



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 19, 1998

The Honorable Tom Maness  
Criminal District Attorney  
Jefferson County  
P.O. Box 2553  
Beaumont, Texas 77704

Letter Opinion No. 98-048

Re: Whether a member of the Pleasure Island  
Commission may be appointed to the Parks Board  
of Jefferson County (RQ-1124)

Dear Mr. Maness:

You have requested our opinion as to whether a member of the Pleasure Island Commission (the "commission") may be appointed to the Parks Board of Jefferson County. You indicate that the Jefferson County Commissioners plan to create a Board of Park Commissioners (the "board"), as authorized by chapter 321 of the Local Government Code. Members of the board are appointed by the county judge with the approval of the commissioners court. Local Gov't Code § 321.021(a). Subsection 321.021(c) provides that "[a] park commissioner may not be an officer or employee of the county or of a municipality in the county." You ask whether a member of the commission may be appointed to the board.

The commission was created by the City of Port Arthur in 1986, pursuant to a 1985 act of the legislature. Act of May 21, 1985, 69th Leg., R.S., ch. 852, § 5, 1985 Tex. Gen. Laws 2954, 2954-58. The Port Arthur city charter provides that the commission is composed of nine members, each position corresponding to the one of the eight city council positions and the mayor. Commission members are "nominated by the respective Councilmember whose position corresponds to the position for which the appointment is made subject to the advice and consent of a majority of the City Council present." City Charter, art. XVIII, § 1. The charter states that "[t]he Commission shall fully manage, control, maintain, operate and develop those lands owned by the City of Port Arthur in and under Sabine Lake and those lands owned by the City of Port Arthur and commonly known as Pleasure Island . . ." *Id.* § 2. The charter further provides that "[t]he Commission shall constitute a body politic and corporate and have all of the powers and authority provided in S.B. 1330, 69th Legis.," subject only to five express limitations.<sup>1</sup>

The statute from which the commission derives its authority confers extensive authority upon that body. The commission may, *inter alia*, 1) manage, control, maintain, and operate the island

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<sup>1</sup>The limitations are: 1) the authority to sell the fee title to any lands is subject to prior approval of the city council; 2) leases shall contain a provision for cancellation upon failure to develop and maintain the property for use; 3) the authority of the Commission over the lands it controls is subject to the police and subdivision powers of the city; 4) the Commission is not authorized to commission peace officers; and 5) the Commission is not authorized to issue any refunding obligations without prior council approval.

property; 2) employ a general manager and other officers, employees, and representatives that the board considers appropriate and fix their duties and compensation; 3) prepare and adopt budgets, fix charges for services and facilities, authorize expenditures, and manage and control the income and revenue of the island property; 4) determine policies and establish rules and procedures for the operation of the island property; 5) acquire property and interests in property to carry out the purposes of this Act and construct improvements and facilities on the property; and 6) contract in its own name, but not in the name of the municipality. Act of May 21, 1985, 69th Leg., R.S., ch. 852, § 5, 1985 Tex. Gen. Laws 2954, 2955.

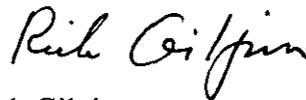
Under the standard promulgated in *Aldine Independent School District v. Standley*, 280 S.W.2d 578, 583 (Tex. 1955), "the determining factor which distinguishes a public officer from an employee is whether any sovereign function of the government is conferred upon the individual to be exercised by him for the benefit of the public largely independent of the control of others." On the basis of the considerable powers vested in the commission both by statute and by city charter, we believe it is clear that a member of that body is an "officer."

Furthermore, we believe that a member of the commission is an officer of the City of Port Arthur. The commission is "created" by the city charter of Port Arthur. Members are appointed by the city council, and they "may be removed for just cause at any time by the majority vote of the City Council present." City Charter, art. XVIII, § 1. The statute that authorizes the commission permits the creating municipality to directly manage and control the "island property" or to vest control in a commission provided for in the charter. The city retains a number of rights over the "island property": 1) prior approval of sales of realty; 2) police and subdivision powers over commission lands; 3) the right to commission peace officers for the "island property"; and 4) the right to prior approval over the issuance of any "refunding obligations." In our opinion, the commission cannot be said to function as a completely independent body. Rather, it may be more properly characterized as an arm of the city. Consequently, its officers are municipal officers, and as a result, a member of the Pleasure Island Commission may not be appointed to the Board of Park Commissioners of Jefferson County.

### S U M M A R Y

A member of the Pleasure Island Commission may not be appointed to the Board of Park Commissioners of Jefferson County.

Yours very truly,



Rick Gilpin  
Deputy Chair  
Opinion Committee