

***A public officer or public employee is prohibited from holding 2 or more incompatible offices at the same time. MCL 15.181(2)***

## **Definition**

**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:

- one office is subordinate to another
- one office supervises another
- a breach of duty of public office

The Michigan Attorney General has issued numerous opinions regarding the applicability of the Act to various public positions. See attached *Plus*.

The Michigan Supreme Court has also issued rulings regarding the Act including its most recent pronouncement in *Macomb County Prosecuting Attorney v Murphy*, 464 Mich 149 (2001). In that decision, the court held that incompatibility, under the third definition, i.e., a breach of duty of public office, occurs when the performance of the duties of one of the public offices "results in" a breach of duty. The court indicated that offices are not incompatible if a breach of duty *may* occur in the future or if a *potential* conflict exists. The court's ruling may conflict with some of the attorney general's prior opinions. The attorney general opinions listed on the attached *Plus* should be read in light of the *Macomb County* decision.

## **Exceptions applicable to municipal officers:**

A public officer or employee may also serve as a member of a board of tax increment authority, downtown development authority, local development finance authority or brownfield redevelopment authority. MCL 15.183(3)

A public officer or employee of a municipality with a population of less than 25,000 may serve as an emergency medical services personnel. MCL 15.183(4)(a)

A public officer or employee of a municipality with a population of less than 25,000 may serve as a firefighter if the firefighter is not full-time, a fire chief, or a person who negotiates with the municipality on behalf of firefighters. MCL 15.183(4)(b)

A municipality with a population of less than 25,000 may, by council action, authorize an officer or employee to perform other additional services for the unit of government. MCL 15.183(4)(c)

\*\*There are three state statutes that provide standards for conduct of local public officials while in public office to avoid conflicts of interest and the appearance of impropriety. *See also* OPPs covering Standards of Conduct for Public Officers and Employees, Misconduct in Office, and Contracts of Public Servants with Public Entities.

## Selected Attorney General Opinions re: incompatible offices

<b>AGO No. 6738</b>	11/13/92	The positions of city councilperson and paid volunteer firefighter for the same city are compatible in a city with a population of less than 25,000, provided the individual is not a full-time firefighter, is not the fire chief and does not participate in negotiations with the city on behalf of the firefighters.
<b>AGO No. 6711</b>	02/14/92	Section 1(b) of 1978 PA 566 prohibits a village council member from simultaneously serving as village clerk.
<b>AGO No. 6030</b>	01/21/82	The offices of mayor of a city and city assessor of the same city are incompatible.
<b>AGO No. 6854</b>	06/08/95	The positions of a city council member and member of the city's board of public works are incompatible and may not be held simultaneously by the same person.
<b>AGO No. 6691</b>	08/14/91	The same person may not simultaneously serve as city manager and city clerk where the position of city clerk is subordinate to and subject to supervision by the position of city manager.
<b>AGO No. 6611</b>	02/23/90	The offices of city treasurer and school board trustee in the same city are incompatible under MCL 15.182; MSA 15.1120(122), and may not be held simultaneously by the same person.
<b>AGO No. 6717</b>	04/07/92	A person may not simultaneously serve as a member of the governing body of one unit of local government and as the attorney for a second unit of local government if the two units of government have entered into or are negotiating one or more contracts with one another.
<b>AGO No. 6753</b>	03/24/93	An individual may simultaneously serve on the city commission and the housing commission, if authorized to do so by the city commission, since the city has a population of less than 25,000.
<b>AGO No. 6754</b>	03/26/93	An elected city treasurer-assessor may also serve simultaneously on the governing board of the city's downtown development authority.
<b>AGO No. 6816</b>	09/08/93	The public positions of city councilperson and administrative assistant to a county commissioner are compatible and may be held simultaneously by the same person.
<b>AGO No. 6269</b>	01/29/85	The offices of village trustee and township clerk are not incompatible and may be simultaneously occupied by the same person, provided, however, that no contract is negotiated, approved or amended between the village and the township.