

TO: County Equalization Directors
State Tax Commission Personnel
FROM: Emil Tahvonen, Administrator
State Tax Commission

No. 14 - April 13, 1982
Downtown Development Authority
City Commissioner Serving on Board

STATE OF MICHIGAN

FRANK J. KELLEY, ATTORNEY GENERAL

INCOMPATIBILITY: Service of city commissioner
upon downtown development
board of city
MUNICIPALITIES: Membership on board of
downtown development authority

A city commissioner may not simultaneously serve as a member of
the board of the city's downtown development authority.

Opinion No. 6029

Honorable John M. Engler
State Senator
The Capitol
Lansing, Michigan 48909

JAN 20 1982

Citing the downtown development authority act, 1975 PA
197; MCLA 125.1651 et seq; MSA 5.3010(1) et seq, and the act
providing for incompatibility of public offices, 1978 PA 566;
MCLA 15.181 et seq; MSA 15.1120(121) et seq, you have requested
my opinion upon the following question:

"May an elected city commissioner of a home
rule city, other than the mayor, simultaneously
sit as a member of that same city's downtown
development authority?"

The membership of a downtown development authority
board is provided for by 1975 PA 197, supra, § 4, which provides:

"The authority shall be under the supervision
and control of a board consisting of the
chief executive officer of the municipality
and not less than 8 or more than 12 members
as determined by the governing body of the
municipality. Members shall be appointed by
the chief executive officer of the municipality,
subject to approval by the governing body of
the municipality...."

While the Legislature has expressly authorized the
chief executive officer of the municipality to serve as a member

of the board, it has not empowered members of the governing body of the municipality to also serve on the downtown development authority.

OAG, 1975-1976, No 5,087, p 690, 693 (December 6, 1976), decided under the common law doctrine of incompatibility, held that "a member of a downtown development authority board may not simultaneously serve as...a member of the governing body of the municipality wherein the district is located...." The basis upon which such offices were found to be incompatible under the common law, rested upon the authority of the board to enter into agreements with the municipality to share tax increment proceeds.

Subsequent to OAG, 1975-1976, No 5,087, supra, the law of incompatibility was codified in 1978 PA 566, supra.

1978 PA 566, supra, § 1(b), defines "incompatible 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."

1978 PA 566, supra, § 2; MCLA 15.182; MSA 15.1120(122), precludes the holding of two or more incompatible offices at the same time, except for certain offices described in section 3 of said act, which are not here applicable.

OAG, 1979-1980, No 5,626, p 537, (January 16, 1980), discussed the law of incompatibility, both under the common law and under 1978 PA 566; supra. As to incompatibility of public offices under the common law, the opinion quoted from OAG, 1967-1968, No 4,620 (August 7, 1968), as follows:

"Based upon the common law, it is the public policy of the state of Michigan that the same person may not simultaneously occupy two public offices where the nature of the duties of such officers renders it improper from considerations or [sic] public policy for one person to retain both. The test of incompatibility is described as the character and relationship of the two offices. There is incompatibility where one office is subordinate to another, subject in some degree to its supervisory power, or where the functions of the two offices are inherently inconsistent and repugnant, so that the same person may not occupy them simultaneously..." [Emphasis added.] OAG, 1979-1980, No 5,626, supra, at p.538.

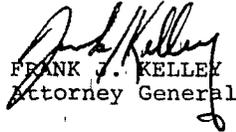
OAG, 1979-1980, No 5,626, supra, concluded that the supervision/subordination criteria are the same under the statute as they were at the common law:

"[The] first and second criteria of incompatibility at common law have not been altered by the statute. Thus, the first and second criteria of incompatibility as set forth by the statute would extend to those situations in which 'the incumbent of one of the offices has the power of appointment as to the other office, or the power to remove the incumbent of the other....'"

An elected city commissioner is a member of the municipality's governing body, and under 1975 PA 197, § 4, supra, would participate in the approval of members appointed to the downtown development authority board by the chief executive officer, and would also participate in the removal of such a board member. Thus, a city commissioner may participate in his or her own appointment and removal as a member of the authority board, which would be contrary

to the legislative intention expressed in 1978 PA 566, supra,
that supervision/subordination results in the prohibited incompatibility.

It is my opinion, therefore, that an elected city
commissioner of a home rule city, other than the mayor, may not
simultaneously serve as a member of that same city's downtown
development authority board since the two positions are incompatible.


FRANK J. KELLEY
Attorney General