



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**JOHN L. HILL
ATTORNEY GENERAL**

December 3, 1973

The Honorable Fred Holub
County Attorney
Matagorda County
Bay City, Texas 77414

Letter Advisory No. 73

Re: Dual Employment -
retired Air Force
Officer/Commissioner
of Conservation and
Reclamation District

Dear Mr. Holub:

You have requested our opinion concerning the eligibility of a retired regular United States Air Force officer to hold the office of Commissioner of a County Conservation and Reclamation District.

We believe there is no constitutional inhibition despite the provisions of Article 16, §12, that:

"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 powers shall be eligible as a member of the Legislature, or hold or exercise any office of profit or trust under this State."

In 1880 the Supreme Court of Texas in State of Texas v. DeGress, 53 Tex. 387, stated that an officer of the United States Army on the retired list held an office of profit or trust under the United States in the language of the Texas Constitution. In Lowe v. State, 201 S. W. 986 (Tex. Crim. 1918), it was held that a member of the National Guard of Texas who was called to active military service occupied a position of profit or trust under the United States and vacated his office under §12 quoted above. But see Ex parte Dailey, 246 S. W. 91 (Tex. Crim. 1922).

These decisions prompted the adoption of amendments to §§ 33 and 40 of Article 16 of the Constitution to the extent that officers and men of the

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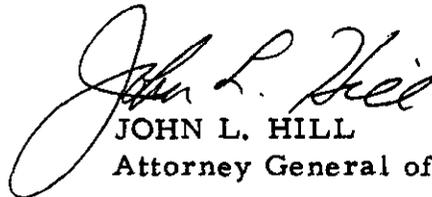
National Guard and other branches of the service were permitted to hold public office or employment in Texas. Cramer v. Sheppard, 167 S.W. 2d 147 (Tex. 1942); Carpenter v. Sheppard, 145 S.W. 2d 562 (Tex. 1940).

Section 40 of Article 16 as it presently exists after the 1972 amendments, contains this language:

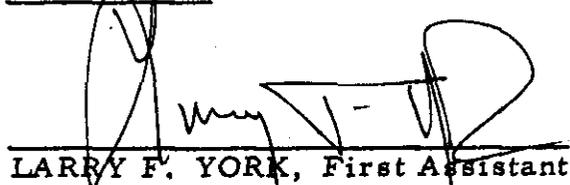
"Provided, that nothing in this Constitution shall be construed to prohibit . . . retired officers of the United States Army, Air Force, . . . and officers of the State soil and water conservation districts, from holding at the same time any other office or position of honor, trust or profit, under this state or the United States. . . ."

Under this provision and Cramer and Carpenter, supra, it is our opinion that a retired Air Force officer is not disqualified from serving as a commissioner of a Conservation and Reclamation District.

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:


LARRY F. YORK, First Assistant


DAVID M. KENDALL, Chairman
Opinion Committee