

## **What constitutes an incompatibility of office? (IML web definition)**

**Municipal Code: 65 ILCS 5/3.1-15-15: Holding other offices (statutory language re: mayor, alderman, clerk, treasurer)**

Note acting mayor to fill a vacancy and volunteer firefighters.

Case law specific to serving as a police officer and village trustee simultaneously (Rogers v. Village of Tinley Park, 116 Ill. App.3d 437) (1983)

### **Public Officer Prohibited Activities Act: 50 ILCS 105/0.01**

“Nothing in this Act shall be construed to prohibit an elected municipal official from holding elected office in another unit of local government as long as there is no contractual relationship between the municipality and the other unit of local government.”

“No person holding any office, either by election or appointment... may be in any manner financially interested directly in his own name or indirectly in the name of any other person... “

**Exemption:** “This section shall not apply to any person serving on an advisory panel or commission” and a specific reference related to hospital boards and districts.

The prohibition includes provisions for exception, which are many but all of which revolve around open processes for bidding, small contract award amounts (under \$1,500, \$2,000 or \$4,000), minimal share of interest (less than 1% or 7.5%), the interested member publicly discloses their interests prior to and during deliberations, and the interested member abstains from voting on the matter.

**Numerous Attorney General Opinions and case law** re: multiple positions of public office, interests – relatives, awards of contracts, and various unique circumstances.

**This Act deals with internal actions while serving as an elected official.** There have been some communities, the City of Chicago included, as well as communities like Arlington Heights, that have attempted to address other prohibitions in relation to holding elected office. Those prohibitions include rules and regulations relating to outside employment by municipal employees, and conflicts of interests and disclosure of campaign contributions for elected officials.

**Restrictions on municipal elected officials engaging in lobbying of the State, County or other local government appears to be a qualification of office, which may only be imposed via referendum.** See *Bocanegra v. City of Chicago Electoral Bd.*, 2011 IL App (1st) 110424 (August 1, 2011).

**The Lobbyist Registration Act provides that a registered lobbyist may hold elective office.** 25 ILCS 170/3.1. Local provisions about (internal) lobbying that local unit of government are wholly supported by legislation, but external restrictions may be subject to challenge. (may need to explain)

# What constitutes an incompatibility of office?

*Published on Monday December 16, 2019*

*Updated on Monday December 16, 2019 @ 10:19 AM*

Where the law specifically prohibits the occupant of one office from holding another office, or where the duties of either office are such that the holder of one office may not in every instance simultaneously properly, fully and faithfully perform all the duties of the other office, the offices are deemed "incompatible" and may not be held by the same person at the same time. Municipal officers may not hold any other office in the city, village or town during their term of office unless they are first granted leave of absence from their primary position. Therefore, when an elected or appointed official seeks a second public office, the official should carefully consider whether holding both offices simultaneously violates a statute, or whether the duties of the offices may create a conflict that could lead the offices to be deemed incompatible. *People ex rel. Myers v. Haas*, 145 Ill. App. 283 (1st Dist. 1908); 65 ILCS 5/3.1-15-15; 50 ILCS 105/2.