



THE ATTORNEY GENERAL
OF TEXAS

AUSTIN, TEXAS 78711

JOHN L. HILL
ATTORNEY GENERAL

November 15, 1974

The Honorable Bobby J. Phillips
County Attorney
Panola County Courthouse
Carthage, Texas 75633

Letter Advisory No. 86

Re: Whether dual employ-
ment of Independent School
District tax assessor-collector
and city commissioner results
in legal incompatibility.

Dear Mr. Phillips:

You ask whether incompatibility prevents a person from serving at the same time as a tax assessor-collector for a school district and as a city commissioner in a city located within the district. You ask us to assume that as a member of the city commission the individual would help appoint the equalization board for the city to equalize tax values of property within the city --the same property that he would assess for the school district.

You have not informed us or asked about other impediments to dual office holding that sometimes exist, and we assume without deciding that none of them are applicable.

Whether two offices are incompatible is usually a question of fact, and incompatibility under the law exists when the faithful and independent exercise of one office would necessarily interfere with or control the faithful and independent exercise of the other. Attorney General Letter Advisory No. 62 (1973); State ex rel. Brennan v. Martin, 51 S. W. 2d 815 (Tex. Civ. App. --San Antonio 1932, no writ); Texas Turnpike Authority v. Shepperd, 279 S. W. 2d 302 (Tex. Sup. 1955).

In Thomas v. Abernathy County Line Independent School District, 290 S. W. 152 (Tex. Comm. App., 1927) the court held the offices of

school board trustee and city alderman to be incompatible where the city was located within the school district. In Odem v. Sinton Independent School District, 234 S. W. 1090 (Tex. Comm. App., 1921) a person was held unable to hold tax assessor-collector positions with both a school district and a city located within the district, but the decision was based upon a violation of the "two offices of emolument" prohibition of Article 16, § 40 of the Constitution and did not reach the question of legal incompatibility of the offices. See also Pruitt v. Glen Rose Independent School District No. 1, 84 S. W. 2d 1004 (Tex. Sup. 1935) which held that under Article 16, § 40, one person could not occupy both a school tax office and a county tax office.

But in State ex rel. Brennan v. Martin, *supra*, after an examination of applicable statutes and city charter provisions, the San Antonio Court of Civil Appeals ruled that the facts alleged there did not show any incompatibility. Martin was the trustee of an independent school district and also the tax assessor-collector for the city of Laredo. The case is not controlling, however, because it considered only the sufficiency of the facts pleaded to show incompatibility. It did not purport to rule that two such offices could never be incompatible.

Attorney General Opinion V-883 (1949) considered the legality of a person being both a trustee of an independent school district and a city health officer at the same time and concluded that the two positions were incompatible because "there could be a conflict of discretion or duty in offices with respect to health, quarantine, and sanitary regulations involving the school district."

School Boards have the option, if they choose, to authorize the tax authorities of any incorporated city in which the school district is entirely or partly located to act as tax assessor, board of equalization and tax collector for the district, and to pay the city for such services in an amount as may be agreed upon by the governing bodies of the municipality and the independent school district. Education Code § 23.96. Such a move by the school district would eliminate the position of district tax-assessor collector. The individual involved would have it within his power perhaps, by reason of his position as a city commissioner, to

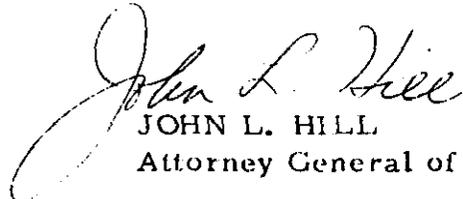
protect his position as school district tax-assessor collector by the exercise of his discretion as a city commissioner. Should that situation arise, there may be a conflict in that the faithful and independent exercise of his duty as a city commissioner could be affected by his position as tax assessor-collector for the school district.

But not every conflict of interest, or possibility thereof, results in legal incompatibility. Conflicts can be avoided on occasion by the application of intervening statutes, ordinances, or rules, or by abstention or recusal. See Attorney General Opinion H-354 (1974); Attorney General Letter Advisory 13 (1973).

You have suggested no factual situation to indicate why this city commissioner's participation in the appointment of the city's tax equalization board would be incompatible with that same person's duties as tax-assessor for a school district. Should the facts of the matter show that the person's duty as a city commissioner is to oppose an action which it is his duty as a school district tax assessor to support (or vice versa), then this is one type of situation in which a legal incompatibility exists and renders the simultaneous holding of both offices by any one person legally impermissible. If the facts show only that it is his personal interest which conflicts with one or more of his legal duties, then the conflict, serious though it may be, does not cause any legal incompatibility between the two offices.

We cannot here pass judgment because we are not in possession of all the pertinent information and cannot resolve fact disputes. We must leave the resolution of the matter to those properly equipped for that task.

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:



LARRY F. YORK, First Assistant



DAVID M. KENDALL, Chairman
Opinion Committee