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OPINION COMMITTEE

Honorable Greg Abbott  
Attorney General of Texas  
Opinions Section  
P. O. Box 12548  
Austin, Texas 78711

RQ-0014-GA

FILE # ML-42965-03  
I.D. # 042965

Re: Request for Attorney General's Opinion

Dear Mr. Abbott:

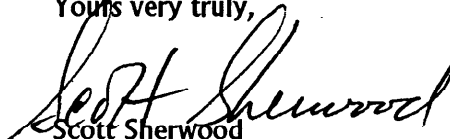
This letter is a request for an opinion regarding several issues involving the City of Skellytown ("the City") and the Skellytown Area Volunteer Firefighters - EMS Association, Inc. ("the Association"). The City Council of the City of Skellytown has requested an opinion regarding the three (3) issues described in the attached Requestor's Brief.

The following documents are attached hereto for additional information:

1. Minutes of Special Council Meeting held on May 3, 2000;
2. Resolution Number 2000-01;
3. Agency Agreement Between City of Skellytown and Skellytown Area Volunteer Firefighters - EMS Association, Inc.;
4. Ratification of Titles, Lease of Facilities and Conveyance of Interest in Realty and Personalty;
5. Articles of Incorporation of Skellytown Area Volunteer Firefighters - EMS Association, Inc.; and
6. By-Laws of Skellytown Area Volunteer Firefighters - EMS Association, Inc.

Thank you for your assistance in this matter. Please contact me if you need additional information.

Yours very truly,

  
Scott Sherwood

cc: City of Skellytown  
P. O. Box 129  
Skellytown, Texas 79080

cc: Mr. James T. Shelton  
City Attorney  
P. O. Box 1370  
Clarendon, Texas 79226-1370

## Requestor's Brief

**ISSUE NO. 1** What are the legal consequences of an individual serving simultaneously on the City Council and Board of Directors of the Association and voting on Resolution 2000-01 and the lease agreement?

### Facts

In May of 2000, D.C. Woods was a member of the City Council serving as Mayor Pro-Term. Mr. Woods was also one of the original members of the Board of Directors and Incorporators of the Association. Mr. Woods seconded and voted for the following motions:

1. Resolution 2000-01 concerning the transfer of existing fire department budget, funds and bank accounts to Skellytown Area Volunteer Fire Fighters - EMS Association, Inc., and ancillary agreements.
2. Lease agreement with Fire Department and City.

### Legal Authorities

The general rule is that one person may not hold two incompatible offices. Two offices are incompatible if their duties are or may be inconsistent or in conflict. Attorney General Opinion No. MW-432 provides that an individual may not serve as both fire chief and city council member of the City of Quitman by virtue of the common law doctrine of incompatibility.

Texas Attorney General Opinion No. JC-0199 addresses the issue of whether a member of the Gilmer Volunteer Fire Department may simultaneously serve on a city council. Said opinion provides that three aspects of incompatibility are self-appointment, self-employment, and complicity loyalties, any one of which is sufficient to bar an individual from serving in two positions at the same time.

Texas Attorney General Opinion No. JC-0385 found that a county commissioner of McCulloch County is not prohibited from simultaneously serving as a member of the Volunteer Fire Department of Lohn, a town located in that county. This opinion distinguishes Texas Attorney General Opinion JC-0199 because the fire department in Gilmer was clearly under the control of the city, was housed on city property, and was led by a chief who must be approved by the city council. The Lohn volunteer fire department was clearly not under the control of the Commissioners Court of McCulloch County.

### Conclusion

The agency agreement between the City and the Association specifically provides the City "has the right to supervise and control the duties and activities of the Volunteer Fire Department performed on behalf of the Governmental Entity." It appears that serving simultaneously as a member of the City Council and on the Board of Directors of the Association is prohibited by

virtue of the common law doctrine of incompatibility. If it is found that D.C. Woods was barred from serving simultaneously on the City Council and the Board of Directors of the Association, what is the legal consequence of his votes on the motions described above?

**ISSUE NO. 2** Could the City legally convey City property to the Association pursuant to the agreements of May, 2000?

**Facts**

Pursuant to the documents signed in May, 2000, the City agreed to relinquish title and possession of equipment and personal property to the Association.

**Legal Authorities**

The Texas Constitution prohibits the transfer of city funds or property to a nonprofit corporation unless the transfer serves a public purpose of the City and the transfer is subject to adequate controls, contractual or otherwise, to ensure that the public purpose is accomplished. Texas Constitution Article III Section 52. Texas Attorney General Opinion No. JC-0439 provided that a county may grant funds to a nonprofit entity to accomplish a statutorily authorized purpose, provides that the county determines the transaction will achieve a public purpose and that adequate controls are placed on the expenditure to ensure that the public purpose is accomplished.

**Conclusion**

It appears that the Agency Agreement between the City and the Association provides that the transfer of City property serves a public purpose of the City and the transfer is subject to adequate controls to ensure that the public purpose is accomplished during the term of the Agency Agreement. However, is the transfer of the City property valid if the Agency Agreement is terminated?

**ISSUE NO. 3** Can the City include a mandatory fee in the water bills to pay for volunteer fire fighting services?

**Facts**

For many years, the City has included a mandatory fee in the water bills to help pay for volunteer fire fighting services. In May, 2000, the mandatory fee included in the monthly water bill was \$1.50 per bill. The Agency Agreement between the City and the Association provides that the City may continue to collect the mandatory fees and deliver funds to the Association.

**Legal Authorities**

Texas Attorney General Opinion No. JM-338 (1985) provides that any fee attached to a utility bill by a general law city, which is not used to cover the expenses of providing utility service for which customer are being billed, is a tax. General law cities, however, possess only those taxing powers that the legislature or the constitution expressly grants them. Vance v. Town of Pleasanion 261 S.W 457, 458 (Tex. Civ. App - San Antonio 1924). Texas Attorney General

Opinion No. JM-338 (1985) concluded that a general law city may not attach a monthly fee on utility bills to finance the police department.

**Conclusion**

It appears that the City can not legally include a mandatory fee in the water bills to pay for volunteer fire fighting services. If the City may not legally collect the mandatory fee, is the provision regarding the collection of said fee in the Agency Agreement void?