



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

July 20, 1988

Honorable Janelle M. Havercamp
County Attorney
Cooke County, Texas
Cooke County Courthouse
Gainesville, Texas 76240

LO-88-85

Dear Ms. Havercamp:

You ask whether an individual may hold the office of constable and also serve as the administrator of the Cooke County Emergency Medical Service.

The Texas Constitution prohibits one person from holding more than one "civil office of emolument" at one time. Tex. Const., art. XVI, § 40. The courts have held that a person holds an office for purposes of article XVI, section 40, if he exercises any sovereign function of government for the benefit of the public and is largely independent of others' control. Tilley v. Rogers, 405 S.W.2d 220, 224 (Tex. Civ. App. - Beaumont 1966, writ ref'd n.r.e.); See also Aldine Independent School District v. Standley, 280 S.W.2d 578, 583 (Tex. 1955). This office has stated that a constable is a civil officer of emolument. Attorney General Opinion M-45 (1967). We conclude, however, that the administrator of the Cooke County Emergency Medical Service is not an officer.

In Attorney General Opinion MW-39 (1979) we considered whether the director of operations of a county CETA program was an officer. The opinion concluded that the director was not an officer because he did not exercise any sovereign authority largely independent of the control of others. The opinion also pointed out that he did not possess elements attributed to officers in various cases. For example, his duties and qualifications were not defined by law.

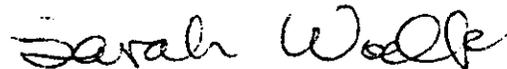
The information you provide indicates that the administrator of the Cooke County Emergency Medical Service does not exercise sovereign authority largely independent of the control of others. Rather, he serves at the pleasure of the commissioners court and exercises his duties subject to their review and correction. See Attorney General Opinion JM-499 (1986) (chief appraiser who is subject to direction of

Honorable Janelle M. Havercamp
July 20, 1988
Page 2

appraisal board is not an officer for purposes of article XVI, section 40)." Also, the duties and qualifications of the position are not established by statute. See Attorney General Opinion C-772 (1966) (county has implied authority to provide ambulance service pursuant to its general authority to provide for the public health). Consequently, we conclude that the administrator of the Cooke County Emergency Medical Service is not an officer for purposes of article XVI, section 40, of the Texas Constitution.

You also ask whether the doctrine of incompatibility prevents an individual from serving both as constable and as administrator of the emergency medical service. The common law doctrine of incompatibility prohibits one person from occupying two positions when the holder of one position may impose its policies on the holder of the other or subject him to control in some way. Attorney General Opinions JM-129, JM-133 (1984); see Thomas v. Abernathy County Line Independent School District, 290 S.W. 152 (Tex. Comm'n App. 1927, holding approved). The constable has no right of control over the administrator of the emergency medical service, nor does the administrator of the emergency medical service have any right of control over the constable. Therefore, the two positions are not incompatible.

Very truly yours,



Sarah Woelk
Assistant Attorney General
Opinion Committee

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3914