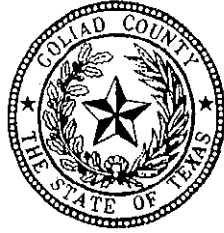


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OCT 30 2006

OPINION COMMITTEE



ROB BAIAMONTE
County Attorney
Goliad County, Texas

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FILE # ML-45042-06
I.D. # 45042

October 23, 2006

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

CERTIFIED MAIL #7003 3110 0005 8156 5663

RQ-0548-GA

Re: *Request for Attorney General Opinion*

Dear Mr. Abbott:

I have been requested to seek an opinion from you whether a constable may be appointed to the Goliad County Groundwater Conservation District without compensation and serve in both offices simultaneously. The facts of our situation are as follows:

The Goliad County Groundwater Conservation District, herein GCGC, was created by the legislature that authorizes it to regulate groundwater issues and levy an ad valorem tax to sustain its existence. The board members are elected and no one filed for a position that will be vacant on January 1, 2007. The board has the authority to appoint to fill that position. A person under consideration for the appointment is one of our constables.

Would holding both positions violate Article XVI, §40 of the Texas Constitution or the Doctrine of Incompatibility?

Your opinion as to this will be greatly appreciated.

Respectfully submitted,

Rob Baiamonte
Goliad County Attorney
P.O. Box 24
Goliad, TX 77963
(361) 645-2184
State Bar No. 01513300

Brief on Dual Office Holding

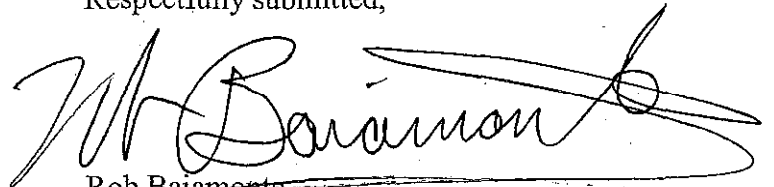
Article XVI, §40 of the Texas Constitution provides that “no person shall hold or exercise at the same time, more than one civil office of enrollment...” Although both positions of constable and board member of the groundwater district constitute “offices” a board member of the groundwater district serves without compensation. Consequently, a groundwater district board member does not hold an “office of enrollment” and Article XVI, §40 would appear not to apply.

The common law Doctrine of Incompatibility, which has three aspects; self appointment, self employment, and conflicting loyalties must be considered. See Texas Attorney General Opinion No. GA-0032(2003) at 4. The first two are not relevant here because both the office of constable and that of board member of the groundwater district are elected positions, and neither officer holder appoints or employs the other.

Therefore, the third aspect, conflicting loyalties, must be examined. The constable’s office is primarily law enforcement and the board member of a groundwater district is primarily administrative. The administrative duties would not overlap the duties of law enforcement and visa versa. The one office would not have a need to turn to or rely on the other. The budget of the constable is not under the control of the groundwater district nor does the groundwater district contribute to the constables’ budget. It would appear there is no conflict of loyalties with the two offices.

Your opinion as to this question is greatly appreciated.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Rob Batamonte", with a large, sweeping flourish at the end.

Rob Batamonte
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