



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

0-3-109

GERALD C. MANN  
ATTORNEY GENERAL

Honorable Cullen B. Vance  
County Attorney  
Jackson County  
Edna, Texas

Dear Sir:

Opinion No. 0-5109

Re: Can a justice of the peace  
legally hold the office of  
tax assessor-collector of  
the Edna Independent School  
District?

Your letter of February 12, 1943, requesting the  
opinion of this department on the above stated question reads  
in part as follows:

"Edna Independent School District which was  
created by a vote of the people under the general  
laws has requested that I procure from your depart-  
ment an opinion as to whether or not a party can  
hold the office of Tax Collector and Assessor for  
the District while also holding the office of  
Justice of the Peace.

Article 16, Section 40 of the State Constitution  
provides in part as follows:

"No person shall hold or exercise, at the same  
time, more than one civil office of emolument, ex-  
cept that of Justice of the Peace, County Commis-  
sioner, Notary Public and . . ."

In the case of *Geal v. Townsend*, 14 S. W. 365,  
Judge Gaines in this opinion seems to lay down the original  
interpretation of Article 16, Section 40 of the Constitution,  
and used the following language:

"Any of the offices named in the exception  
may be held with any other office, whether named  
in the exception or not."

By the laws of this State, constitutional and statutory, a person is prohibited from holding more than one civil office of emolument, (Article 16, Section 40 of the State Constitution) except certain offices of which that of the justice of the peace is one. However, our courts have gone further and have extended the rule that even where there is a specific exception to the rule of more than one office of emolument as in this case, or where an office does not pay for his services to the holder thereof, that where a person seeks to hold more than one civil office and the duties of the two offices are incompatible, that such a person cannot hold both offices, and the acceptance of the latter, or later in point of time, is considered a vacancy or resignation of the office formerly held.

Applying these rules, the courts have held in the case of *Luera v. State*, 63 S. W. (2) 699, that the justice of the peace can also be a recorder in the corporation court of the city, as Article 16, Section 40 of the State Constitution does not apply to justices of the peace and the duties of the two offices are not incompatible one to the other. Even though the two offices in the inquiry at hand, tax assessor-collector of the Edna Independent School District and justice of the peace, may be both civil offices of emolument, yet this provision of the Constitution does not apply to justices of the peace, where one person could hold both offices unless the duties of the same were incompatible one to the other.

Though the line which distinguishes compatible and incompatible duties of separate offices is sometimes dim and difficult to distinguish yet we are of the opinion that the offices of tax assessor-collector of the Edna Independent School District and justice of the peace are not incompatible one to the other and that the same person can hold both offices at the same time.

Offices are incompatible where their duties are or may be inconsistent or conflicting, but not where their duties are wholly unrelated, or in no manner inconsistent and are never in conflict, and where neither officer is accountable or under the dominion of, or subordinate to, the other, or has any right or power to interfere with the other in the performance of any duty. *State v. Martin*, 51 S. W. (2) 815, *Kugle v. Glen Rose Independent School District*, 50 S. W. (2) 375, *Thomas v. Abernathy County Line Independent School District*, 200 S. W. 152, *Texas Jurisprudence*, Volume 34, page 351.

Honorable Cullen B. Vance, Page 3

In view of the foregoing authorities, you are respectfully advised that it is the opinion of this department that the justice of the peace, inquired about, can also legally hold the office of tax assessor-collector of and for the Edna Independent School District. In other words a person can hold both the office of justice of the peace and the office of tax assessor-collector of the Edna Independent School District at the same time.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Ardell Williams*

Ardell Williams  
Assistant

RECEIVED 1947

AW:mp

*Genard C. Mann*

ATTORNEY GENERAL OF TEXAS

