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

This letter is in response to your recent inquiry regarding potential incompatibility of office issues within Clearwater County. Specifically, you ask the following questions:

May an individual simultaneously serve as county commissioner and as:

- (a) City Councilperson; or
- (b) Planning and Zoning Commission Member?

The answers to these questions are examined detail below.

A. City Councilperson and County Commissioner

At the outset of this review, it is essential to note that Idaho has not adopted a rule that prohibits *per se* the holding of both city council and county commissioner positions. Therefore, the appropriate inquiry will focus on the common law doctrine of incompatible offices.¹

There is also present a question of incompatibility of office. The 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.*

Public policy demands that an officeholder discharge his duties with undivided loyalty. In order to insure undivided loyalty, the doctrine of incompatible offices requires vacation of offices wherein it is impossible for an officeholder to discharge his duties with undivided loyalty. Applicability of this doctrine in no way turns upon the integrity of the officeholder. The analysis of incompatible offices turns instead on factors such as: due to multiplicity of the business in them they cannot be executed with due care; or when offices are subordinate to one another; or where offices are contrary and antagonistic to one another. 3 *McQuillin on Municipal Corporations*, § 12.67; *see also, Oakland County Prosecutor v. Scott*, 603 N.W.2d 111 (Mich. 1999).

The offices of city councilman and county commissioner clearly fall within the doctrine due to both the multiplicity of business, and the fact that cities and counties often find themselves in potentially contrary or antagonistic positions. Any time a shared officeholder found himself in this position, there would be a question as to where his “undivided loyalty” lay. This office cannot recommend the assumption or retention by an officeholder of both a city councilman’s and county commissioner’s position based upon the common law doctrine of incompatibility of offices.

It is worthy of note that, for a county commissioner, neglect of duty is broadly defined, and could be interpreted to apply to a circumstance wherein a shared officeholder was unable to achieve undivided loyalty. For your convenience and review, Idaho Code § 31-855 is set forth fully below:

31-855. Neglect of duty by commissioners.— Any commissioner who neglects or refuses, without just cause therefore, to perform any duty imposed on him, or who willfully violates any law provided for his government as such officer, or fraudulently or corruptly performs any duty imposed on him, or willfully, fraudulently or corruptly attempts to perform an act, as commissioner, unauthorized by law, shall be prosecuted as provided in section 18-316, Idaho Code.²

For the foregoing reasons, this office recommends that a dual officeholder select one office which he would prefer to hold and resign from the other.

B. County Commissioner and Planning & Zoning Commission Member

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 related to him by affinity or consanguinity within the second degree has an economic interest in the procedure or action.

Idaho Code § 67-6506.

A county commissioner is an agent of the county he represents, therefore, this section would probably prevent him/her from participating in any county zoning decisions that may affect the county’s economic interests. However, there is no provision requiring the council member to resign his/her position.

Also present is the same issue addressed above regarding incompatibility of office. The commissioners pass ordinances, adopt budgets and oversee county departments. Also among their duties is to oversee all county officers, departments, appoint boards and commissions. They further oversee the county budget and provide for the maintenance of roads and bridges, solid waste disposal, juvenile court services, ambulance services and building inspections. In short, they supervise the tasks involved with managing county business.

The board sits as a quasi-judicial body to hear various matters including planning and zoning requests, property valuation protests and requests for cancellation of taxes and indigent issues.

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. 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. It is this office's recommendation that one office be vacated to eliminate the incompatibility problem.

I hope that you find this letter helpful. If you would like to discuss this or any other matter more fully, please contact me.

Sincerely,

BRIAN P. KANE
Deputy Attorney General
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¹ The common law inquiry is appropriate because Idaho has adopted the common law "in all cases not provided for in these compiled laws. . . ." Idaho Code § 73-116.

² It should be noted that Idaho Code § 18-316 has been repealed. It would appear that the relevant code section is Idaho Code § 18-315, which provides for punishment of omission of public duty as a misdemeanor.