



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 3, 2022

The Honorable Tom Selleck
Brazoria County Criminal District Attorney
111 East Locust, Suite 408A
Angleton, Texas 77515

Opinion No. KP-0418

Re: Whether a city council member may also serve as a member of the city's reserve police force (RQ-0453-KP)

Dear Mr. Selleck:

On behalf of the City of Freeport ("City"), you ask whether a city council member may also serve as a member of the City's reserve police force.¹ You acknowledge a previous opinion of this office addressed this issue and concluded, "the common law doctrine of incompatibility prohibited an alderman on the city council of a general law city from serving as a member of the city's police reserve." Request Letter at 3 (citing Tex. Att'y Gen. Op. No. JM-0386 (1985) at 3). You suggest the prohibition may not apply here because you believe the City of Freeport Home Rule Charter² ("Charter") gives the city council an attenuated role over the reserve police force. *Id.* at 4 (asking if "the City Council's supervision and other authority over the City Manager and Police Chief [is] enough to confirm that the holding of a city councilmember position and being a police reserve force member meets the common-law doctrine of incompatibility").

The incompatibility doctrine prohibits an officer from holding an employment position over which the officer exercises employment authority.

The common-law incompatibility doctrine prohibits dual public service in cases of self-appointment, self-employment, and conflicting loyalties. Tex. Att'y Gen. Op. No. KP-0265 (2019) at 2. One prong of the doctrine relevant here is self-employment, which precludes an officer from being employed in a position over which the officer has employment authority. *See* Tex. Att'y Gen. Op. No. KP-0172 (2017) at 2. The fundamental consideration under the self-employment aspect of the incompatibility doctrine is the supervision of the subordinate employment by the

¹*See* Letter from Honorable Tom Selleck, Brazoria Cnty. Crim. Dist. Att'y, to Honorable Ken Paxton, Tex. Att'y Gen. at 1 (Apr. 6, 2022), <https://texasattorneygeneral.gov/sites/default/files/request-files/request/2022/RQ0453KP.pdf> ("Request Letter") (explaining that the individual was serving as a member of the City's reserve police force when he was elected to the city council).

²*See* https://library.municode.com/tx/freeport/codes/code_of_ordinances?nodeId=HOME%20RULE%20CHARTER (last visited June 15, 2022).

office. Tex. Att’y Gen. Op. No. GA-0826 (2010) at 2. It is sufficient that the officer is in the direct chain of supervision over the position. *See, e.g.*, Tex. Att’y Gen. Op. Nos. GA-0536 (2007) at 4 (concluding an individual could not serve in the office of city administrator and also as assistant police chief because the city administrator supervised the police chief, who in turn supervised the assistant police chief); GA-0077 (2003) at 2–3 (concluding the director of a water district could not simultaneously serve as a part-time employee of the district where the director had supervisory authority over the general manager, who in turn supervised the part-time employee position); JC-0371 (2001) at 2 (stating that the key element of the rational supporting self-employment incompatibility is the subordination of one position to the other).

The City of Freeport city council exercises employment authority over the City’s police reserve force.

The City of Freeport city council exercises supervisory power over the City’s police reserve force under both the Local Government Code and the Charter. Like its predecessor, Local Government Code section 341.012 gives the city council considerable supervisory authority over members of the police reserve force. *See* Tex. Att’y Gen. Op. No. JM-0386 (1985) at 2 (discussing the predecessor statute to section 341.012). For instance, section 341.012 requires the city council to “establish qualifications and standards of training for members of the reserve force” and authorizes the city council to limit the size of the reserve force. TEX. LOC. GOV’T CODE § 341.012(b), (c). You explain “[t]he City Charter follows Section 341.012 of the Texas Local Government Code relating to the use of a Police Reserve Force.” Request Letter at 2 (citing FREEPORT, TEX., CITY CHARTER §§ 31.15–31.20 (1993)). In addition, you refer to “the City Council’s supervision . . . over the City Manager and Police Chief” under the Charter, which puts the city council in the direct chain of supervision over reserve officers. *Id.* at 3–4 (explaining the police chief’s authority to appoint and remove reserve officers and the city manager’s authority to appoint and remove the police chief).

Because the City of Freeport city council exercises employment authority over reserve officers, the common-law doctrine of incompatibility bars a council member from also serving as a member of the City’s police reserve.

S U M M A R Y

The common-law doctrine of incompatibility bars a councilmember of the City of Freeport from simultaneously serving as a member of the City's police reserve force.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, slightly slanted style.

KEN PAXTON
Attorney General of Texas

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