

HIGHWAY LAW §§ 141, 277; TOWN LAW § 60; VILLAGE LAW  
§ 4-400(1)(a).

A person may not hold simultaneously the positions of mayor  
of a village and supervisor of a town.

October 25, 1995

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P. O. Box 356  
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Informal Opinion  
No. 95-51

Dear Mr. Miller:

You have asked whether a person may hold simultaneously the  
offices of town supervisor and mayor of a village located within  
the town.

In the absence of a constitutional or statutory prohibition  
against dual-officeholding, one person may hold two offices  
simultaneously unless they are incompatible. The leading case on  
compatibility of office is People ex rel. Ryan v Green, 58 NY 295  
(1874). In that case the Court held that two offices are  
incompatible if one is subordinate to the other or if there is an  
inherent inconsistency between the two offices. The former can  
be characterized as "you cannot be your own boss", a status  
readily identifiable. The latter is not easily characterized,  
for one must analyze the duties of the two offices to ascertain  
whether there is an inconsistency. An obvious example is the  
inconsistency of holding both the office of auditor and the  
office of director of finance.

There are two subsidiary aspects of compatibility. One is  
that, although the common law rule of the Ryan case is limited to  
public offices, the principle equally covers an office and a  
position of employment or two positions of employment. The other  
is that, although the positions are compatible, a situation may  
arise where one has a conflict of interests created by the  
simultaneous holding of the two positions. In such a situation,  
the conflict is avoided by declining to participate in the  
disposition of the matter.

The mayor of a village is a member of the village board of  
trustees, the legislative body of the village. Village Law  
§ 4-400(1)(a). Similarly, the supervisor of a town is a member

of the town board, the legislative body of town government. Town Law § 60. In prior opinions of this office, we have found that the positions of member of a town board and member of a village board of trustees are incompatible.

This finding is based on the fact that under section 277 of the Highway Law, in the preparation of the town budget the town board must annually determine whether real property in the village will be exempted from taxes for certain highway purposes. See, Highway Law § 141(3), (4). While this balancing of interests of the village and the town will occur only once a year, it is inevitable and substantial. The town budgetary process consumes considerable time and the impact of the town board's decision upon the taxes of the village and the town can be substantial. 1988 Op Atty Gen (Inf) 52; 1980 Op Atty Gen (Inf) 119, 158.

We conclude that a person may not hold simultaneously the positions of mayor of a village and supervisor of a town.

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