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HOUSE OF REPRESENTATIVES
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ACTION BY N. FULLER
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The Honorable Greg Abbott
Attorney General of the State of Texas
300 West 15th Street
Austin, Texas 78701

FILE # ML-44047-04

I.D. # 044047

Re: Request for Opinion

Dear General Abbott:

A member of the board of trustees of East Chambers Independent School District was recently elected to the position of sheriff of Chambers County, where the school district is located. On behalf of Rep. Craig Eiland, I am asking your office to render an opinion as to whether the trustee may, given his election to the position of sheriff, serve in both positions.

Prior rulings from your office do not appear to address this precise issue. A 1941 opinion determined that a deputy sheriff could simultaneously hold the office of school trustee of a common school district of the same county. *See*, Op. Tex. Att'y Gen. No. O-3308 (1941). In 1986, your office concluded that the offices of school trustee and constable were not incompatible. Op. Tex. Att'y Gen. No. JM-519 (1986). Although the current situation is similar to the situations considered in these opinions, the district is concerned that more recent interpretations of dual office holding—especially in terms of conflicting loyalties—might lead to a different conclusion.

The office of school trustee is not an office of emolument, since trustees serve without compensation. *See* Tex. Educ. Code § 11.061(d). Consequently, the district does not believe the trustee is prohibited from also serving as sheriff by Article XVI, Section 40, which prohibits persons from holding two civil offices of emolument. There may, however, still be a problem of common-law incompatibility, specifically, the “conflicting loyalties” aspect of this doctrine.

The trustees of an independent school district have the duty to “oversee the management of the district.” *See*, Tex. Educ. Code § 11.051(a). A sheriff is, on the other hand, a “peace officer” as defined by Texas law. *See*, Tex. Code. Crim. Proc. art. 2.12. In this role, it is the sheriff’s duty to “preserve the peace within the officer’s jurisdiction.” *Id.* at art. 2.13. Texas peace officers are, therefore, required to: “(1) interfere without warrant to prevent or suppress crime; (2) execute all lawful process issued to the officer by any magistrate or court; (3) give notice to some magistrate

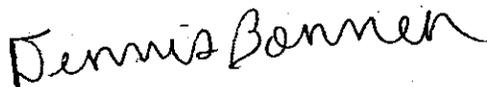
of all offenses committed within the officer's jurisdiction, where the officer has good reason to believe there has been a violation of the penal law; and (4) arrest offenders without warrant in every case where the officer is authorized by law, in order that they may be taken before the proper magistrate and be tried." *Id.*

Because East Chambers ISD is located in an unincorporated area, the sheriff is its primary law enforcement authority in a variety of matters. The sheriff is, for example, the law enforcement official whom the district contacts when a crime is committed on district property, when students are engaged in serious disciplinary misconduct, when it has concerns of child abuse or neglect, etc. On some occasions, the sheriff interacts with school authorities to assess a student disciplinary incident, and the sheriff determines whether to investigate crimes reported by the school district. These are but a few examples of the relationship between the sheriff and the district. Any number of law enforcement issues may arise at public schools throughout the course of the school year.

Additionally, schools and law enforcement are required to communicate with one another regarding certain matters, particularly those involving student discipline and safety. For example, a principal is required to notify the sheriff of the county in which the school is located, if the principal has reasonable grounds to believe that certain activities occur in school, on school property, or at a school-sponsored or school-related activity on or off school property. *See, e.g.,* Code Crim. Proc. art. 15.27(a). Similarly, a law enforcement agency that arrests any person or refers a child to the office or official designated by the juvenile board who the agency knows or believes is enrolled as a student in a public primary or secondary school is required to orally notify the superintendent or designee in the district in which the student is enrolled or believed to be enrolled of that arrest or referral within 24 hours after the arrest or referral is made, or on the next school day. *Id.*

Given that the two offices share overlapping territory and the potential for conflicting loyalties, East Chambers ISD seeks your opinion regarding the legal compatibility of these two offices.

Sincerely,



Dennis Bonnen
District 25

cc: The Honorable Craig Eiland, State Representative