



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

BOISE 83720

JIM JONES
ATTORNEY GENERAL

TELEPHONE
(208) 334-2400

June 18, 1987

Richard L. Harris
Prosecuting Attorney
Canyon County
P.O. Box 668
Caldwell, ID 83606

THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE

Re: Conflict of Interest/Incompatibility

Dear Mr. Harris:

You have asked whether a member of a county planning and zoning commission can serve as a city councilman without creating a conflict of interest.

The Local Planning Act contains a conflict of interest provision:

A member or employee of a governing board, commission, or joint commission shall not participate in any proceeding or action when the member or employee or his employer, business partner, business(,) associate, or any person relating to him by affinity or consanguinity within the second degree has an economic interest in the procedure or action. Idaho Code § 67-6506.

Because a city council member is an agent of the city he represents, this section would probably prevent him from participating in any county zoning decisions which may affect the city's economic interests. However, there is no provision requiring the council member to resign his position.

Although not specifically stated, the facts in your letter also present a question of incompatibility of office. This common law doctrine applies if there is a potential conflict between the two offices such that one individual could not give absolute allegiance to both offices. Incompatibility is most

often found where one office supervises the other, or when the interests of the two offices are antagonistic to each other. 3 McQuillin on Municipal Corporations, § 12.66 et seq.

In the area of zoning, the interests of the county and the city may frequently be at odds, and it is not uncommon for cities and counties to sue one another over zoning disputes. See State v. City of Hailey, 102 Idaho 511, 633 P.2d 576 (1981); Board of County Comm'rs v. City of Thornton, 629 P.2d 605 (Colo. 1981). Under such circumstances one person could not fill both offices without a conflict of loyalty.

If two offices are incompatible, one office should be vacated. In some instances, it has been held that the acceptance of a second incompatible office will vacate the first office; that is, the mere acceptance of the second incompatible office per se terminates the first office as effectively as a resignation. 3 McQuillin, § 12.67.

Although we do not offer an opinion as to whether the per se rule applies in Idaho, we do recommend that one office be vacated to eliminate the incompatibility problem.

If we can be of further assistance on this matter, please contact us.

Sincerely,

Daniel G. Chadwick

DANIEL G. CHADWICK
Acting Chief
Intergovernmental Affairs
Division

DGC/mkf