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STATE OF MICHIGAN

**BILL SCHUETTE, ATTORNEY GENERAL**

MICHIGAN PLANNING ENABLING ACT: Township board of review member serving  
on township planning commission.

GENERAL PROPERTY TAX ACT:

INCOMPATIBLE PUBLIC OFFICES ACT:

Neither the Michigan Planning Enabling Act, MCL 125.3801 et seq., nor the General Property Tax Act, 1893 PA 206, MCL 211.1 et seq., prohibits a member of a township board of review from simultaneously serving as a member of a township planning commission in the same township.

The Incompatible Public Offices Act, 1978 PA 566, MCL 15.181 et seq., does not prohibit a member of a township board of review from simultaneously serving as a member of a township planning commission in the same township unless circumstances arise that would result in the individual being unable to protect, advance, and promote the interests of both offices simultaneously.

Opinion No. 7289

April 11, 2016

The Honorable Tonya Schuitmaker  
State Senator  
The Capitol  
Lansing, MI 48909

You have asked whether a member of a township's board of review may also be a member of the same township's planning commission under the Michigan Planning Enabling Act (MPEA), MCL 125.3801 *et seq.*

The MPEA authorizes local units of government, including townships, to create a planning commission. MCL 125.3811. A township's planning commission is responsible for adopting a master development plan for the township. MCL 125.3831. The planning commission must consist of 5, 7, or 9 members who are appointed by the township supervisor with the approval of the township's board of trustees, its legislative body. MCL 125.3815(1)-(2). The MPEA requires the appointment of one member of a township's board of trustees to serve as an *ex officio* member of the planning commission. MCL 125.3815(5).<sup>[1]</sup> Otherwise, "an elected officer or employee of the [township] is not eligible to be a member of the planning commission." *Id.*

The General Property Tax Act (GPTA), 1893 PA 206, MCL 211.1 *et seq.*, provides for the creation of a board of review by each township. MCL 211.28. This board hears protests from property owners disputing the valuations and classifications established by local assessors for real and personal property tax purposes or claiming entitlement to an exemption from taxation. MCL 211.29; 211.30. Under the GPTA, members of the board of review are appointed by the board of trustees. MCL 211.28 (1).

The GPTA imposes certain restrictions on who may serve on a township board of review: “A member of the township board is not eligible to serve on the board or to fill any vacancy. A spouse, mother, father, sister, brother, son, or daughter, including an adopted child, of the assessor is not eligible to serve on the board or to fill any vacancy. . . .” MCL 211.28(1). And by operation of law, the assessor for a township cannot serve as a member of a board of review, but rather serves as secretary for the board of review. MCL 211.28(1) and 41.61(1).

Neither the MPEA nor the GPTA expressly prohibits a township board of review member from serving on the same township’s planning commission. Information included with your request notes that subsection 15(5) of the MPEA, MCL 125.3815(5), prohibits “an elected officer or employee” of the township from serving on the planning commission. But as noted above, a board of review member is an appointed township office. Thus, a board of review member is not an elected official of the township, and this subsection of the MPEA does not prohibit a dual appointment.

This same conclusion was reached in OAG, 1995-1996, No. 6839, pp 23-24 (March 3, 1995), which analyzed similar language in the now-superseded Township Rural Zoning Act, MCL 125.271 *et seq.*:

Section 4 of the Township Rural Zoning Act states as follows:

An elected officer of the township or an employee of the township board shall not serve simultaneously as a member or an employee of the zoning board.

This provision only prohibits an *elected* officer of the township from serving simultaneously as a *member or employee of the zoning board*. . . .

[A]s noted above under section 28 of the General Property Tax Act [MCL 211.28], members of the township board of review are appointed, not elected, officers of the township. Section 4 only applies to elected officers. . . . To read section 4 as applying to all officers of the township, whether elected or appointed, would be to render the word *elected* nugatory. Since the prohibition in section 4 expressly mentions elected officers, it must be concluded that the Legislature did not intend to extend this prohibition to appointed officers. Thus, section 4 does not apply to the appointed officers on the township board of review. [Emphasis in original.]

Similarly, as appointed township officials, these board of review members are not employees of the township either. See, e.g., MCL 15.181(d) (term “public employee” does not include person whose employment “results from election or appointment”). Accordingly, nothing in the MPEA or the GPTA prohibits a township board of review member from serving as a member of the township planning commission.

It is my opinion, therefore, that neither the MPEA nor the GPTA prohibits a member of a township board of review from simultaneously serving as a member of the township’s planning commission.

Next, it is necessary to consider whether the Incompatible Public Offices Act (IPOA), 1978 PA 566, MCL 15.181 *et seq.*, which prohibits the same person from simultaneously holding two or more incompatible public offices, applies to the situation you describe. Subsection 2(1), MCL 15.182(1), provides: “Except as provided in section 3, a *public officer* . . . shall not hold 2 or more incompatible offices at the same time.” (Emphasis added). A “public officer” includes a person “appointed” to a “public office of a . . . township . . . in this state.” MCL 15.181(e). Township planning commission members and board of review members are “public officers” for purposes of the IPOA. See OAG, 1983-1984, No. 6144, p 101 (April 7, 1983); OAG, 1995-1996, No. 6839, p 23; and OAG, 2003-2004, No. 7161, p 151 (September 15, 2004).

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

In order to determine whether the offices of township planning commission member and board of review member are incompatible, it is necessary to examine the relationship of the offices to one another. A review of the duties and responsibilities of these offices discloses no instance in which these offices have a superior-subordinate or supervisory relationship for purposes of MCL 15.181(b)(i)-(ii).

The two offices perform distinct functions. A board of review member participates in the board’s determinations regarding the accuracy of the township’s property tax assessment roll, including 1) consideration of objections to the roll that are submitted to the board; 2) corrections to be made to the roll; and 3) approval of the roll on an annual basis. See MCL 211.28 – MCL 211.33.[\[2\]](#) By contrast, a township planning commission member participates in the commission’s determinations as to 1) the development and maintenance of the township’s master development plan; 2) the

preparation or review of the township's capital improvement program; and 3) the undertaking of other planning-related activities. See MCL 125.3811, MCL 125.3833, MCL 125.3839, MCL 125.3845, and 125.3865.<sup>[3]</sup>

In addition, one must look to subsection 1(b)(iii) of the IPOA to determine whether holding these offices at the same time results in a breach of duty. A breach of duty arises when a public official holding dual offices cannot protect, advance, and promote the interests of both offices simultaneously. See *Macomb Co Prosecutor v Murphy*, 464 Mich 149, 162-166; 627 NW2d 247 (2001) (discussing circumstances under which a prohibited breach of duty will arise under the IPOA). See also OAG, 1987-1988, No. 6418, pp 15, 17 (January 13, 1987); OAG, 1979-1980, No. 5626, pp 537, 543 (January 16, 1980); OAG, 2009-2010, No. 7226, p 17 (March 11, 2009).

After reviewing the duties and responsibilities of a planning commission member and a board of review member, it appears that holding both offices would not result in an individual being unable to protect, advance, and promote the interests of both offices simultaneously. Thus, absent specific facts resulting in a breach of duty, holding the offices of township board of review member and township planning commissioner does not violate the IPOA.<sup>[4]</sup>

It is my opinion, therefore, that the IPOA does not prohibit a member of a township board of review from simultaneously serving as a member of a township planning commission in the same township unless circumstances arise that would result in the individual being unable to protect, advance, and promote the interests of both offices simultaneously.

Sincerely,

BILL SCHUETTE  
Attorney General

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<sup>[1]</sup> In a township that had a planning commission created on or before September 1, 2008, one member of the township's legislative body (board of trustees) or the chief elected officer (township supervisor) or both may be appointed to the planning commission as ex officio members. MCL 125.3811(5).

<sup>[2]</sup> A summary of the work performed by a board of review is available on the Michigan State Tax Commission's website, [https://www.michigan.gov/documents/treasury/BOR\\_QA\\_423899\\_7.pdf](https://www.michigan.gov/documents/treasury/BOR_QA_423899_7.pdf). (accessed March 22, 2016).

<sup>[3]</sup> In addition, a township board of trustees may assign to the planning commission certain zoning responsibilities under the Michigan Zoning Enabling Act, such as the review and approval of special use permits and planned unit developments. See MCL 125.3301, MCL 125.3501 – 125.3504, and MCL 125.3514.

<sup>[4]</sup> Even if the offices were incompatible, the township at issue has a population under 40,000. Under subsection 3(4)(c) of the IPOA, MCL 15.183(4)(c), as amended by 2015 PA 134, a township board may "authorize a public officer or public employee to perform . . . other additional services for the unit of local government" as an exception to the otherwise applicable requirements of the IPOA. See OAG, 2001-2002, No. 7105, p 86 (April 17, 2002) (discussing this exception, which at that time applied to local units with a population of less than 25,000).

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<http://opinion/datafiles/2010s/op10368.htm>

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