

TOWN LAW § 175(3).

The positions of volunteer firefighter and counsel to a fire district are not per se incompatible.

September 7, 1999

Mark A. Murray, Esq.  
Counsel  
West Sayville-Oakdale Fire District  
300 Rabro Drive  
Hauppauge, New York 11788

Informal Opinion  
No. 99-26

Dear Mr. Murray:

You have been retained as counsel to the West Sayville-Oakdale Fire District and have asked whether you may continue to serve as a volunteer firefighter with the West Sayville Fire Department.

In the absence of a constitutional or statutory prohibition against dual office holding, 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 the principle equally covers an office and a position of employment or two positions of employment. Also, where positions are compatible, a conflict of interests may arise out of the simultaneous holding of the positions. The conflict can be avoided by declining to participate in the disposition of the particular matter.

We conclude that the positions of volunteer firefighter and counsel to the Fire District are not per se incompatible. Provisions of the Town Law specifically deal with the holding of various fire district positions. Significantly, Town Law

§ 175(3) permits a volunteer firefighter to serve as a fire district commissioner. The Legislature thus has established an exception to the common law rule of compatibility in permitting a firefighter to serve on the board that supervises the activities of the fire company. See, Op Atty Gen (Inf) No. 94-39. Service of volunteers as fire district commissioners is very common. In our view, it follows that if a firefighter may make policy as a member of the governing body of the fire district, he or she may render legal advice as counsel to the governing body. Specific conflicts of interest which may arise out of the dual office holding may be addressed on a case-by-case basis.

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,

SIOBHAN S. CRARY  
Assistant Attorney General