



## Incompatible Offices in Planning and Zoning

- a. Incompatible Public Offices Act<sup>1</sup> – “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, results 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
  
- b. What are subordination, supervision?
  - i. Establishes wage
  - ii. Appoints, removes
  - iii. Reviews performance
  - iv. Reviews financial accounting
  
- c. What is a “breach of duty?”
  - i. Cannot protect, advance the interests of both offices simultaneously
  - ii. Interpreted as a current contractual relationship (i.e., not potential)
  
- d. There are specific offices that are deemed to be incompatible because of statutory duties and functions. **This table is a working draft of incompatible offices with respect to the planning and zoning function of local government. It is based on statutes, Michigan Attorney General opinions, and court decisions, and may be incomplete. There are many more local government incompatible offices than those detailed herein. Individuals are encouraged to work with a municipal attorney to fully-assess the compatibility of two offices in question.** Look across the top of the table (first row on the top of each page) to find the body you are a member of. Then look down the left column to find the other office. The box where the column and row intersect will indicate if the two offices are compatible or incompatible. “Yes” indicates that it is okay to be a member of both offices; they are compatible. “No” indicates it is not proper to be member of both offices; they are incompatible. Sometimes the “Yes” and “No” is qualified by the word “Probably.” That means there is no statute, Attorney General opinion, or court case that directly addresses the two offices, but the situation is very similar to two offices which were addressed.

<sup>1</sup> PA 566 of 1978, as amended, being [MCL 15.181 et seq.](#)



| If you are a member of one of these (right):             | Planning Commission  | Zoning Board of Appeals   | Zoning Administrator (including planner doing zoning adm. duties) | Planner (with no zoning administrator duties) | County Planning Commission   |
|--|--|---|---|---|--|
| Then these offices are/are not compatible (below):       | “Yes” = compatible office based on statute, court case, or Michigan Attorney General Opinion.<br>“No” = Incompatible office based on statute, court case, or Michigan Attorney General Opinion.<br>“Probably” means it is likely because the situation is similar to a court case or AG Opinion but is not specifically addressed. |   |   |   |  |
| The city, village, county, and township legislative body | <b>Yes</b><br>1. For ex officio member(s). <sup>2</sup><br>2. A planning commission for a city or village less than 5,000 population may have other compatible offices. <sup>3</sup>   | <b>Yes</b><br>1. For a county and township, one legislative body member <u>shall</u> be an ex officio member of the ZBA.<br>2. For a city and village, one legislative body member <u>may</u> be an ex officio member of the ZBA <sup>4</sup> (cannot be chair of the ZBA). | <b>Probably No<sup>5</sup></b>                                    | <b>Probably No<sup>5</sup></b>                | <b>Yes<sup>2</sup></b> for county board of commissioner ex officio member(s)<br><b>Yes<sup>6</sup></b> for city, village, township legislative body member |
| Elected officials (not on the legislative body)          | <b>Yes/No (debatable)</b>  | <b>Yes/No (debatable)</b>   | <b>Probably No<sup>5</sup></b>                                    | <b>Probably No<sup>5</sup></b>                | <b>No</b> for county elected officials<br><b>Yes</b> for city, village, township elected officials   |

<sup>2</sup> In a city, village, or county, the chief administrative official or a person designated by the chief administrative official, the chief elected official, one or more members of the legislative body, or any combination thereof, may be appointed to the planning commission, as ex officio members with full voting rights (not more than 1/3 of the members of the planning commission may be ex officio members). In a township, one member of the legislative body shall be an ex officio member of the planning commission ([MCL 125.3815\(5\)](#)).

<sup>3</sup> If the village or city has a population less than 5,000, the planning commission can be the Economic Development Corporation board, Downtown Development Authority board, or tax increment finance board if those boundaries are the same as the village-city boundaries ([MCL 125.3815\(5\)](#)).

<sup>4</sup> In a city and village, the legislative body can act as the zoning board of appeals ([MCL 125.3601\(2\)](#)).

<sup>5</sup> The township manager is subordinate to the township supervisor because the manager is employed under [MCL 41.75a](#) (being part of the Revised Statutes of 1846, Chapter 16) and serves at the pleasure of the township board ([Attorney General Opinion 6083, July 7, 1982](#)). As [MCL 41.75a](#) applies to other employees of the township, the position of zoning administrator and the position of township supervisor are most likely incompatible. Under [MCL 15.183\(4\)\(c\)](#), elected officials may perform “other additional services” (with compensation) for the unit of government if the population is less than 40,000. Whether zoning administration constitutes “other additional services” has yet to be considered by the Attorney General.

<sup>6</sup> Due to intervening legislation, AG Opinion 6837, February 23, 1995 (that the office of member of a township board and the office of member of a county planning commission are incompatible), no longer expresses the opinion of the AG. There is also [AG Opinion 6863, August 11, 1995](#), which states the position of county planning commissioner is not incompatible with membership on a township board in a township which has not adopted a township zoning ordinance. Since the 2002 ‘coordinated planning’ amendments to the planning enabling acts ([PA 263 and 264 of 2001](#)), the county planning commission has only an advisory role in reviewing township plans (and zoning ordinance amendments), there is no longer a supervisory/subordinate relationship between the two and the roles of township board member and county planning commissioner are compatible.



| If you are a member of one of these (right):                              | Planning Commission  | Zoning Board of Appeals   | Zoning Administrator (including planner doing zoning adm. duties) | Planner (with no zoning administrator duties) | County Planning Commission  |
|---|--|---|---|---|---|
| Then these offices are/are not compatible (below):                        | “Yes” = compatible office based on statute, court case, or Michigan Attorney General Opinion.<br>“No” = Incompatible office based on statute, court case, or Michigan Attorney General Opinion.<br>“Probably” means it is likely because the situation is similar to a court case or AG Opinion but is not specifically addressed. |   |   |   |   |
| All employees of your government (including fire fighter, assessor, etc.) | No <sup>7</sup>  | No <sup>7</sup>   | n/a   | n/a   | No <sup>2,7</sup> for counties except ex officio<br>Yes for city, village, township employees |
| A contractor of your government   | Probably<br>No <sup>7</sup>  | No <sup>7</sup>   | Yes (when contracted to be the zoning administrator)              | Yes (when contracted to be the planner)       | No <sup>7</sup> for counties except planner<br>Yes for city, village, township contractors    |
| Township Supervisor or Deputy Supervisor                                  | Probably<br>Yes <sup>8</sup>   | Probably<br>Yes <sup>8</sup>  | Probably No <sup>5</sup>  | Probably<br>No <sup>5</sup>                   | Probably<br>Yes   |
| Your Township [tax] Board of Review                                       | Yes <sup>9</sup>   | Probably<br>Yes   | Yes <sup>10</sup>   | Probably<br>Yes                               | Probably<br>Yes   |
| Your Planning Commission  | n/a  | Yes<br>1. One shall be an ex officio in a township, county.<br>2. One may be in a village and city. | No  | No  | Yes <sup>11</sup>   |
| Your Zoning Board of Appeals  | Yes<br>1. One shall be an ex officio in a township, county.<br>2. One may be in a village and city.  | n/a   | No  | No  | Yes <sup>11</sup>   |
| County Planning Commission for your county                                | Yes <sup>11</sup>  | Yes <sup>11</sup>   | Probably Yes  | Probably<br>Yes                               | n/a   |

<sup>7</sup> An elected officer or employee of the local unit of government is not eligible to be a member of the planning commission, except for ex officio members ([MCL 125.3815\(5\)](#)). An employee or contractor of the legislative body may not serve as a member of the zoning board of appeals ([MCL 125.3601\(6\)](#)).

<sup>8</sup> The supervisor appoints planning commission members subject to approval by the township board ([MCL 125.3815\(1\)](#)). The township board also acts to remove a member from the planning commission. The statutory role of the board provides a ‘check’ on the supervisor’s authority and may relieve the potential incompatibility.

<sup>9</sup> Nothing prohibits a simultaneous membership on a township planning commission and the township board of review ([AG Opinion 7289, April 11, 2016](#)).

<sup>10</sup> A person may simultaneously serve as a member of a township board of review and as the township zoning administrator ([AG Opinion 6839, March 3, 1995](#)). The opinion applies to the Township Rural Zoning Act, PA 184 of 1943, since repealed by the [Michigan Zoning Enabling Act, PA 110 of 2006](#), as amended, however, the same conclusion likely applies.

<sup>11</sup> A member of a county planning commission may at the same time be a member of a township planning commission (and presumably township zoning board of appeals) ([AG Opinion 7161, September 15, 2004](#)). If a township planning commission is organized under the Municipal Planning Act, PA 285 of 1931 (now repealed by the [Michigan Planning Enabling Act, PA 33 of 2008](#), as amended), membership on the township planning commission and county planning commission is considered permissible ([AG Opinion 7060, August 28, 2000](#)).



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|---|--|-------------------------|---|---|--|
| Then these offices are/are not compatible (below):                                    | “Yes” = compatible office based on statute, court case, or Michigan Attorney General Opinion.<br>“No” = Incompatible office based on statute, court case, or Michigan Attorney General Opinion.<br>“Probably” means it is likely because the situation is similar to a court case or AG Opinion but is not specifically addressed. |                         |   |   |  |
| County Board of Commissioners for your county   | Yes <sup>12</sup>  | Probably Yes            | Probably Yes  | Probably Yes  | No (except ex officio members <sup>2</sup> ) |
| County employees and other elected officials for the county your government is within | Probably Yes   | Probably Yes            | Probably Yes  | Probably Yes  | No (except ex officio members <sup>7</sup> ) |
| The School Board for the school district your government is within                    | Yes  | Yes                     | Probably Yes <sup>13</sup>  | Probably Yes <sup>13</sup>  | Yes  |
| Superintendent of a school district your government is within                         | Yes <sup>14</sup>  | Probably Yes            |   |   | Probably Yes                                 |
| Advisory Panel for the Clean Michigan Fund  | Probably Yes   | Probably Yes            | Probably Yes  | Yes <sup>15</sup> (for a county planner, probably yes for other planners) | Probably Yes                                 |
| Michigan State Waterways Commission   | Yes <sup>16</sup>  | Probably Yes            | Probably Yes  | Probably Yes  | Probably Yes                                 |

<sup>12</sup> An individual may simultaneously serve as a member of a charter township planning commission and as a member of a county board of commissioners in the county in which the township is located ([AG Opinion 6720, May 5, 1992](#)). If a member of the county board of commissioners holding both the offices were also appointed to the county planning commission, that would raise additional issues concerning incompatibility of public positions.

<sup>13</sup> Public schools under the jurisdiction of the Michigan superintendent of public instruction are not subject to local zoning ([Charter Township of Northville et al. v. Northville Public Schools, Michigan Supreme Court \(2003\)](#); and the [Revised School Code, PA 451 of 1976](#), as amended (specifically [MCL 380.1263\(3\)](#))).

<sup>14</sup> A person may simultaneously occupy the public positions of member of a township planning commission and assistant superintendent of a school district located in that township ([AG Opinion 6791, March 11, 1994](#)).

<sup>15</sup> The position of county planning department director is not incompatible with the position of a member of the Advisory Panel for the Clean Michigan Fund and may, accordingly, be simultaneously held by the same individual ([AG Opinion 6627, September 8, 1989](#)).

<sup>16</sup> A member of the State Waterways Commission may simultaneously serve as a member of a township planning commission ([AG Opinion 7033, September 16, 1999](#)).