

Opn. No. 97-21

TOWN LAW § 174(4).

A person may not serve simultaneously as the assistant chief of the fire department of a fire district and as a member of the board of fire commissioners.

April 29, 1997

William N. Young, Jr., Esq. Informal Opinion
Fort Hunter Fire District No. 97-21
P.O. Box 309
Guilderland, New York 12084

Dear Mr. Young:

You have asked whether an assistant chief of the fire department of a fire district may also serve as a member of a board of fire commissioners. You are aware that section 174 of the Town Law prohibits a person from holding at the same time the office of fire district commissioner and the office of chief or assistant chief. Representatives of the fire district you represent, however, argue that since the assistant chief is authorized to assume command of firefighting operations, he or she is in fact a line officer of the fire district and no incompatibility would result if the occupant of that office also held the office of fire district commissioner.

In our view, a person may not serve as the assistant chief of the fire department of the fire district and as fire district commissioner at the same time. Section 174(4) expressly prohibits this dual office holding.

We note that you have referred to Op Atty Gen (Inf) No. 91-43 as a basis for the argument that a person may hold simultaneously the position of assistant chief and fire district commissioner. That opinion, however, distinguishes the chief and assistant chief from other officers such as a lieutenant or captain. In that opinion, we state that since the supervision of the fire department by the board of fire commissioners is carried out through the chiefs and assistant chiefs, there does not appear to be any incompatibility between the position of commissioner and positions such as a captain or lieutenant.

We conclude, then, that a person may not serve simultaneously as the assistant chief of the fire department of a fire district and as a member of the board of fire commissioners.

The Attorney General renders formal opinions only to officers and departments of State government. This perforce is an informal and unofficial expression of the views of this office.

Very truly yours,

JAMES D. COLE
Assistant Attorney General
in Charge of Opinions