

COUNTY OF DIMMIT



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February 24, 1993

Opinion Committee
Office of the Attorney General
Opinions Committee
Supreme Court Building
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548

FILE # MBJ
RO-00572-DM
19103-93
I.D.# 19103 21229

Attn: Madaline Johnson
Technical Opinion Process

Re: LO-25, Whether a county auditor may also act as the executive director of a non-profit housing corporation

Dear Sirs:

I have been asked by the County Auditor of Dimmit County to request an opinion and I am herewith requesting an opinion from your office as it relates to whether or not the County Auditor of Dimmit County, Texas may also serve as the executive director of a local non-profit housing corporation and whether or not the duties and responsibilities as County Auditor are in conflict with the position of executive director.

FACTS

In November of 1986 the Neighborhood Housing Services of Dimmit County, Inc. (NHSDC) was created. The NHSDC is a section 501 (c)(3) non-profit corporation which provides loans for affordable housing to qualified applicants in Dimmit County for the rehabilitation of existing structures not in compliance with building codes or for the new construction of residential dwellings. Manuel Estrada, Jr. was hired as the executive director of the NHSDC and began receiving a salary set by the board of directors. Board members are elected from the corporate body of NHSDC, serve as volunteers, and are separate and independent from the commissioners court. Also in 1986, the County of Dimmit, Texas (the county) applied for and was awarded an economic development grant through the then Texas Department of Community Affairs (TDCA) for economic

development funds which were loaned to a private business interest called Agri-Tree, Inc. to establish a pecan shelling factory. It is my understanding the principal and interest were to be repaid to the county over a ten year period and the obligation was secured by a note and deed of trust. Under the agreement between the county and TDCA the county was authorized to invest the interest payments from Agri-Tree as they saw fit for economic development purposes. The county, subject to TDCA approval, provided that the interest payment flowing to the county from Agri-Tree were dedicated to the operating budget of the NHSDC. As with usual amortized payments the amount of interest is large at the beginning of the repayment period and diminishes toward the end of the term of the note. Additionally, the county has provided office space to the NHSDC, making a small room in the courthouse available for the corporations use, and the county pays for the telephone and allows the use of the Xerox machine in the County Clerks Office for the benefit of the NHSDC.

It is my understanding from Mr. Estrada that the operating budget of the NHSDC is funded at this time approximately 83% by fees and interest payments generated solely from NHSDC activities and approximately 17% by interest payments from Agri-Tree to the county, plus the in-kind contributions in the form of office space, copies, and telephone from the county.

On January 3, 1989 by order of the District Judges Manuel Estrada, Jr. was appointed County Auditor of Dimmit County and began receiving a salary as County Auditor paid from county funds. Mr. Estrada continues to serve as the executive director of the NHSDC and receives a salary as executive director paid from foundation grants and program income.

Mr. Estrada, as executive director, does render a valuable service to the moderate and low income residents of Dimmit County and the NHSDC through his leadership has been credited with creating a number of permanent jobs and other economic development activities that are ongoing and are desperately needed as Dimmit County ranks among the poorest areas in the state. In my opinion Mr. Estrada is uniquely qualified to administer the NHSDC and his service there is of benefit to the State of Texas.

LAW

As near as I could find the laws addressing this area are found in the Local Government Code, Section 84.007, which requires the county auditor to take an official oath required of all officials and a further oath that he will not become "personally interested in a contract with the county". See also, Op. Tex. Atty. Gen. No. WW-1241 (1962) Auditor's ownership of oil stock in company and bank shares of bank dealing with county prohibited.

Additionally, Article 16, sections 33 and 40 of the Texas Constitution address salary or compensation payments to persons holding more than one office and exceptions to holding more than one office. See, Op. Tex. Atty. Gen. No. LA-65 (1973) The same person may not be a county auditor and also serve as a teacher in an independent school district or serve as a county probation officer. But see, Op. Tex. Atty. Gen. No. LA-78 (1973) The same person may legally hold the office of executive director of the Texas Commission of Indian Affairs, and at the same time occupy the position of executive director of the Alabama-Coushatta Housing Authority, and be paid for both, so long as his holding of the office of executive director of the Alabama-Coushatta Indian Housing Authority is of benefit to the State of Texas, or is required by state or federal law, and there is no conflict between it and his office as executive director of the Texas Commission of Indian Affairs. See also, Op. Tex. Atty. Gen. No. M-813 (1971) The executive director of the community action council is eligible to serve on the governing board of Bee County college, the college board not being a sponsoring agency for the community action council.

Additionally Section 40, Article 16 of the Texas Constitution has language concerning nonelected State officers holding other nonelective offices under the State or the United States, but I do not believe this provision applies under the circumstances. .

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Please provide me with an opinion as it relates to a conflict, if any, which may exist under the facts set out above. In the event a conflict exists please advise possible scenarios in which a conflict could be avoided between the service by Mr. Estrada as the County Auditor and as executive director of the NHSDC. If you have any questions or require additional information please do not hesitate to contact me.

Yours truly



Charles D. Johnson
County Attorney
Dimmit County

xc: Mr. Manuel Estrada, Jr.
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