

Opn. No. 96-28

COUNTY LAW § 501; PUBLIC AUTHORITIES LAW §§ 1952, 1953, et seq.

The positions of Rensselaer County Attorney and counsel to the Troy Industrial Development Authority are compatible.

September 16, 1996

Patrick T. Morphy, Esq. Informal Opinion
Corporation Counsel No. 96-28
City of Troy
City Hall
Troy, NY 12180

Dear Mr. Morphy:

You ask whether the counsel to the Troy Industrial Development Authority may serve simultaneously as the Rensselaer County Attorney.

The Troy Industrial Development Authority (TIDA) is a public benefit corporation legally separate from the municipal governments of the City of Troy and the County of Rensselaer. See, Public Authorities Law § 1952. TIDA's operations and activities are governed by the provisions of Title 11 of the Public Authorities Law.

The nine members of TIDA's governing board are appointed by the Troy City Manager. Id., § 1952. TIDA's enabling legislation requires that several of the board's members be members of the city council of the City of Troy. Id. An officer or an employee of the City of Troy who is appointed as a member of the authority does not forfeit his municipal office or employment by virtue of the appointment. Id.

TIDA's board is authorized to appoint officers, employees and agents of the authority and prescribe their qualifications and compensation. Id., § 1953(7). The Troy Industrial Development Authority Act authorizes the Authority to appoint a counsel and permits the Troy City Attorney to serve in that capacity. Id., § 1953(8).

A county attorney serves as the legal advisor to the county government. County Law § 501. The county attorney prosecutes and defends all civil actions and proceedings brought by or against the county. Id.

There are no restrictions in State law on municipal officers or employees also serving as officers or employees of the Authority. For example, the Authority's board may appoint the Troy City Attorney as its counsel. In the absence of a constitutional or statutory prohibition against dual-officeholding, one person may hold two offices simultaneously unless they are incompatible. See, People ex rel. Ryan v Green, 58 NY 295 (1874).

In our view, there is no incompatibility between the positions of Rensselaer County Attorney and counsel to TIDA. The county and TIDA are legally independent of one another. In the event a conflict should occur on a particular issue, the remedy of recusal can be utilized.

We conclude, then, that the positions of counsel to the Troy Industrial Development Authority and Rensselaer County Attorney are compatible.

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,

JOSEPH CONWAY
Assistant Attorney General