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**INCOMPATIBILITY:** Statute permitting political activities by public employees.

**OFFICERS AND EMPLOYEES:** Incompatibility.

**TOWNSHIPS:** Incompatibility of office and employment.

**POLITICAL ACTIVITY:** Incompatibility of office and employment.

A township fireman elected to the office of township trustee must resign or obtain a leave of absence from his employment during his elected term.

The manager of a township sewer system elected to the office of township treasurer must resign as manager of the township sewer system or obtain a leave of absence during his elected term.

The provision in the statute permitting public employees to engage in political activities that requires resignation from employment upon election to office does apply to a person elected to office in the November 2, 1976 general election.

Opinion No. 5108

November 18, 1976.

Representative Roy Smith  
House of Representatives  
Capitol Building  
Lansing, Michigan

Representative Charles H. Varnum  
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Representative Gary Owen  
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Each of you has requested an opinion involving the recently enacted statute permitting public employees to engage in political activities, 1976 PA 169; MCLA 15.401 *et seq*; MSA 4.1700 *et seq*. In each case the question concerned the applicability of 1976 PA 169, § 3(2), which provides in pertinent part:

“ . . . , a public employee of a unit of local government or school district who is elected to an office within that unit of local government or school district shall resign or may be granted a leave of absence from his employment during his elected term.”

The questions are:

1. May a township trustee serve as a township fireman or in any other compensible position by the township?
2. May a township treasurer serve as the manager of the township sewage system?

3. Does 1976 PA 169 apply to a person elected to a township office in the November 2, 1976 general election?

Prior to enactment of 1976 PA 169, *supra*, the holding of two public offices simultaneously was governed by the common law rule on incompatibility, which rule is stated in 67 CJS, Officers, § 23, pp 135, 136, to be:

"\* \* \* the general rule is that the inconsistency, which at common law makes offices incompatible, does not consist in the physical impossibility to discharge the duties of both offices, but lies rather in a conflict of interest, as where one is subordinate to the other and subject in some degree to the supervisory power of its incumbent, or where the incumbent of one of the offices has the power of appointment as to the other office, or the power to remove the incumbent of the other, or to audit the accounts of the other, the question being whether the occupancy of both offices by the same person is detrimental to the public interest or whether the performance of the duties of one interferes with the performance of those of the other. Thus, in determining incompatibility, the permanency of the position, the power granted, and the functions actually performed should be considered. \* \* \*"

With enactment of 1976 PA 169, § 3(2), the legislature has adopted a rule of law that governs situations in which a public employee of a unit of local government or of a school district is elected to an office within that unit. The rule so adopted is that the person shall resign or may be granted a leave of absence from his employment during his elected term.

Thus, the response to the first two questions obviously flows from the application of the statutory provision. It is therefore clear that (1) a township fireman elected as a township trustee must either resign as a fireman or obtain a leave of absence during his elected term and (2) a manager of a township sewage system must, if elected as a township treasurer, resign or obtain a leave of absence from his employment as manager of the township sewer system.

As to the third question, it will be noted that 1976 PA 169, *supra*, took effect on June 25, 1976, whereas candidates for nomination to township offices were required to file petitions by June 1, 1976 and could not withdraw their names from consideration after June 3, 1976.

A general rule of statutory construction requires that, in the absence of a clear legislative expression to the contrary, a statute should be given prospective effect. See *Abood v Detroit Board of Education*, 60 Mich App 92; 230 NW2d 322 (1975). However, application of 1976 PA 169, § 3(2), *supra*, to candidates for township office in the November 2, 1976 general election will not violate this principle because the act does not require a public employee to resign or obtain a leave of absence until after he is elected to an office within the local unit of government. This will not occur until the effective date of 1976 PA 169. Therefore, the act may properly be applied to candidates elected to township offices in the November 2, 1976 general election.

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