

VILLAGE LAW, ART 10.

A member of the board of trustees of the Village of Marcellus may also serve as a volunteer member of the village volunteer fire department and as vice-president of the Marcellus Fire Department, Inc. The trustee should, however, recuse himself from participating in the approval of the budget for the volunteer fire department.

June 27, 1996

James F. Dwyer, Esq.  
Village Attorney  
Village of Marcellus  
5720 Commons Park  
East Syracuse, NY 13057

Informal Opinion  
No. 96-21

Dear Mr. Dwyer:

You have asked whether it is a conflict of interests for a member of the village board of trustees to serve also as a volunteer member of the Marcellus Volunteer Fire Department and as the vice-president of the Marcellus Fire Department, Inc.

You have provided factual information in your May 1, 1996 opinion request, in a supplemental letter dated May 10, 1996, and in a May 13, 1996 telephone conversation. You have explained that the Marcellus Volunteer Fire Department has been organized as the fire department of the village and is funded by the village board of trustees. See, Village Law, Art 10. The Marcellus Fire Department, Inc. is a separate entity, unaffiliated with village government.

You have informed us that the Marcellus Fire Department, Inc. "acts in a supportive capacity to the Marcellus Volunteer Fire Department". The Marcellus Fire Department's responsibility is strictly limited to fundraising and it is not involved in firefighting.

Annually, the Village of Marcellus contracts with the Town of Marcellus to provide fire protection and other emergency services to the town through the village's volunteer fire department. The contract is approved by the town and the village and in addition the fire chief of the volunteer fire department consents to the contract on behalf of the department. The Marcellus Fire Department, Inc. is not a signatory to the contract and provides no services under the contract.

You ask first whether the trustee's position as vice-president of the Marcellus Fire Department, Inc. is a conflict of interests. The fire department is an incorporated

entity separate and distinct from village government. You have indicated that it receives no funding from the village, no funding under the contract with the town and it provides no firefighting or other services to the village or under the contract with the town. It acts independently as a social fundraising vehicle for volunteer firefighters. Since there is no interaction between the village government and the Marcellus Fire Department, Inc., we see no conflict of interests resulting from a village trustee also serving as the vice-president of the incorporated fire department.

In the telephone conversation, you asked that in addition we also consider whether the trustee has a conflict of interests as a volunteer member of the Marcellus Volunteer Fire Department. It is very common for local legislators to serve as volunteer firefighters. We see no conflict in participation by the subject trustee in the approval of the contract with the town. The interests of the trustees and volunteer firefighters are consistent--reimbursement of the village and volunteer fire department for expenses in providing services to the town.

The village trustees, however, provide additional funding to the volunteer fire department beyond funding provided under the contract with the town. The trustees must determine the extent of support, taking into consideration limited resources and the needs of other village departments. In our view, the trustee should recuse himself from deliberating and voting on the budget for the fire department. Participation would, in our opinion, create at least an appearance of impropriety. The fire department's budget can be voted upon separately, so that the subject trustee can participate in the approval of the village's budget.

We conclude that a member of the board of trustees of the Village of Marcellus may also serve as a volunteer member of the village volunteer fire department and as vice-president of the Marcellus Fire Department, Inc. The trustee should, however, recuse himself from participating in the approval of the budget for the volunteer fire department.

The Attorney General renders formal opinions only to officers and departments of State government. This perforce is an informal and unofficial expression of the views of this office.

Very truly yours,

JAMES D. COLE  
Assistant Attorney General  
in Charge of Opinions