



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**JOHN L. HILL
ATTORNEY GENERAL**

August 18, 1975

The Honorable Joe Resweber
Harris County Attorney
Harris County Courthouse
Houston, Texas 77002

Letter Advisory No. 113

Re: Whether a member
of the Port of Houston
Authority may also
serve on the Texas
Amusement Machine
Commission.

Dear Mr. Resweber:

You have requested our opinion concerning whether a member of the Board of Commissioners of the Port of Houston Authority may also serve on the Texas Amusement Machine Commission.

There are three limitations on dual office holding: article 16, section 40 of the Texas Constitution; article 2, section 1 of the Texas Constitution; and the common law doctrine of incompatibility. Attorney General Opinion H-7 (1973).

Article 16, section 40 prohibits persons from holding more than one civil office of emolument. Although article 8235, V. T. C. S., provides that members of the Board of Commissioners of Navigation Districts "shall receive such compensation as the Navigation Board may fix," we have been informed that no compensation is authorized or paid to these Commissioners. See Attorney General Opinion H-137 (1973). Where such is the case, the office is not one of emolument and article 16, section 40 is inapplicable.

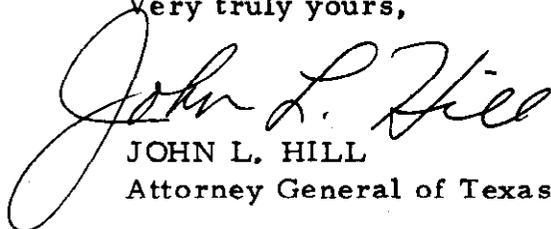
Article 2, section 1 of the Texas Constitution prohibits a person of the executive, legislative, or judicial department of government from exercising powers of another department. Attorney General Opinion H-6 (1973). We have discovered no authority which would indicate that both boards are not in the executive department of government. Thus we believe there is no separation of powers problem. See Meaney v. Nueces County Navigation District No. 1, 222 S. W. 2d 402 (Tex. Civ. App. --San Antonio 1949, writ ref'd.).

Cf., Imperial Irrigation Co. v. Jayne, 138 S. W. 575 (Tex. Sup. 1911); Norris v. City of Waco, 57 Tex. 635 (1882); Wilbarger County v. Hall, 55 S. W. 2d 797 (Tex. Comm'n. App. 1932, judgment adopted); Coleman v. Archer County, 16 S. W. 2d 942 (Tex. Civ. App. -- Ft. Worth 1929, no writ); Stratton v. Commissioners' Court, 137 S. W. 1170 (Tex. Civ. App. -- San Antonio 1911, writ ref'd.); Kettle v. City of Dallas, 80 S. W. 874 (Tex. Civ. App. -- 1904, writ ref'd.).

We have examined the statutes pertaining to the two positions and cannot rule as a matter of law that they are incompatible. Of course, whether the offices will be incompatible as a matter of fact cannot be resolved in the opinion process.

Accordingly, it is our view that a member of the Board of Commissioners of the Port of Houston Authority may also be a member of the Texas Amusement Machine Commission.

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:


DAVID M. KENDALL, First Assistant


C. ROBERT HEATH, Chairman
Opinion Committee