

Ethics—Incompatible Public Offices

A public officer or public employee is prohibited from holding two 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 Incompatible Public Offices Act to various public positions.

The Michigan Supreme Court has also issued rulings regarding the Act, including *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 should be read in light of the *Macomb County* decision.

Exceptions applicable to public officers and employees

A public officer or employee may also serve as a member of a board of a: tax increment finance authority; downtown development authority; local development finance authority; brownfield redevelopment authority; housing commission; neighborhood improvement authority; water resource improvement tax increment finance authority; historical neighborhood tax increment finance authority; principal shopping district; business improvement zone; land bank fast track authority; metropolitan district; or, corridor improvement authority. MCL 15.183(3)

A public officer or employee of a city, village, township, or county having a population of less than 40,000 may serve with or without compensation, as:

- an emergency medical services personnel MCL 15.183(4)(a)
- a firefighter, police chief, fire chief, police officer, or public safety officer if that firefighter, police chief, fire chief, police officer, or public safety officer is not a person who negotiates a collective bargaining agreement with the city, village, township, or county on behalf of the firefighters, police chiefs, fire chiefs, police officers, or public safety officers. MCL 15.183(4)(b)

A city, village, township, or county having a population of less than 40,000 may, by council action, authorize a public officer or public employee to perform other additional services for the unit of government, with or without compensation. 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 Fact Sheets 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 public offices

AGO No. 6711	02/14/92	Section 1(b) of 1978 PA 566 prohibits a village councilmember from simultaneously serving as village clerk.
AGO No. 6030	01/21/82	The offices of mayor and city assessor of the same city are incompatible.
AGO No. 6691	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.
AGO No. 6611	02/23/90	The offices of city treasurer and school board trustee in the same city are incompatible and may not be held simultaneously by the same person.
AGO No. 6717	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.
AGO No. 6753	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.*
*the population threshold was increased to 40,000 in 2015.		
AGO No. 6754	03/26/93	An elected city treasurer-assessor may also serve simultaneously on the governing board of the city's downtown development authority.
AGO No. 6269	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.
AGO No. 7226	3/11/09	The positions of an elected township supervisor and a city police officer are not incompatible unless: 1) the township and the city have or are negotiating a contract for police services; or 2) other particularized facts are present that demonstrate the individual cannot faithfully perform the duties of a city police officer and township supervisor in a manner that protects, advances, or promotes the interests of both offices simultaneously.
Informational letter	11/22/11	The offices of city commissioner and school board member in the same school district are incompatible and may not be simultaneously held by the same individual.
AGO No. 7295	3/8/17	The offices of village president and village manager of the same village are compatible in a village with a population of less than 40,000.

Selected Court Case

Gleason v. Kincaid

Where city council member filed his intent to run for reelection to his city council seat and also declared himself a candidate for the incompatible office of city mayor in the same election, but failed to withdraw from either race in the time allocated for withdrawing, the proper remedy was not equitable, but rather was that clearly provided by statute, namely, that council member was to be excluded as a candidate for both offices. *Gleason v. Kincaid* (2018) 917 N.W.2d 685, 323 Mich.App. 308 .