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OPINION COMMITTEE

**RED RIVER COUNTY**  
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FILE # ML-47763-15  
I.D. # 47763

July 7, 2015

**RQ-0036-KP**

**Via First Class U.S. Mail**

The Honorable Ken Paxton  
Office of the Attorney General  
P.O. Box 12548  
Austin, TX 78711-2548

**Re: Request for Opinion Concerning Doctrine of Incompatibility**

Dear General Paxton:

I am writing on behalf of the Clarksville Independent School District (CISD) to seek your opinion regarding the applicability of the doctrine of common law incompatibility to two local offices of government. The common law doctrine of incompatibility prohibits an individual from occupying two government offices that would result in conflicting loyalties to those offices. In this case, an individual seeks to serve as a member of the Board of Trustees of the CISD and as Red River County Sheriff. Does the doctrine of incompatibility prohibit an individual from simultaneously serving in these two offices?

**Factual Summary**

A member of the CISD Board of Trustees has been appointed to fill the vacant office of Red River County Sheriff. The appointment to the office of County Sheriff is effective August 20, 2015.

CISD is an entity created by Chapter 11 of the Texas Education Code charged with educating students within its boundaries; covering both incorporated and unincorporated portions of Red River County. All of the CISD campuses are situated in Clarksville, an incorporated portion of Red River County, Texas. CISD is governed by a board of independently elected trustees. The District is situated within the jurisdiction of both the Clarksville Police Department and the Red River County Sheriff. CISD contracts with the Clarksville Police Department to provide a School Resource Officer (SRO) to CISD, a relationship described in Tex. Occupational Code § 1701.601.

The County Sheriff is an elected position charged with certain law enforcement duties

within the county of jurisdiction, in this case Red River County. The County Sheriff serves as the “conservator of the peace” of the county of jurisdiction and has broad law enforcement powers within the county. TEX. CRIM. PROC. ART. 2.17.

### **Summary of Applicable Authority**

The common law doctrine of incompatibility governs three types of prohibited relationships: self-appointment, self-employment, and conflicting loyalties. Tex. Att’y Gen. Op. No. GA-0328 (2005). Because the issue presented in this instance does not relate to self-employment or appointment, the question is examined under the conflicting-loyalties incompatibility analysis. *See* Tex. Att’y Gen. Op. No. GA-0328 (2005) at 1. The common law doctrine of incompatibility was first announced by Texas courts in the case of *Thomas v. Abernathy County Line Independent School District*, 290 S.W. 152 (Tex. Comm’n App. 1927). That court found the offices of School Board Trustee and City Alderman were incompatible and therefore prohibited. The court explained:

In our opinion the offices of school trustee and alderman are incompatible. For under our system there is in the City Council or Board of Aldermen various directory or supervisory powers exercisable in respect to school property located within the city or town and in respect to the duties of school trustees performable within its limits. E.G., - There might well arise a conflict of discretion or duty in respect to health, quarantine, sanitary, fire-prevention regulations (...) If the same person could be a school trustee and a member of the City Council or Board of Aldermen at the same time school policies, in many important respects, would be subject to direction of the Council or Aldermen instead of to that of the Trustees.

*Thomas v. Abernathy County Line Indep. Sch. Dist.*, 290 S.W. 152, 153 (Tex. Comm’n App. 1927) (internal citations omitted). The question, as outlined by *Thomas*, is whether there is some conflict of discretion or duty that would prohibit one individual from dispensing the duties of either position.

In any incompatibility analysis, factual circumstances are examined and “the crucial question is whether the occupancy of both government offices by the same person is detrimental to the public interest or whether the performance of the duties of one interferes with the performance of those of the other.” *State ex rel. Hill v. Pirtle*, 887 S.W.2d 921, 930 (Tex. Crim. App. 1994). Key to this inquiry is the role that each entity plays in the community and the role of each position within that entity. *See* Tex. Att’y Gen. Op. No. GA-1075 (2014).

In *Turner v. Trinity Independent School District Board of Trustees*, 700 S.W.2d 1 (Tex. Civ. App. – Houston 1983), the Court of Appeals of Texas found the offices of Justice of the Peace and School Board Trustee are not incompatible. The court noted that because neither office is accountable to, or subordinate to the other, and neither has the right to interfere with the other in performance of an official duty, the duties of each position do not overlap.

The Texas Attorney General has issued a number of opinions regarding incompatibility of positions with local entities that have overlapping jurisdiction. In Attorney General Opinion O-3308, the Attorney General found that an individual could serve as both a deputy Sheriff and

as a School Board Trustee in the same county. The opinion states: “we have been unable to find where any of the duties falling upon a holder of each respective office would necessarily be inconsistent with or incompatible with the duties of a person holding the other office.”<sup>1</sup>

The most relevant Attorney General Opinion to our inquiry, Opinion No. GA-0328 (2005), addresses whether an individual may serve as a County Sheriff and a member of the Board of Trustees for a School District located within the same county. In analyzing the facts at hand, the Attorney General found that there was a close, frequent relationship between the school board and the County Sheriff. The school district was located in an unincorporated area and relied on the sheriff to serve as the primary law enforcement official. The relationship was such that the school district and the sheriff’s office interacted frequently, often with regard to student safety and discipline. As a result, the two positions were incompatible.

### **Discussion**

The factual scenario presented today is significantly different from the various situations outlined above. This particular situation and the unique relationship of these two entities has not yet been addressed by courts or the Texas Attorney General. The cases addressing the incompatibility of a school board member and a law enforcement official involve a close working relationship between the two entities – a circumstance not present here. As a result, I am requesting an opinion from your office.

The Red River County Sheriff is a law enforcement official charged with the enforcement of laws within its jurisdiction. The Sheriff has broad law enforcement power, and can enforce the laws of the county anywhere within the county, including incorporated areas with independent police forces, such as Clarksville. Tex. Att’y Gen. Op. No. JC-0125 (1999). Furthermore, the Sheriff has exclusive jurisdiction over the unincorporated areas within the CISD boundaries.

The CISD is governed by an elected Board of Trustees that is charged with the operation of the school district. The District taxes within its jurisdiction for the purpose of providing an education to all students residing within its boundaries.

These entities lack overlapping responsibilities or duties. Both offices operate in different political spheres. As the court focused on in *Turner*, neither office is subordinate to the other and neither office can impose its policies on the other. Furthermore, neither office has the right to interfere with the other’s official duty. The County Sheriff does not operate on the CISD campus in any official capacity. Any reports of criminal activity are handled through the School Resource Officer; this is true regardless of the jurisdiction of the Clarksville Police or County Sheriff. If the Resource Officer determines that charges should be filed, the case is referred to the Clarksville Police Department. CISD and the Clarksville Police Department have a mutual understanding that the Clarksville Police Department will serve as the primary point of contact.

Inevitably, some of the issues that arise on school district property may require the intervention of law enforcement officials. That being said, the County Sheriff is not the primary law enforcement contact for CISD. Unlike the relationship of the positions presented in Texas Attorney General Op. No. GA-0328 (2005), there is very little interaction between the Red River

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<sup>1</sup> Please note this opinion was overruled to the extent it conflicted with Tex. Att’y Gen. Op. No GA-0328 (2005).

County Sheriff's Office and CISD. CISD facilities are situated within an incorporated part of the County that operates its own municipal police force, the Clarksville Police Department. This police department provides the District with its School Resource Officer, even though the District boundaries also encompass unincorporated portions of Red River County. The Clarksville Police Department – not the Sheriff—is the primary law enforcement contact for the School District. While the Sheriff has the discretion to provide law enforcement services and support within its county, including incorporated areas, in this case the Sheriff has deferred to the Clarksville Police Department to provide law enforcement services to the School District. In other words, the Clarksville Police Department serves as the primary law enforcement agency as a matter of fact, even if the Sheriff has an equal right to enforce as a matter of law.

Because of the unique circumstances presented in this case, we are formally requesting an opinion from your office on the legal issues presented. Thank you for your time and attention to this request.

Sincerely,



Val Varley  
Red River County and District Attorney

