



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

October 26, 1993

Honorable Ronald Earle
Travis County District Attorney
P.O. Box 1748
Austin, Texas 78767

Letter Opinion No. 93-96

Re: Whether a district attorney may
simultaneously hold a compensated teaching
position with a state university (ID# 21290)

Dear Mr. Earle:

You request our opinion as to whether a district attorney may simultaneously hold a compensated teaching position with a state university.

Article XVI, section 40 of the Texas Constitution prohibits an individual from holding simultaneously more than one "civil office of emolument." A question virtually identical to the one you pose here was addressed in Letter Opinion No. 90-39 (1990). There, the issue was whether an elected county attorney was authorized to hold a paid, part-time professorship at a state university. The opinion held that, since "a college professor does not hold a civil office of emolument," the general prohibition of article XVI, section 40 was not applicable to the circumstances described. *See Ruiz v. State*, 540 S.W.2d 809 (Tex. Civ. App.--Corpus Christi 1976, no writ); Letter Advisory No. 137 (1977).

Letter Opinion No. 90-39 also noted that a proviso to article XVI, section 40, states that

individuals who receive all or part of their compensation either directly or indirectly from funds of the State of Texas, and who are not state officers, shall not be barred from serving as members of the governing bodies of [various local political subdivisions].

This proviso is applicable, however, "only if the office is that of membership on the governing bodies of school districts, cities, towns, or other local governmental districts." Letter Opinion No. 90-39 concluded that, since "a county attorney is not a member of such a governing body," the referenced proviso "does not prevent a county attorney from being paid as a part-time professor at a state university." The same reasoning compels the conclusion that the proviso to article XVI, section 40 is not applicable to the facts you

describe, and consequently, the Texas Constitution does not bar a district attorney from holding simultaneous employment with a state university.¹

Letter Opinion No. 90-39 additionally declared that

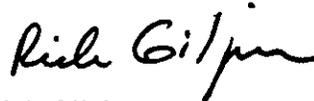
[t]he common law doctrine of incompatibility also acts to prohibit dual office holding in certain instances, even where the Texas Constitution is no bar.

Incompatibility may arise where one position is subordinate to another, or where the holding of the two positions might create "conflicting loyalties." *See* Attorney General Opinion JM-1266 (1990). Under the circumstances you have described, the teaching position is not subordinate to the office of district attorney. Furthermore, we can perceive no possibility of "conflicting loyalties" between the two positions. Accordingly, the common-law doctrine of incompatibility does not bar a district attorney from simultaneously holding a teaching position with a state university.

S U M M A R Y

A district attorney is not prohibited, either by article XVI, section 40, of the Texas Constitution, or by the common-law doctrine of incompatibility, from simultaneously holding a compensated teaching position with a state university.

Yours very truly,



Rick Gilpin
Deputy Chief
Opinion Committee

¹Whether the compensation for the teaching position comes from legislatively appropriated funds is irrelevant.