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May 11, 2006

RQ-0485-GA

Office of the Attorney General
Opinions Division
P.O. Box 12548
Austin, Texas 78711-2548

FILE # ML-44800-GA
I.D. # 44800

RE: Request for Attorney General Opinion

Dear Sir/Madam:

The 25th Judicial District Attorney's Office, on behalf of the Lavaca County District Clerk, is requesting an opinion from the Attorney General's Office regarding whether there is a conflict of interest when a paid part-time Lavaca County Deputy Clerk also works part-time for a private practicing attorney, who files cases from his private office with the Lavaca County District Clerk.

Following the holdings in Letter Opinion No. 97-081 (1997) and Letter Opinion No. 98-035 (1998), the district attorney's office believes that such dual employment is not barred by either the Texas constitution or common-law.

Article XVI, § 40, of the Texas Constitution prohibits any person from holding or exercising "more than one civil office of emolument." TEX. CONST. art. XVI § 40. Each county shall have a clerk for the district court. TEX. CONST. art. V § 9. Under Local Government Code section 152.001, a district or county officer who requires the services of deputies, assistants, or clerks in performance of the officer's duties shall apply to the commissioners court of the county

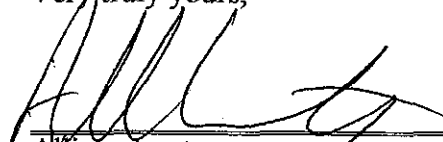
in which the officer serves for authority to appoint the employees. LOCAL GOV'T CODE § 152.001. Under the Texas constitution, the Lavaca County District Clerk is a district or county officer. As an officer, the district clerk has authority to hire employees. Therefore, a deputy district clerk is an employee, not an officer, and exempt from the prohibition of holding more than one civil office of emolument. Further, a private practicing attorney is not a government officer. As a result there is not a conflict of interest, under Texas Constitution Article XVI § 40 when a paid part-time deputy district clerk also works as a paid part-time employee with a private practicing attorney, even though, the private practicing attorney files cases from his private office with the Lavaca County District Court.

Next, the common law doctrine of incompatibility prevents a person from holding two public offices whose duties are inconsistent or in conflict ("conflicting loyalties" incompatibility), or appointing himself to another public entity ("self-appointment" incompatibility) or holding an employment subordinate to his public office ("self-employment" incompatibility). Letter Opinion No. 97-081(1993) at 1. None of these doctrines apply. First, "conflicting loyalties incompatibility" does not apply because the deputy district clerk in question does not hold two public offices. Here the said deputy district clerk merely holds two positions of employment; one being an employee of the district clerk's office, and the second being an employee for a private practicing attorney. Second, "self appointment incompatibility" does not apply because the Lavaca County District Clerk has nothing to do with the appointment or employment of employees in a private attorney's office. Employees of the private attorney serve at the pleasure of the private attorney and not the Lavaca County District Clerk. Third, "self employment incompatibility" is not applicable for two reasons. The first reason is that a

deputy district clerk does not hold an office, but is merely an employee of the office holder. The second reason is that a private attorney is not subordinate to the Lavaca County District Clerk.

In conclusion, under either the Texas constitution or the common law doctrine, there is not a conflict of interest when a paid part-time Lavaca County Deputy Clerk also works part-time for a private practicing attorney who files general cases from his law office with the Lavaca County District Clerk's Office because the laws are not applicable since neither position is a civil office of emolument, the Lavaca County District Clerk does not appoint or employ the work staff in a private attorney's office, and a private attorney's office is not subordinate to the public office of the Lavaca County District Court.

Very truly yours,



Allison Lanty
Assistant District Attorney

cc: Calvin Albrecht
Lavaca County District Clerk