



TEXAS COMMISSION ON LAW ENFORCEMENT

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Executive Director

RQ-0163-GA

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OPINION COMMITTEE

January 9, 2004

Honorable Greg Abbott
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

FILE # ML-43425-04
I.D. # 43425

Re: Request for attorney general opinion regarding whether a peace officer may simultaneously hold a commission from more than one law enforcement agency

Attention: Nancy Fuller, Chair, Opinion Committee

Dear General Abbott:

The Texas Commission on Law Enforcement Officer Standards and Education ("Commission") requests your formal opinion on an issue that is frequently brought before the Commission.

As you may be aware, the Commission is the state agency charged by the Legislature through the Occupations Code chapter 1701 with the responsibility for administering the state-wide standards for education, training and conduct of law enforcement officers, including peace officers and county jailers. Under state law, a law enforcement agency (e.g. a police department) may not appoint an officer (i.e. may not employ an individual as a peace officer), unless the individual holds a peace officer license issued by the Commission. TEX. OCC. CODE ANN. § 1701.301.

When a law enforcement agency appoints an individual officer, it is said that the agency *carries the commission* of that officer. From time to time, the Commission receives requests from members of the regulated community (e.g. law enforcement officers, agency administrators) whether an individual licensee whose commission is carried by one law enforcement agency may be simultaneously commissioned by another, different law enforcement agency. In other words, may an individual simultaneously be appointed as a peace officer at more than one law enforcement agency?

We are familiar with various pronouncements by the courts, and by your office, on this question, and similar questions, in the past. For example, in the case of *Irwin v. State*,

177 S.W.2d 970 (Tex. Crim. App. 1944), the court addressed the issue whether the Texas Constitution prevented dual office holding by peace officers. In *Irwin*, the arresting officers were City of Houston municipal police officers, but the arrest occurred outside of the city limits in Harris County. The defendant challenged the officers' jurisdiction to make the arrest and they responded that they were dually commissioned as special deputy sheriffs of Harris County. The court reversed the defendant's conviction on the grounds that Art. 16, § 40 of the Texas Constitution prohibited a person from simultaneously holding the offices of municipal peace officer and deputy sheriff.

Later cases, and opinions of your office appear to have overcome the holding in *Irwin*, on the ground that municipal peace officers have county wide jurisdiction [*see e.g. Angel v. State*, 740 S.W.2d 727 (Tex. Crim. App. 1987)]; and on the ground that a rank and file police officer does not hold an office of civil emolument, and thus does not fall within the prohibition in Art. 16, § 40 of the Texas Constitution [*see e.g. Op. Tex. Att'y Gen. Nos. DM-212* (1993); Letter Opinion 98-035 (1998)].

While it seems clear that under recent law there is not a constitutional problem with the concept of dual office holding for peace officers (at least as far as rank and file officers are concerned), the underlying problem presented by a situation in which an officer is responsible to two different "masters" has not been adequately addressed, at least not recently. Although the common law doctrine of incompatibility was the subject of Op. Tex. Att'y Gen. No. JM-1047 (1989), (concerning whether a justice of the peace may also serve as jailer), the issue has not been analyzed in the context of a peace officer simultaneously appointed by two or more law enforcement agencies.

Under these circumstances, and on behalf of the law enforcement community at large, I am requesting a definitive statement from the Office of the Attorney General regarding whether, under Texas law, an individual may be simultaneously employed as a peace officer (whether or not for pay) at more than one law enforcement agency. Neither the Commission's rules, nor the Texas Occupations Code address this question.

Thank you for your attention to this request. If you or your staff require any additional information, please do not hesitate to contact me or my executive staff.

Sincerely,



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