

IO # 14910  
mBJ

Jack Skeen, Jr.  
Criminal District Attorney  
Smith County

SMITH COUNTY COURTHOUSE  
TYLER, TEXAS 75702

AREA CODE 903  
535-0520

RQ-3/8



RECEIVED

FEB 11 92

SMITH COUNTY DISTRICT ATTORNEY

February 6, 1992

Telecopier # (512) 463-2092

CERTIFIED MAIL - RETURN  
RECEIPT REQUESTED  
P 862 232 700

Ms. Madeleine Johnson  
Chair - Opinion Committee  
Attorney General's Office  
P.O. Box 12548  
Austin, Texas 78711-2548

RE: Opinion Request on behalf of the Smith County District  
Attorney's Office.

Dear Opinion Committee:

The Smith County District Attorney's Office recently rendered an opinion to the Smith County Tax Assessor-Collector pursuant to 41.007, Texas Government Code. We are now seeking to have the Opinion Committee consider the same statement of facts and and render its opinion as well.

The statement of facts is as follows: The Smith County Tax Assessor-Collector was elected and sworn in on January 4, 1989. The term of office for the Tax Assessor-Collector is four (4) years with his term ending December 31, 1992. The Tax Assessor-Collector desires to remain in office as the tax assessor-collector and refiled to do so during the filing period of 13/3/91-1/2/92. He is running unopposed for that position which will be voted on in November of 1992. Additionally, the tax assessor-collector is considering becoming a candidate for school board trustee of an independent school district. The filing period for the school board trustee position is 2/17/92-3/18/92; the election for same will be held 5/2/92; the term for same is three (3) years.

Please address the following:

1. Whether this instance of dual office holding is prohibited by Article 16, Section 40 of the Texas Constitution which bars one person from holding two civil offices of emolument?

2. Whether Article 2, Section 1 of the Texas Constitution, the separation of powers provision, would prevent this instance of dual office holding?

3. Whether the common law doctrine of incompatible offices prevents one person from holding both the offices of county tax assessor-collector and school board trustee?

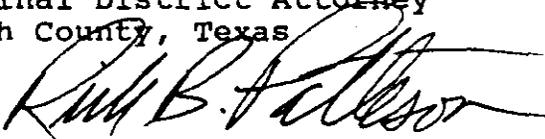
4. Whether pursuant to Article 16, Section 65 of the Texas Constitution, the county tax assessor-collector will automatically resign from the office of assessor and collector of taxes by announcing or in fact becoming a candidate for the office of school board trustee?

Please consider my letter directed to Mr. Harris Oswalt, Smith County Tax Assessor-Collector dated December 30, 1991 as the necessary brief in this instance.

Sincerely,

Jack Skeen, Jr.  
Criminal District Attorney  
Smith County, Texas

BY:

  
Richard B. Patteson  
Asst. District Attorney  
Smith County, Texas