



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 13, 1992

Honorable Jack Skeen, Jr.
Criminal District Attorney
Smith County Courthouse
Tyler, Texas 75702

Letter Opinion No. 92-004

Re: Whether an individual may simultaneously hold the positions of county tax assessor-collector and school board trustee of a district located in that county (RQ-318)

Dear Mr. Skeen:

You have requested our opinion on a matter involving dual office holding. You indicate that the tax assessor-collector of Smith County is currently serving a term which expires at the end of 1992, and is running unopposed for that same position in the general election of November, 1992. He is also considering becoming a candidate for the position of trustee of an independent school district located within Smith County. You state that the school district is presently under contract with Smith County for the tax assessor-collector to assess and collect school district taxes. You ask whether this particular individual may hold both positions.

Article XVI, section 40 of the Texas Constitution prohibits one person from holding more than a single "office of emolument." A member of the board of trustees of an independent school district is required to serve without compensation. Educ. Code § 23.19(e). Consequently, the position of school board trustee does not constitute an "office of emolument."

Article II, section 1 of the Texas Constitution, the "separation of powers" article, was employed for a number of years in the mid-1970s as a dual office holding provision. Whether this constitutional declaration has any but the most simple and obvious consequences for dual office holding at the *state* level, for example, a person may not serve simultaneously as governor and supreme court justice, has not been addressed in the intervening years. The doctrine has long since been abandoned for *local* offices, however. See, e.g., Attorney General Opinion JM-519 (1986). Accordingly, it need not trouble us here.

The common-law doctrine of incompatibility also constrains many instances of dual office holding. The original case on the subject in Texas, *Thomas v. Abernathy County Line Indep. School Dist.*, 290 S.W. 152 (Tex. Comm'n App.--1927, judgm't adopted), held that one individual could not simultaneously hold the offices of city alderman and school trustee of a district which had overlapping boundaries with the city. This office has used the "conflicting loyalties" type of incompatibility on many occasions to bar various examples of dual office holding.¹ See, e.g., Attorney General Opinions JM-634 (1987) (offices of city alderman and school district trustee are incompatible); JM-133 (offices of county auditor and city council member are incompatible, where jurisdictional boundaries overlap), JM-129 (1984) (offices of community college trustee and county commissioner, where jurisdictional boundaries overlap, are incompatible).

In Attorney General Letter Opinion No. 90-18 (1990), this office said that incompatibility barred a person from serving both as a city council member and a board member of a water district, where it was indicated that a contract between the two entities was likely. In the situation you pose, the school district is *already* under contract with Smith County for the tax assessor-collector to assess and collect school district taxes. In such an instance, where a contract between two governmental bodies is extant and expected to continue, we believe that the doctrine of incompatibility bars a single individual from serving both. As a result, we conclude that one person may not simultaneously hold the position of county tax assessor-collector and member of the board of trustees of a school district which contracts with the county to assess and collect its taxes.

It is well established that when a person qualifies for and accepts a second office which is incompatible with another office which the person holds, he *ipso facto* relinquishes the first. See Attorney General Opinion JM-133; Attorney General Letter Opinion No. 90-23 (1990). Article XVI, section 65 of the Texas Constitution provides that "automatic resignation" will occur in the first office upon one's becoming a candidate for a second office only if more than one year remains on the unexpired term of the first office. Since you indicate that the tax assessor-collector's *current term* will expire at the end of 1992, he will not automatically

¹The other kind of incompatibility, often deemed "self-employment," prohibits one person from occupying any position which has supervisory authority over another position which he holds. For a classic example, see Attorney General Letter Advisory No. 114 (1975) (individual may not simultaneously hold positions of school board trustee and teacher in same district).

resign the office of tax assessor-collector by becoming a candidate for school board trustee during 1992. We caution, however, that *acceptance* of the office of school board trustee would cause him to automatically resign his position as county tax assessor-collector.

Yours very truly

A handwritten signature in cursive script that reads "Rick Gilpin".

Rick Gilpin
Assistant Attorney General
Opinion Committee

RG/mc

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