



**THE ATTORNEY GENERAL  
OF TEXAS**

**GERALD C. MANN**  
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ATTORNEY GENERAL

**AUSTIN 11, TEXAS**

Honorable J. A. Amis, Jr.  
County Attorney  
Rains County  
Emory, Texas

Opinion No. O-2226

Re: Holding two offices--constitutional provisions construed-- member, County Board of School Trustees and member of local community committee, Agricultural Adjustment Administration.

Dear Sir:

Your request for an opinion as to whether one person, at the same time may serve as a member of the county board of school trustees and as a member of a local community committee operating under and supervised by the United States Department of Agriculture through the Agricultural Adjustment Administration, has been received and carefully considered by us.

The determination of the question submitted must be grounded upon an interpretation of the provisions of the Texas Constitution. Section 12 of Article 16 of the Constitution reads as follows:

"No member of Congress, nor person holding or exercising any office of profit or trust, under the United States, or either of them, or under any foreign power, shall be eligible as a member of the Legislature, or hold or exercise any office of profit or trust under this State."

Section 33 of Article 16:

"The Accounting Officers of this State shall neither draw nor pay a warrant upon the Treasury in favor of any person, for salary or compensation as agent, officer or appointee, who holds at the same time any other office or position of honor, trust or

profit, under this State or the United States,  
except as prescribed in this Constitution. \* \* \*."

The pertinent provision of section 40 of Article  
16 is as follows:

"No person shall hold or exercise, at the  
same time, more than one civil office of emolu-  
ment, except that of justice of the peace, county  
commissioner, notary public and postmaster \* \* \*  
unless specially provided herein \* \* \* ."

The election, qualification, service, duty and  
compensation of members of the county board of school trus-  
tees is prescribed by Title 49, Chapter 11 of the Revised Civ-  
il Statutes of Texas, 1925, as amended (Articles 2676 et seq.,  
Vernon's Annotated Texas Statutes.) Such members serve for  
a definite term, receive compensation on a per diem basis pay-  
able out of the State and County Available School Fund by war-  
rants drawn on order of the County Superintendent and signed  
by the President of the county board, and take the official oath  
of office.

By Act of Congress, Public No. 430, Seventy Fifth  
Congress, Chapter 30, Third Session, H. R. No. 8505, Title 1,  
Section 101, the Secretary of Agriculture was authorized to set  
up such regulations as might be required in administering the  
Agricultural Adjustment Administration program. Pursuant  
to such delegation of authority, in the Articles of Association,  
under which the various counties operate, provision is made  
for county and local committeemen to be elected by producers  
in the county upon their receiving a majority of the votes cast  
for the position to which they are elected. Local committee-  
men are elected to serve from January 1 to December 31 of  
the current year, or until their successors have been duly elected.  
Local committeemen are not required to take an oath of office;  
they do not receive a stipulated salary, but are paid at a certain  
rate per diem for the days which they serve. (This information  
furnished per letter, E. N. Holmgren, Administrative Officer in  
charge, Agricultural Adjustment Administration, United States  
Department of Agriculture, College Station, Texas.)

Under the title "Public Officers", Texas Jurisprudence gives the following statement of the law:

"Many judicial definitions of 'public office' are to be found in the reported cases, but they are substantially of the same import. It is said to be a right to exercise a public function or employment and take the fees and emoluments belonging to it; 'a public station or employment conferred by the appointment of government'; and 'the right, authority and duty created and conferred by law, by which, for a given period, either fixed by law, or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign function of the government, to be exercised by him for the benefit of the public.' The individual so invested is a public officer. He is a person who exercises some functions of the government -- one who is commissioned or authorized to perform any public duty." (34 Tex. Jur. 322).

From the case of Commissioners Court of Limestone County v. Garrett, (Com. App.) 236 S. W. 970 at p. 972, we take the following quotation from Mechem on Public Officers:

"Public officers are usually required by law to take the oath of office, and this fact goes far in determining the character of the duty. But the taking of the oath is not an indispensable criterion, and the office may exist without it, for, as has been said, the oath is a mere incident, and constitutes no part of the office. \* \* \* If a duty be a continuing one, which is defined by rules prescribed by the government, and not by contract, which an individual is appointed by government to perform, who enters on the duties pertaining to his station without any contract defining them, if those duties continue though the person be changed, it seems very difficult to distinguish such a charge or employment from an office or the person who performs the duties from an officer. \* \* \*"

The same authority contains the following statement:

" 'A man is not the less a public officer where his authority is confined to narrow limits; for it is the duty of his office and the nature of that duty which make him an officer, and not the extent of his authority.' See Mechem on Public Officers, § 9."

in the Supreme Court case of *Kimbrough v. Barnett*, 93 Tex. 310, 55 S. W. 122, is the following:

"Public office is the right, authority, and duty created and conferred by law by which, for a given period either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of the government to be exercised by him for the benefit of the public."

From the case of *State of Montana ex rel Julius Barney v. R. N. Hawkins, Secretary of State*, 251 P. 411, 53 A. L. R. 583 (1927) we quote:

"After an exhaustive examination of the authorities, we hold that five elements are indispensable in any position of public employment, in order to make it a public office of a civil nature: (1) It must be created by the Constitution or by the Legislature or created by a municipality or other body through authority conferred by the Legislature; (2) it must possess a delegation of a portion of the sovereign power of government, to be exercised for the benefit of the public; (3) the powers conferred, and the duties to be discharged, must be defined, directly or impliedly, by the Legislature or through legislative authority; (4) the duties must be performed independently and without control of a superior power, other than the law, unless they be those of an inferior or subordinate office, created

or authorized by the Legislature, and by it placed under the general control of a superior officer or body; (5) it must have some permanency and continuity, and not be only temporary or occasional."

That a member of the county board of school trustees holds an "office"; that it is an office of "profit or trust"; also an "office or position of honor, trust or profit" and a "civil office of emolument" is not open to question. See *Hendericks v. State*, (Civ. App.) 49 S. W. 705; *Thomas v. Abernathy County Line Independent School District* (Com. App.), 290 S. W. 152; *Commissioners' Court of Limestone County v. Garrett* (Com. App.), 236 S. W. 970; 34 Tex. Jur. 331 and cases cited under § 7.

With the exception of the taking of an official oath, it appears to us that a member of a local community committee meets the prescribed essentials as an "officer" and holds an "office" within the contemplation of our constitutional inhibitions. According to Mechem's statement, quoted with approval by our Commission of Appeals in *Limestone County v. Garrett*, *supra*, the taking of an oath is not an indispensable criterion, all the other elements being present.

As was said in our opinion No. O-490 on March 17, 1939:

"The restraint against a person exercising or holding more than one civil office of emolument might appear to be a manifestation of a superabundance of caution on the part of the framers of the constitution, where the offices are not of major importance, or of high financial remuneration, as is the present case. On the other hand, said prohibition can amount to a protection of fundamental rights and liberties, and a bulwark of democratic institutions and principles. Consequently, regardless of the personalities, offices and compensation involved, the constitutional mandate must be strictly obeyed."

Honorable J. A. Amis, Jr., page 6

You are therefore advised that in our opinion one person may not, at the same time, hold the office of county school trustee and act as a local community committee-man under the Agricultural Adjustment Act.

Yours very truly

ATTORNEY GENERAL OF  
TEXAS

By /s/ Benjamin Woodall  
Assistant

APPROVED MAY 23, 1940

/s/ Gerald C. Mann

ATTORNEY GENERAL OF TEXAS

BW:jm:da

APPROVED OPINION  
COMMITTEE

By BWB  
Chairman