



Office of the Attorney General
State of Texas

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The Honorable Rodney Ellis
Chair, Senate Jurisprudence Committee
Texas State Senate
P.O. Box 12068
Austin, Texas 78711-2068

Letter Opinion No. 98-039

Re: Whether a legislator may employ local
public officials (RQ-1078)

Dear Senator Ellis:

You have requested our opinion as to whether a legislator may employ local public officials.

The first sentence of article XVI, section 40 of the Texas Constitution provides that no person may "hold or exercise at the same time, more than one civil office of emolument." As the supreme court said in *Aldine Independent School District v. Standley*, 280 S.W.2d 578 (Tex. 1955):

the determining factor which distinguishes a public officer from an employee is whether any sovereign function of government is conferred upon the individual to be exercised by him for the benefit of the public largely independent of the control of others.

Clearly, local elected officials hold "offices" under the *Aldine* test. But a legislative *employee* does not hold an office. Attorney General Letter Advisory No. 21 (1973). Thus, the first sentence of article XVI, section 40, does not preclude a legislator from employing local elected officials.

A proviso to article XVI, section 40, states, however:

State employees or other 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 school districts, cities, towns, or other local governmental districts; provided, however, that such State employees or other individuals shall receive no salary for serving as members of such governing bodies.

An employee of the legislature is a "state employee." Consequently, a legislator would be barred by the proviso from employing members of any local governing body in which compensation is attached to the local position, unless the local official renounces the compensation. Letter Opinion No. 95-033 (1995). On the other hand, *County of Maverick v. Ruiz*, 897 S.W.2d 843, 847 (Tex.

App.--San Antonio 1995, no writ), holds that the phrase "other local governmental districts" does not embrace counties. As a result, a legislator may employ a county commissioner without the latter renouncing his salary as commissioner.

The common-law doctrine of incompatibility must also be considered in dealing with matters of dual office-holding. The "conflicting loyalties" aspect of the doctrine is not applicable to the circumstances you describe, because both positions are not "offices." Attorney General Opinion DM-311 (1994). "Self-appointment" is also obviously not applicable. Finally, the "self-employment" aspect of the doctrine of incompatibility does not apply because a legislator, or a legislative committee, has no direct supervisory authority over local elected officials. The latter are accountable only to the voters.

Thus, in answer to your specific questions, you are advised that a legislator may employ, "with full-time compensation and benefits comparable to other legislative and committee staff," all local elected officials, except that those that serve as members of the governing boards of most local governmental districts may not receive a salary for their local service. He may also employ county commissioners and other elected county officials without their having to renounce the salaries attached to their positions. For all such persons, no restrictions on their salary or emolument as state employees arise from the fact that they are local elected officials. We express no opinion as to what, "special budgetary or record keeping arrangements," if any, might be necessary for any such individual "to comply with state laws governing such employment." We suggest you direct those inquiries to the comptroller or the state auditor.

S U M M A R Y

A legislator is not prohibited from employing local elected officials. Legislative employees who are members of the governing boards of most local governmental districts may not receive a salary for their local service, except that county commissioners are not barred from doing so.

Yours very truly,



Rick Gilpin
Deputy Chair
Opinion Committee