



Office of the Attorney General
State of Texas

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ATTORNEY GENERAL

June 14, 1996

The Honorable Mark W. Stiles
Chair, Calendars Committee
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78711-2910

Letter Opinion No. 96-064

Re: Whether a member of a city council
or a board of directors of a drainage district
may simultaneously serve as a director of
the Clear Creek Watershed Regional Flood
Control District (ID# 38869)

Dear Representative Stiles:

You have requested our opinion as to whether certain elected officials may simultaneously serve as directors of the Clear Creek Watershed Flood Control District (the "CCWRFCD").

House Bill 3179, Act of May 27, 1995, 74th Leg., R.S., ch. 699, 1995 Tex. Sess. Law Serv. 3696, creates the CCWRFCD, which encompasses land in portions of Harris, Brazoria, Fort Bend, and Galveston counties. The primary purpose of the district is to "develop a flood control and drainage plan . . . for all land in the district, including the main channel and all tributaries of Clear Creek." *Id.* § 8, at 3699. The CCWRFCD is governed by a board of five directors, with two appointed by the Commissioners Court of Harris County, and one each appointed by the commissioners courts of Brazoria, Fort Bend, and Galveston counties. A director "is not entitled to receive compensation for service on the board, but may be reimbursed for actual travel expenses." *Id.* § 4(h), at 3698. The statute further provides:

A commissioners court may not appoint a person as a director unless at the time of appointment the person holds an elective office of a political subdivision in the district other than the office of county commissioner.

Id. § 4(e). You ask whether a member of a city council or a member of the board of directors of a drainage district may simultaneously serve as a director of the CCWRFCD.

Two obstacles exist to the simultaneous holding of two different offices. The constitutional prohibition of article XVI, section 40, proscribes the holding of more than one "office of emolument." Since the position of director of the CCWRFCD is uncompensated, the proscription against dual "offices of emolument" does not apply.

The common-law doctrine of incompatibility may also, in certain instances, prohibit the simultaneous holding of two offices. It is essential to remember, however,

that this is a *common-law* principle. Section 5.001 of the Civil Practice and Remedies Code provides:

The rule of decision in this state consists of those portions of the common law of England that are not inconsistent with the constitution or the laws of this state, the constitution of this state, and the laws of this state.

In the situation you present, the statute itself prescribes the composition of the board, and it limits membership to elected officials of any political subdivision whose geographical boundaries overlap those of the CCWRFCDD. Obviously, in this instance, the statute specifically abrogates the common-law doctrine of incompatibility. See Attorney General Opinion JM-1087 (1989) at 2 (home-rule city's charter may overcome common-law doctrine of incompatibility). We conclude therefore that a member of a city council and a member of the board of directors of a drainage district located in the CCWRFCDD may serve as directors of the CCWRFCDD.

S U M M A R Y

A member of a city council and a member of the board of directors of a drainage district located within the geographical boundaries of the Clear Creek Watershed Regional Flood Control District are not prohibited by the Texas Constitution article XVI, section 40, or the common-law doctrine of incompatibility from serving as directors of the district.

Yours very truly,



Rick Gilpin
Deputy Chief
Opinion Committee