

MICHIGAN TOWNSHIPS ASSOCIATION
2005 TRUSTEES
PROFESSIONAL DEVELOPMENT RETREAT

INCOMPATIBILITY OF OFFICES

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prepared by:

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**LEGISLATION AFFECTING COMPATIBILITY OF OFFICES
AND CONFLICT OF INTEREST**

I. Incompatible Public Offices - P. A. 566 of 1978 - MCL 15.181, defines "incompatible":

"Incompatible offices" means public offices held by a public official which, when the official is performing the duties of any of the public offices held by the official, result in any of the following with respect to those offices held:

- (i) The subordination of 1 public office to another.
- (ii) The supervision of 1 public office by another.
- (iii) A breach of duty of public office.

MCL 15.182 states, in pertinent part, that "a public officer or public employee shall not hold 2 or more incompatible offices at the same time."

MCL 15.183(4), as amended by P.A. 10 of 1992, states that the above section cannot prohibit:

A public officer or employee of township where the township has a population of less than 25,000 from serving as emergency medical personnel; firefighter (as long as it is not a full time firefighter or fire chief, or a person who negotiates on behalf of the firefighters); or any other position determined not to be incompatible.

II. Hatch Political Activities Act of 1939 -- 5 USC, §1501, et seq.

A. Prohibits federal employees from holding an elective office.

III. Contracts of Public Servants with Public Entities - P.A. 317 of 1960, MCL 15.321, et seq.

IV. Standards of Conduct for Public Officers and Employees, P.A. 196 of 1973, MCL 15.341, et seq.

STANDARDS OF CONDUCT FOR PUBLIC OFFICERS AND EMPLOYEES
1973 PA 196 (MCL 15.341 et seq.)

1. Definitions.

The Act applies to employees and elected or appointed public officials of a township and other political subdivisions of the state.

2. Specified Statutory Prohibited Conduct.

Specified statutory prohibited conduct include the following:

- a. Not to divulge to an unauthorized person confidential information in advance of its release to the public.
- b. Not to represent his or her personal opinion as that of the township.
- c. Not to use personal property or funds of the township for personal gain or benefit and only in accordance with prescribed constitutional, statutory and regulatory procedures.
- d. Not to solicit or accept a gift or loan of money, goods, services or other things of value for the benefit of anyone other than the township.
- e. Not to engage in any business transaction in which the public officer or employee may profit from his or her official position or authority or benefit financially.
- f. Not to engage in or accept employment or render services for a public or private interest when the employment or service is incompatible or in conflict with the discharge of the official or employee's official duties.
- g. Not to participate in the negotiation or execution of contracts, fixing of rates, issuance of permits, etc., relating to a business entity in which the officer or employee has a financial or personal interest.

3. Limitations of the foregoing Standards of Conduct.

- a. Where the official is required to participate and vote on an issue in order to constitute a quorum necessary for official action.
- b. Where the public officer is not paid for working for more than 25 hours per week for the township.
- c. Where the public officer promptly discloses any personal, contractual, financial, business or employment interest as part of the public record.
- d. Where the public officer will directly benefit from the contract in an amount less than \$250 or less than 5% of the public costs of the contract, whichever is less, he or she may vote on the awarding of the contract if it is necessary to satisfy a quorum and he is not paid for working more than 25 hours per week and promptly discloses his involvement. The officer must file a sworn affidavit of his/her involvement in this latter case.

I. **Incompatibility** of offices has been found to exist in the following situations:

A. Supervisor and

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|-------------------------------|---------------------------|
| 1. County assessor | AG 75/76-5108 |
| 2. County Commission member | AG 92-6737 |
| 3. Drain commissioner | AG 97-6931 |
| 4. Fire chief | |
| 5. Manager | AG 82-6083 |
| 6. Planning commission member | AG 95-6834 |
| 7. Road commission member * | |
| 8. School board member * | AG 91-6695; AG 56-2675 |
| 9. Sheriff | AG 95-6877; AG 81/82-6083 |
| 10. Zoning board member | MCL 125.274 |

B. Clerk and

- | | |
|---------------------------------|-------------|
| 1. County planning commissioner | AG 95-6837 |
| 2. Road commission member * | |
| 3. School board member | AG #7156 |
| 4. Zoning board member * | MCL 125.274 |

C. Treasurer and

1. School board member *
2. School district treasurer

D. Trustee and

- | | |
|--|----------------------|
| 1. Clerical employee of district court | AG 95-6859 |
| 2. School board member * | AG 80-5626 & 84-6239 |
| 3. Zoning Board | MCL 125.288 |

E. Other

- | | |
|--|---------------|
| 1. Assessor and county commission member | AG 80-5626 |
| 2. Board of Review and school board member | AG 64-4307 |
| 3. Building inspector and school board member | AG 95-6841 |
| 4. Township employee and library board member | AG 79/80 5621 |
| 5. Township employee and zoning board or ZBA member | MCL 125.288 |
| 6. Zoning administrator and Zoning Board or Planning Commission member | MCL 125.274 |
| 7. Township police chief and county board commissioner | AG 96-6903 |

* Incompatibility is found if there is a contract between the township and the other entity or if a person is placed in a position in which the interests of both positions conflict.

** If population is less than 25,000 - MCL 15.183.

II. **Compatible offices are:**

A. **Supervisor and**

1. Assessor
2. Assessor in another township AG 97/98-6967
3. Firefighter
4. Undersheriff *
5. Zoning Administrator MCL 15.183
6. County solid waste township representative AG 95-6853
7. School superintendent AG 97/98 6967

B. **Clerk and**

1. Assessor ** AG 92-6743
2. Firefighter
3. Planning commission member
4. Village trustee AG 86-6269
5. Zoning administrator MCL 15.183

C. **Treasurer and**

1. Assessor ** AG 83/84-6126 & 92-6743
2. Firefighter
3. Planning Commission member
4. School district employee
5. Village clerk
6. Zoning administrator

D. **Trustee and**

1. Assessor **
2. Building inspector
3. Deputy sheriff if no contract with county AG 82-5955
4. Firefighter
5. Planning commission member AG #6791
6. Teacher
7. Zoning administrator
8. ZBA member

E. **Other**

1. Assessor and school superintendent AG 97/98 6967
2. Board of Review member and Township Zoning Administrator AG 95-6839

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** If population is less than 25,000 - MCL 15.183.