MEMORANDUM

TO: Coon Creek Watershed District Board of Managers
    Tim Kelly, Administrator

FROM: Michelle J. Ulrich, Harold H. Sheff

RE: Watershed District Manager/School Board Member

DATE: September 5, 2017

QUESTION

May a manager of the Coon Creek Watershed District Board of Managers simultaneously serve as a school board member of a school district within the Coon Creek Watershed District?

OPINION

It is our opinion that the offices of school board member and Coon Creek Watershed District Board member in this situation are “compatible offices” and may be occupied at the same time.

DISCUSSION

Because public offices are considered public trusts created for the public benefit, the same person may not hold two public offices that are considered incompatible.

At the heart of the issue is a determination that the nature of two offices are so inherently inconsistent that it would be a violation of public trust for the same person to hold both offices. This is known as the common law doctrine of incompatibly, which applies to the functions of two inconsistent offices. ¹

The term “office” for the purpose of determining compatibility includes all elected offices and those appointed positions involving independent authority under law to determine public policy or to make a final decision not subject to a supervisor’s approval. ²

In this context it appears that the positions of Coon Creek Watershed District Board manager and school board member are “public offices” since both have independent authority under law to determine public policy, and make final decisions implementing their statutory powers.

Offices are generally incompatible when a specific statute states that one person may not hold two or more specific positions. Regarding watershed district managers, the Minnesota

¹ See Compatibility of Offices, House Information Brief (July 2012).
² McCutcheon v. City of St. Paul, 216 N.W.2d 137, 139 (Minn. 1974).
Legislature in the Watershed Law (Chapter 103D) has specified that a watershed district manager cannot at the same time be a “public officer of the county, state, or federal government, except that a soil and water conservation supervisor may be a manager.”\(^3\) However the legislature in this governing law has not further defined the terms “public officer,” or the “county, state, or federal government,” as used in this subdivision.

It is likely that a court would consider a watershed district manager and a school board member to be “public officers” for the purposes of this statute. As discussed above regarding “public offices,” both have independent authority under law to determine public policy, making final decisions in implementing their statutory powers. Although a school board member may be a “public officer,” it is our opinion that the position of school board member is not the type of office that would be considered “incompatible” under the above provision with the office of watershed district manager. Neither office: Has authority over the organization of the other; supervises the other; adopts a policy plan for the other; hires or appoints the other; sets the salary for the other; adopts/approves a budget for the other; or statutorily implements the same laws.

Watershed districts manage water resources including public ditch systems, comprehensively plan for and implement projects effecting natural resources within the watershed district – school districts are not charged with implementing these types of statutory duties.

\(^3\) Minn. Stat. § 103D.311 (1)(2) (2016).