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OPINION COMMITTEE

February 9, 2015

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

Dear Sir or Madam:

Question: Can the Chief of Police for a School District also hold the office of Precinct Constable for the Precinct in which the school district lies?

Facts: School District Chief of Police employed by the District has submitted application to County Commissioners for appointment to vacant Precinct Constable position in same Precinct in which the School District is located.

Brief:

As stated in Attorney Opinion GA-0402, "Article XVI, section 40 of the Texas Constitution states in relevant part that "no person shall hold or exercise at the same time, more than one civil office of emolument..." TEX. CONST. art XVI, §40. The Texas Supreme Court has long held that the "determining factor which distinguishes a public officer from an employee is whether any sovereign function of the government is conferred upon the individual to be exercised by him for the benefit of the public largely independent of the control of others. *Aldine Indep. Sch. Dist. V. Standley*, 280 S.W.2d 578, 583 (Tex. 1995). A constable is an elected official and clearly holds his position largely independent of the control of others." *See* Tex.Att'y Gen. Op. No. GA-0402 (2006) at 1. The Chief of Police for a school district is employed by and serves at the will of the School District. They are certified peace officers who have a sovereign function conferred upon them to be exercised for the benefit of the public; to wit: the students, faculty and citizens of that district. Because the Chief of Police is employed by and at the discretion of the School District and not elected, the position of Chief and position of Constable may be incompatible.

The common law doctrine of incompatibility has three aspects: self-appointment, self-employment, and conflicting loyalties. *See* Tex. Att'y Gen. Op. No. GA-0328 (2005) at 1 citing,

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Thomas v. Aberrathy County Line Independent School District, 290 S.W. 152, 153 (Tex. Comm'n App. 1927, judgm't adopted). The first two do not apply in this situation because neither position appoints or employs the other. Here, conflicting loyalties aspect is the issue.

In a similar situation, when asked if a person appointed chief of police can serve simultaneously as the constable. Texas Attorney General Opinion JM-422 states that, "ordinarily a mere conflict of interest will not make a person legally ineligible for a public office or position, although the existence of such a conflict may make it illegal on occasion for a public office or employee to exercise his public authority. The conflict in an incompatibility situation is not between an officer's private interests and his public duty but rather between two inconsistent public duties". See Tex. Att'y Gen. Op. No. JM-422 (1986) at 1-2, citing Tex. Att'y Gen. Op. No. JM-172 (1984). "A constable is required to exercise independent judgment respecting the proper discharge of his duties, including his responsibility to preserve the peace. He is elected by the citizens of the precinct to discharge his duties independently of the wishes – even if expressed by ordinance- of the governing body of a city located within the precinct. On the other hand, the chief of police of a city is subject to the control of the city council and is duty bound to enforce its ordinances. The two officers are subject to inconsistent duties, making the office incompatible." See Tex. Att'y Gen. Op. No. JM-422 (1986) at 3. Similarly, the chief of police of a school district is subject to the control of the school board and expected to enforce their policies. Therefore, a chief of police for a School District and a constable may be subject to inconsistent duties within the same jurisdictional boundaries, making the offices incompatible.

Thank you for your consideration in this matter.

Sincerely,

A handwritten signature in black ink, appearing to be "AH" with a long horizontal stroke extending to the right.

Anna Hord

Hockley County Attorney