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OPINION COMMITTEE



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RQ-1195-GA

April 3, 2014

Office of the Attorney General
Attention: Opinion Committee
P. O. Box 12548
Austin, TX 78711-2548

By electronic mail submission

Dear Sir:

The following facts, law and questions are submitted for your consideration and with the request that an opinion be rendered.

Authority for the Request

The Juvenile Board for Fisher, Mitchell and Nolan Counties is defined in the Human Resources Code (Each county has its own section. Fisher County is §152.0821, Mitchell County §152.1741, and Nolan County §152.1831). By definition, it includes a County Attorney (currently the attorney from Nolan County) and a County Judge (currently the Judge from Mitchell County). This Opinion Request originated with the Board in regular meeting, and is signed by the Judge and the attorney, both in their positions as county officials and as mandated members of the Board.

Facts

An individual employed by the Juvenile Board as a Juvenile Probation Officer (and not the head of the department) is concurrently a member of the Sweetwater Independent School District Board of Trustees and is its presiding officer.

The Multicounty Court At Law #1 hears truancy cases in Nolan County. The majority of these cases are filed by personnel representing the schools of the Sweetwater Independent School District. The Court has employed a Juvenile Case Manager to assist in the management of this docket.

Questions

- 1) Given the funding provision of the enabling statute, does concurrent employment with the Fisher, Mitchell and Nolan Counties Juvenile Department and service on the Sweetwater Independent School District Board of Trustees constitute a conflict of interest?

- 2) If service as a member of the Board of Trustees does not create such a conflict, does serving as the presiding officer of the Board constitute a conflict?

Law

The Texas Constitution provides:

One person may not occupy two legally incompatible offices. Offices are legally incompatible when the faithful and independent exercise of one would necessarily interfere with the faithful and independent exercise of the other. A person may not serve in one branch of government while exercising any powers properly attached to either of the other branches of government. (Texas Constitution, Art. II, § 1)

The school district may employ a person to serve as a Juvenile Case Manager. (Art. 45.456, Tx Code Crim Proc.) The duties of this individual, as spelled out in the statute include "provide services in cases involving juvenile offenders who are before a court consistent with the court's statutory powers or referred to a court by a school administrator or designee for misconduct that would otherwise be within the court's statutory powers prior to a case being filed, with the consent of the juvenile and the juvenile's parents or guardians." (*supra*, section (a)(1)) The services of a Juvenile Probation Officer are broadly described in the Human Resources Code as, among other things, diversion, counseling and supervision. (§142.001, Tx HR Code) In the event a child is placed on probation by the Court, the Juvenile Probation Officer is charged with monitoring school attendance (§54.043, Tx Fam Code) Arguably, these overlap with the duties of the Juvenile Case Manager who may be appointed by the School Board or the Court

The Legislature has foreseen that a situation could arise in which a Board of Trustees and a Juvenile Board may need to meet to consider their interaction. Pursuant to Section 37.013 of the Education Code, only the President of the Board of Trustees may call such a meeting. Under the facts above, this places the onus on an employee of the Juvenile Board calling on her bosses (the Board) to meet with the group she chairs (the School Board). To make it somewhat stickier, the meeting would concern actions to be taken by the department of which she is a part but not the head.

Funding for the Nolan, Fisher and Mitchell County Juvenile Board is provided from several sources, including the State of Texas through grants, and each of the three counties. The statute for Nolan County provides in part:

(d) The Nolan County Commissioners Court, the Sweetwater City Commission, and the board of trustees of the Sweetwater Independent School District may agree to provide the funds for the salaries of the personnel assigned to Nolan County and the other expenses the board chairman certifies as necessary to provide adequate juvenile services to Nolan County. The commissioners court, city council, and board of trustees shall each provide one-third of the funds.

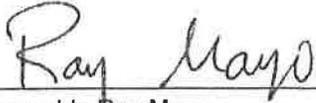
and

(g) The board member appointed by the Sweetwater Independent School District under Subsection (a)(5) may be appointed only if that school district agrees to provide funds for the salaries of the personnel assigned to Nolan County and other expenses the board chairman certifies as necessary to provide adequate juvenile services to Nolan County as provided by Subsection (d). (§152.1831 Tx HR Code)

The Board of Trustees is responsible for setting the annual budget of the School District. (§44.04, TX Educ Code). In addition, it is charged with "(s)eeek(ing) to establish working relationships with other public entities to make effective use of community resources and to serve the needs of public school students in the community." (§11.1511, Tx Educ Code)

Once again, a seemingly awkward situation is created in which the presiding officer of the school board is positioned to provide (or not) funds for both her own salary as well as that of her supervisor and co-workers. The entity for which she is responsible is charged with finding ways to establish a working relationship with her supervisor.

Respectfully submitted,



The Honorable Ray Mayo
Mitchell County Judge
Chair, Fisher, Mitchell and Nolan Counties
Juvenile Board



Lisa L. Peterson
Nolan County Attorney
Secretary, Fisher, Mitchell and Nolan Counties
Juvenile Board