



**THE ATTORNEY GENERAL
OF TEXAS**

April 25, 1989

**JIM MATTOX
ATTORNEY GENERAL**

Honorable William N. Thomas
State Representative
Rockwall County
P. O. Box 2910
Austin, Texas 78768-2910

LO-89-39

Dear Representative Thomas:

You ask whether it is a conflict of interest for the criminal district attorney of Rockwall County to serve on the board of directors of a private, for-profit hospital. You state that the hospital in question contracts with the county to provide indigent health care services. See generally V.T.C.S. art. 4438f (Indigent Health Care and Treatment Act).

Chapter 171 of the Local Government Code regulates conflicts of interest of county officers. Because a criminal district attorney does not participate in the decision by a county to contract with a private hospital, chapter 171 would not prevent a criminal district attorney from serving on the board of an entity with which the county contracts.

The criminal district attorney of Rockwall County is required to perform all the duties conferred by law on county and district attorneys. Gov't Code § 44.299(c). Article 2.01 of the Code of Criminal Procedure provides that a district attorney shall represent that state in all criminal cases in the district court "except in cases where he has been, before his election, employed adversely." Article 2.08 of the Code of Criminal Procedure provides that district and county attorneys shall not be of counsel adversely to the state in any case. Generally a district attorney would be disqualified under those provisions because of previous employment as an attorney. See, e.g., Ex parte Spain, 589 S.W.2d 132 (Tex. Crim. App. 1979). At least one case, however, suggests that a prosecuting attorney might be disqualified in a case in which the prosecuting attorney is an officer of a corporate defendant. Donald v. State, 453 S.W.2d 825, 827 (Tex. Crim. App. 1969). In any case, the possibility that the hospital in question might conceivably

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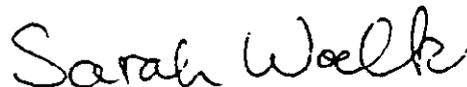
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be a criminal defendant does not prevent the criminal district attorney from serving on the board of the hospital. At most, it would require his disqualification or recusal in a specific case.

You state that the criminal district attorney also advises the county in civil matters. See generally Attorney General Opinion S-03 (1953) (discussing responsibilities of Harris County Criminal District Attorney in civil matters). Because the county contracts with the hospital in question, the county will occasionally require legal advice in regard to that contract. We find nothing in the law, however, that prohibits a criminal district attorney from serving on the board of an entity that contracts with the county. It would be appropriate, of course, for the county to seek legal advice from a disinterested party in matters relating to the hospital in question. See Supreme Court of Texas, Rules Governing the State Bar of Texas art. 10, § 8 (Code of Professional Responsibility) DR S-101 (1971).

Yours very truly,



Sarah Woelk, Chief
Letter Opinion Section
Opinion Committee

SW/lcd

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