

VILLAGE LAW, ART 10, §§ 3-308(1), 10-1000(6), 10-1006(12),
10-1012, 10-1018.

The Chief, Deputy Chief and Assistant Chief of a Village Fire Department may not hold the office of Mayor or Trustee of the Village.

July 10, 1998

Scott F. Chatfield, Esq.
Village Attorney
Village of North Syracuse
P. O. Box 614
Tully, NY 13159

Informal Opinion
No. 98-33

Dear Mr. Chatfield:

You have inquired whether the rules and regulations of the Village Fire Department may be amended to prohibit only the Chief and Deputy Chief from also holding the offices of Mayor or Trustee of the Village. Currently under the rules the Chief, Deputy Chief, Assistant Chief and the Wardens are prohibited from also holding the offices of Mayor or Trustee.

As background information, you have informed us that the Village owns the equipment and land utilized by the Village Fire Department and that the Board of Trustees approves all Fire Department membership and the election of all Fire Department officers. The descending order of rank of the officers in the Fire Department is as follows: Chief, Deputy Chief, Assistant Chief, two Wardens, two Captains and six Lieutenants. All other Fire Department personnel are members only. Control of the Fire Department at a fire scene is the responsibility of the highest ranking officer present. The Board of Trustees has responsibility for disciplining members of the Fire Department.

Village fire departments are authorized and established under Article 10 of the Village Law. Under those provisions, in the event the village has no board of fire commissioners, the board of trustees serves as the governing body of the fire department. Village Law §§ 3-308(1), 10-1006(12). You have indicated that the Board of Trustees performs this role in your Village. Therefore, the Board of Trustees is responsible for the adoption of rules and regulations governing the Fire Department and prescribing the duties of members. Id., § 10-1000(6). The Board of Trustees may not, however, interfere with the duties of

the Fire Chief or the Assistant Chiefs¹ when the Fire Department or any Company of the Department is on duty. Id.

The Fire Chief, under the direction of the Board of Trustees, has exclusive control of the members of the Fire Department at all fires, inspections and reviews and supervises the engines, hose and other equipment owned by the Village for the prevention or extinguishment of fires and all other property of the Fire Department. Id., § 10-1018. The Chief, when required, must report to the Board of Trustees on the condition of equipment and provide any other information requested by the Trustees. Id. In the event the Fire Chief is unable to undertake his responsibilities or is absent, the First Assistant Chief and other Assistants in order of rank will assume the Chief's responsibilities. Id.

The Village Law specifically prohibits a person from holding the office of Village Mayor or Village Trustee and the office of Chief or Assistant Chief of a Village Fire Department. Id., § 10-1012. We note that a Village Trustee who does not appoint or approve the appointment of the Chief or Assistant Chief may hold those offices. Id. However, you informed us that this is not the case in your Fire Department. This statutory prohibition undoubtedly is based upon the subordination of the positions of Chief and Assistant Chiefs to the Board of Trustees, the governing body of your Village Fire Department. The Chief and Assistant Chiefs are responsible for carrying out policies established by the Board of Trustees. Also, the Village Board may not interfere with the supervision of the members of the Fire Department by the Chief and Assistant Chiefs when the Fire Department is on duty. We note that provisions of the Town Law governing fire districts have similar provisions and prohibitions. Op Atty Gen (Inf) No. 91-43.

Therefore, the provisions of the Village Law require that you continue to prohibit the Chief, Deputy Chief and Assistant Chief from also holding the office of Mayor or Trustee of the Village.

¹Note that the Village Law does not use the term "Deputy Chief." Your Deputy Chief is essentially serving as the First Assistant Chief as the term is used in the statute.

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