreement does not create such a board. Rather, it provides that the governing bodies of the township and the village "shall be responsible for the overall operation, management and oversight of the Fire Department."<sup>2</sup> The oversight by the township board, therefore, includes participation in reviewing and approving the fire department's budget, invoices, rules, and regulations, each of which is prepared by the fire chief.<sup>3</sup> In addition, the township and village boards approve the selection of the fire chief and may institute disciplinary action against the fire chief.<sup>4</sup>

The Incompatible Public Offices Act (IPOA), 1978 PA 566, MCL 15.181 *et seq.*, prohibits the same person from simultaneously holding two or more incompatible public offices. Section 2(1), MCL 15.182(1), provides: "Except as provided in section 3, a public officer or public employee shall not hold 2 or more incompatible offices at the same time." Section 1(b) of the IPOA, MCL 15.181(b), defines incompatible public offices as follows:

"Incompatible offices" means public offices held by a public official which, when the official is performing the duties of any of the public offices held by the official, results in any of the following with respect to those offices held:

- (i) The subordination of 1 public office to another.
- (ii) The supervision of 1 public office by another.

---

<sup>2</sup> Intergovernmental Agreement, Article III, section 3.1.

<sup>3</sup> Intergovernmental Agreement, Article V, sections 5.1, 5.2(b), 5.4, and Article IX, section 9.5.

<sup>4</sup> Intergovernmental Agreement, Article VII, section 7.1 and Article IX, section 9.6.

- (iii) A breach of duty of public office.

The Michigan Supreme Court has construed the phrase "public offices held by a public official" to include not only public offices but also positions of public employment. *Macomb County Prosecutor v Murphy*, 464 Mich 149, 158-162; 627 NW2d 247 (2001). Thus, the elected office of township trustee as well as the employment position of fire chief are each deemed to be public offices subject to the IPOA.

The exception provided in section 3 of the IPOA must also be considered to fully address your question. By 1992 PA 10, the Legislature amended section 3 to enable communities with limited populations to avail themselves of the services of public officials and employees in several different capacities in order to fill all available public positions. See OAG, 1993-1994, No 6748, pp 7, 8 (February 2, 1993), citing Senate Legislative Analysis, HB 4262 and HB 4263, February 13, 1992. The amendatory language in section 3(4) of the IPOA created, among others, the following exceptions to the prohibition against incompatible office-holding:

- (4) Section 2 does not do any of the following:

\* \* \*

- (b) Prohibit public officers or public employees of a city, village, township, or county having a population of less than 25,000 from serving, with or without compensation, as a firefighter in that city, village, township, or county *if that firefighter is not any of the following:*

- (i) A full-time firefighter.

- (ii) A fire chief.

- (iii) A person who negotiates with the city, village, township, or county on behalf of the firefighters. [MCL 15.183(4)(b)(i)-(iii); emphasis added.]

Thus, under MCL 15.183(4)(b)(i), the prohibition against holding dual incompatible offices in section 2 of the IPOA does not prohibit a public officer or public employee of a local governmental unit with a population less than 25,000 from also serving as a firefighter in that same local unit provided that the firefighter is not the fire chief.

In OAG, 2001-2002, No 7094, p 63 (November 27, 2001), the Attorney General concluded that the positions of township trustee and assistant township fire chief in the same township are incompatible due to the supervisory and subordinate nature of the two positions.<sup>5</sup> OAG No 7094 noted that the township trustee there served on the township board, which was authorized to appoint, fix compensation for, and terminate fire department personnel, as well as adopt rules for the fire department's operation. OAG No 7094 at 64.

Similarly, the positions of township trustee and fire chief of the jointly administered fire department underlying your question are incompatible as defined by section 1(b) of the IPOA due to the supervisory and subordinate nature of the two positions. Although the Intergovernmental Agreement provides that the fire department shall be jointly administered, the township's governing board, along with that of the village, remains responsible for the overall operation, management, and oversight of the fire department. The township board on which the township trustee sits reviews and approves the fire department's budget, invoices, rules, and regulations, each of which is prepared by the fire chief. In addition, the township board approves the selection of the fire chief and may institute disciplinary action against the fire chief. Thus, in carrying out their respective duties under the Intergovernmental Agreement, the township board

---

<sup>5</sup> The positions of city councilperson and paid volunteer firefighter are compatible in a city with a population of less than 25,000 provided the individual is not the fire chief. OAG, 1991-1992, No 6738, p 193 (November 13, 1992).

acts in a supervisory capacity over the fire chief and the fire chief is subordinate to the township board. Moreover, because the exception stated in section 3(4)(b) of the IPOA expressly excludes the position of fire chief from the dual office holding it authorizes in small communities, the positions of township trustee and fire chief of a department administered by that same township remain incompatible regardless of the fact that the township's population is less than 25,000.

Material forwarded with your request suggests that section 3(4)(c) of the IPOA could be read to allow for the simultaneous holding of the offices of township trustee and fire chief of a jointly administered fire department. Section 3(4)(c) of the IPOA provides the following additional exception to the prohibition stated in section 2:

Section 2 does not do any of the following:

\* \* \*

(c) Limit the authority of the governing body of a city, village, township, or county having a population of less than 25,000 to authorize a public officer or public employee to perform, with or without compensation, other additional services for the unit of local government. [MCL 15.183(4)(c).]

Several rules of statutory construction apply in ascertaining the meaning of this provision. A section of a statute does not stand alone but must be read in the context of the entire act in which it appears, and the words and phrases used there must be assigned such meanings as are in harmony with the whole of the statute, construed in the light of history and common sense. *Baraga County v State Tax Comm*, 466 Mich 264, 275 n 6; 645 NW2d 13 (2002); *Arrowhead Development Co v Livingston County Rd Comm*, 413 Mich 505, 516; 322 NW2d 702 (1980). Moreover, in construing a statute, effect must be given to every part of it. One part must not be so construed in such a way as to render another part nugatory, or of no

effect. *State Farm Fire & Casualty Co v Old Republic Ins Co*, 466 Mich 142, 146; 644 NW2d 715 (2002).

To conclude that subsection 3(4)(c) of the IPOA permits the governing body of a municipality to authorize dual office holding that is expressly prohibited by subsection 3(4)(b) would render subsection 3(4)(b) nugatory contrary to the governing rule of construction. One subsection cannot be read to entirely negate the effect of another subsection. In addition, exceptions operate to restrict the general applicability of legislative language and are, therefore, strictly construed. *People v Brooks*, 184 Mich App 793, 797; 459 NW2d 313 (1990), citing *Grand Rapids Motor Coach Co v Public Service Comm*, 323 Mich 624; 36 NW2d 299 (1949). The "other additional services" that may be authorized under the section 3(4)(c) exception to the section 2 general prohibition, therefore, cannot be read so broadly as to extend to services that are specifically excluded from that result under subsection 3(4)(b)(ii). The exception in MCL 15.183(4)(c) does not apply to allow the dual office holding involved in your request.

The two offices at issue here are incompatible under the IPOA, and, therefore, the prohibitions of that act apply absent a specific constitutional or other statutory exception. Therefore, examination of your question does not end the analysis.

Const 1963, art 7, § 28 empowers the Legislature to authorize municipalities to enter into intergovernmental agreements to provide services and administer functions that each party to the intergovernmental agreement would have the power to perform separately. Const 1963, art 7, § 28 states:

*The legislature by general law shall authorize two or more counties, townships, cities, villages or districts, or any combination thereof among other things to: enter into contractual undertakings or agreements with one another or with the state or with any combination thereof for the joint administration of any of the functions or powers which each would have the power to perform separately; share the costs and responsibilities of functions and services with one another or with the state or with any combination thereof which each would have the power to perform separately; transfer functions or responsibilities to one another or any combination thereof upon the consent of each unit involved; cooperate with one another and with state government; lend their credit to one another or any combination thereof as provided by law in connection with any authorized publicly owned undertaking. [Emphasis added.]*

Art 7, § 28 further permits local governmental officers and employees to serve on or with any governmental body established in accordance with the above provision:

*Any other provision of this constitution notwithstanding, an officer or employee of the state or any such unit of government or subdivision or agency thereof, except members of the legislature, may serve on or with any governmental body established for the purposes set forth in this section and shall not be required to relinquish his office or employment by reason of such service. [Emphasis added.]*

Thus, an officer or employee of a municipality that is a party to an intergovernmental agreement may serve on or with the governmental body of the intergovernmental entity established for the purposes set forth in Const 1963, art 7, § 28.<sup>6</sup>

Prior opinions of the Attorney General analyzing Const 1963, art 7, § 28 have concluded that this constitutional provision allowed the member of the municipal governing body at issue to also serve on the governmental body of the particular intergovernmental entity, reasoning that dual service expressly allowed by the Constitution is not prohibited under general notions of

---

<sup>6</sup> See also the Address to the People and Constitutional Convention Debates at 2 Official Record, Constitutional Convention 1961, p 3394; 1 Official Record, Constitutional Convention 1961, p 1060, Report of Delegate Elliott, Chair of Committee on Local Government; Official Record, Constitutional Convention 1961, p 1061, Remarks of Delegate Allen; 1 Official Record, Constitutional Convention 1961, p 1081, Remarks of Delegate Elliott.

incompatibility. For example, a person may simultaneously serve as a member of a city council and a member of the board of a public transportation authority of which the city is a member because Const 1963, art 7, § 28 permits such dual office holding. OAG, 1999-2000, No 7054, p 121 (May 17, 2000). A city commissioner or city manager of a city participating as a member of a regional sewer authority may serve on the sewer authority's board of trustees without violating the IPOA, because this dual service is expressly allowed by the Constitution. A city attorney for a city participating as a member of a regional sewer authority may simultaneously serve as attorney for the sewer authority. OAG, 1997-1998, No 6959, p 80 (October 17, 1997). In addition, elected state, county, or city officers, except state legislators, may serve as members and member-officers of a governing board of a port authority organized by a city and a county. OAG, 1987-1988, No 6440, p 96 (June 2, 1987). A member of a county board of commissioners may serve on the board of an intergovernmental public agency. OAG, 1983-1984, No 6260, p 423 (December 5, 1984). Each of these officers "serve on or with [a] governmental body established for the purposes set forth" in art 7, § 28, and, accordingly, may serve in the other public offices held.

An examination of the terms of the subject Intergovernmental Agreement, however, reveals that there is no "governmental body established" under the agreement to administer the joint fire department. Rather, the joint fire department is administered jointly by the governing bodies of the participating township and village. Therefore, the fire chief employed to serve the joint fire department does not, in that capacity, "serve on or with" a governmental body established under art 7, § 28.

The absence of an interlocal governmental body to administer the joint fire department renders Const 1963, art 7, § 28 inapplicable. But even assuming that a governmental body had been created by the Intergovernmental Agreement, the fire chief of the joint fire department would be an employee of and, thus, subordinate to the governmental body and not one serving "on or with" the governmental body itself. Research reveals no authority to permit dual office holding under these circumstances. Therefore, the Michigan Constitution does not provide an exception from the prohibitions against incompatible office holding under the IPOA for the factual scenario you present.

In further support of this conclusion are the two statutes implementing Const 1963, art 7, § 28 and pursuant to which the joint fire department was created: 1) the Intergovernmental Contracts Act, which authorizes municipal corporations to contract with one another to provide for the ownership, operation, or performance of services that each would have the power to own, operate or perform separately; and 2) the Police and Fire Protection Act, which authorizes a township to contract with other townships, certain incorporated villages, and certain cities for fire and police protection. The Intergovernmental Contracts Act is a general authorizing statute, while the Police and Fire Protection Act specifically governs township police and fire departments. Thus, it must be ascertained whether the Police and Fire Protection Act contains an exception that would permit a township trustee to simultaneously serve as the fire chief in a jointly administered fire department.

The Police and Fire Protection Act contains language strikingly similar to that found in section 3 of the IPOA, MCL 15.183(4)(b)(ii). Sections 11(1) and 12(2) of the Police and Fire

Protection Act expressly prohibit a member of a joint or individual fire administrative board from serving as an employee of the fire department. MCL 41.811(1) ("a member of a joint administrative board shall not be an employee of a police or fire department of a participating township, village, or qualified city") and MCL 41.812(2) ("A member of the board shall not be a member of the police or fire department of the township").

While the Intergovernmental Agreement does not create a joint or individual fire administrative board as permitted by the Police and Fire Protection Act, it is instructive to note that the Legislature created parallel prohibitions against an individual simultaneously holding dual positions of township fire department administrative board member and township fire department employee. Thus, the Police and Fire Protection Act does not contain an exception to the prohibitions in the IPOA against simultaneously serving as a township trustee and township fire chief, but rather it reinforces the statutory prohibition against an individual holding both positions.

Pursuant to both Const 1963, art 7, § 28 and the Intergovernmental Contracts Act, a township and a village may exercise only those powers that each might lawfully exercise individually. Therefore, since a township trustee is prohibited by the IPOA from simultaneously serving as township fire chief, the same prohibition applies where the township creates a joint fire department under the Intergovernmental Contracts Act and the Police and Fire Protection Act.

It is my opinion, therefore, that a trustee of a township with a population less than 25,000 that is a party to an intergovernmental agreement creating a joint fire department may not simultaneously serve as the fire chief of the joint fire department.

MIKE COX  
Attorney General