

Village Law §§ 3-301(4), 10-1000, 10-1006(2), 10-1006(12), 10-1010, 10-1012, 10-1014, 10-1018;

The battalion chief of a village fire department cannot also serve as village mayor or village trustee.

September 3, 2014

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Informal Opinion
No. 2014-4

Dear Mr. Spencer:

You have asked whether a battalion chief in the Village's fire department may simultaneously serve as either mayor or trustee for the Village. Your question arises because the Village Law generally prohibits one person from serving as both village mayor or village trustee and fire chief or assistant chief. Village Law § 10-1012. The Village Law does not use the term "battalion chief." As explained below, we are of the opinion that the battalion chief cannot also serve as village mayor or village trustee.

You have explained that the Village operates a fire department. The Village does not have a separate board of fire commissioners. Thus the administration of the fire department is divided between the Village's board of trustees and a "fire council," which is composed of the fire chief, assistant chief, and wardens selected by the members of the fire department. Village Law §§ 10-1000, 10-1014. In accord with the Village Law, the Village's board of trustees, composed of the mayor and four trustees, appoints, from nominations made by the members of the fire department, the fire department's chief, first and second assistant chiefs, and any additional chiefs the fire department's bylaws provide for. Village Law §§ 3-301(4), 10-1012. The board of trustees also approves the election of new volunteer members of the fire department. Village Law § 10-1006(2),(12).

The fire chief has exclusive control of the fire department's members at all fires, inspections, and review. Village Law § 10-1018. He is responsible for the Village's firefighting equipment and the fire department's property. *Id.* He supervises all of the fire department's officers and employees and is to hold them strictly to account for neglect of duty. *Id.* In case of the inability or absence of the chief, the first assistant performs the duties of the chief. *Id.* If the first assistant is unavailable, the second assistant performs the chief's duties, and so on through the fourth assistant. *Id.*

The members of the fire department elect a captain, a lieutenant, and any other officers that the fire department's bylaws provide for. Village Law § 10-1010. The election of these officers is subject to the approval of the board of trustees. *Id.*

You have explained that the hierarchy of officers within the Village's fire department varies slightly from that established by statute. In the Village's fire department, the most superior officer is the chief, followed by the first assistant chief, the battalion chief, the captain, and the lieutenant. You have further explained that the battalion chief assumes control of the fire department when it responds to a call and both the chief and the first assistant chief are absent. If the chief or first assistant chief subsequently arrives at the scene of the call, the battalion chief relinquishes control to the superior officer.

From the hierarchy and the description of the duties you provided, we are of the opinion that the position of battalion chief is the functional equivalent of the statutorily-established second assistant chief. As such, it comes within the statutory prohibition of Village Law § 10-1012 that "a person shall not hold the office of village mayor or village trustee and the office of chief or assistant chief of a village fire department at the same time." *See* Op. Att'y Gen. (Inf.) No. 98-33 ("deputy chief" equivalent of first assistant chief and within statutory prohibition).

Moreover, this conclusion is consistent with the purpose of the statutory prohibition. In enacting the prohibition, the Legislature recognized that a board appointing one or more of its members to another public position is contrary to public policy. *See* Sponsor's Statement in Support of Bill, *reprinted in* 1970 McKinney Session Laws 2956, 2957 (citing *Wood v. Town of Whitehall*, 120 Misc. 124 (Sup. Ct. Washington Co.), *aff'd*, 206 A.D. 786 (3d Dep't 1923)). This is exactly the position the mayor or trustee would be in if he were to also serve as battalion chief.

And, although you have indicated that the battalion chief fills the role of chief only at the scene of a call, from the officer structure you provided it appears that the battalion chief would be in line to perform the duties of the chief in any capacity if the chief and the assistant chief were unavailable. *See* Village Law § 10-1018. The role the fire chief holds on the fire council and in relation to the board of trustees that renders those positions incompatible would similarly apply to the battalion chief filling in for the chief or the assistant chief. *See* Sponsor's Statement in Support of Bill, *reprinted in* 1970 McKinney Session Laws 2956, 2957; *see also* 1976 Op. Att'y Gen. (Inf.) 301 (village trustee cannot hold position in fire department which would necessitate performing function of chief upon occasion).

The Attorney General issues formal opinions only to officers and departments of state government. Thus, this is an informal opinion rendered to assist you in advising the municipality you represent.

Very truly yours,

KATHRYN SHEINGOLD
Assistant Solicitor General
in Charge of Opinions