

REAL PROPERTY TAX LAW §§ 523(1), 525; TOWN LAW § 267.

A person may serve simultaneously as a member of the zoning board of appeals and member of the board of assessment review of a town.

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Cody B. Bartlett, Esq.
Town Attorney
Town of Savannah
50 East Main Street
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Informal Opinion
No. 95-9

Dear Mr. Bartlett:

You have asked whether a person may hold simultaneously the positions of member of the zoning board of appeals and board of assessment review of a town.

We have found no statutory prohibition on the holding of these two offices. See, Town Law § 267(1); Real Property Tax Law § 523(1). In the absence of a statutory prohibition, the question remains whether the offices are compatible under the common law rule of compatibility of office.

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 normally easy to see. 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 town board of assessment review has responsibility for hearing and determining complaints in relation to the assessment of real property within the town. Real Property Tax Law § 525. The zoning board of appeals reviews determinations made by town officials charged with enforcement of the town's land use regulations. Town Law § 267. We see no interaction between the duties of these two offices. Nor is one office subordinate to the other. In our view, the two offices are compatible.

We conclude that a person may serve simultaneously as a member of the zoning board of appeals and the board of assessment review 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