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OPINION COMMITTEE



RODNEY W. ANDERSON
COUNTY ATTORNEY
BRAZOS COUNTY, TEXAS

FILE # ML-48016-16
I.D. # 48016

TELEPHONE (979) 361-4300
FAX (979) 361-4357

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BRAZOS COUNTY COURTHOUSE
300 E. 26th ST., STE. 1300
BRYAN, TEXAS 77803-5359

RQ-0108-KP

The Honorable Ken Paxton
Office of the Attorney General
Attn: Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

Re: The effect of Texas Education Code §130.0827 on the doctrine of incompatibility and the dual office holding by a Blinn College Board of Trustee Member appointed by the Brazos County Commissioners' Court and a Brazos County Commissioner elect.

Dear Attorney General Paxton and Opinion Committee:

On behalf of the Brazos County Commissioners' Court, the Brazos County Attorney requests the opinion of the Texas Attorney General regarding the common law doctrine of incompatibility and the constitutional provision of dual office holding as it pertains to a County Commissioner elect and the Blinn College Board of Trustees.

Background:

Prior to the recent legislative session (84R) seven (7) members served on the Blinn College Board of Trustees. While Blinn College has four (4) district campuses and its service areas include Austin, Burleson, Brazos, Madison, Grimes, Waller, and Washington counties, all seven (7) members on the current Blinn College Board of Trustees were from Washington County. The former board make-up created a situation where Blinn's largest campus, Bryan, which contributes millions of dollars in tuition-based revenue and has more than five (5) times as many students as the next largest campus, had no representation on the Board. H.B. 2621 (attached as Exhibit "A" along with the bill analysis "B") added to the Blinn College Board of Trustees two (2) members appointed by the commissioners' court of each county with a branch campus of the district with a student enrollment of greater than 10,000. These new board members may participate in any of the board's decision-making processes except for those related to the imposition of taxes or the distribution of revenue related to the imposition of taxes.

The Brazos County Commissioners' Court recently appointed two (2) trustees under this legislation. One of those trustees became the Republican nominee for

Brazos County Commissioner, Precinct 3, and is unopposed in the upcoming general election; she will take office as a Brazos County Commissioner on January 1, 2017. A prior Attorney General opinion, JM-129, dealt with a similar situation and concluded that the common law doctrine of incompatibility prohibits dual service. However, the language of Texas Education Code §130.0827 could present a changed circumstance.

The Attorney General was asked in JM-129 if a member of a Board of Trustees governed by section 130.082 (dealing with junior colleges) of the Texas Education Code, may serve simultaneously as a county commissioner. Attorney General Jim Maddox concluded that the offices of junior college trustee and county commissioner were incompatible based upon the common law doctrine of incompatibility, which prevents one (1) person from accepting two (2) offices where one (1) office might thereby impose its policies on the other or subject it to control in some other way. See *Thomas v. Abernathy County Line Independent School District*, 290 S.W. 152 (Tex.Comm.App.1927); *State v. Martin*, 51 S.W.2d 815 (Tex.Civ.App.--San Antonio 1932, no writ). Compare Letter Advisory No. 114 (1975) with Letter Advisory No. 149 (1977). Applying the law, the Attorney General considered three (3) circumstances where policies or controls might be subject one office to another: taxing authority (131.121), designation of roads (2.04), and coterminous boundaries. JM-129. However, the trustee position in the current request differs from the illustration in JM-129 in terms of taxation and boundaries.

Although Brazos County contains a Blinn Campus that lies wholly within the City of Bryan, the Blinn College district exerts its taxing authority in Washington County. Additionally, Texas Government Code §130.0827 withholds any oversight over taxation from the Brazos County appointee to the Blinn Board.

The common-law doctrine of incompatibility has three aspects: self-appointment, self-employment, and conflicting loyalties. See Tex. Att'y Gen. Op. No. GA-0032 (2003) at 4. Incompatibility due to conflicting loyalties was first recognized by a Texas court in *Thomas v. Abernathy County Line Independent School District*, 290 S.W. 152 (Tex. Comm'n App. 1927, judgm't adopted), in which the court declared:

In our opinion the offices of school trustee and alderman are incompatible; for under our system there are 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 trustee performable within its limits--e.g., there might well arise a conflict of discretion or duty in respect to health, quarantine, sanitary, and 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.

The duties of a county commissioner are reflected in our state's constitution, Chapter 81 of the Local Government Code, and various statutes that empower or limit the

commissioners' court to act. Importantly, a single county commissioner cannot act, it is the body, commissioners' court, which acts according to the powers and duties assigned to it. Commissioners Courts exercise policy-making authority. Individually, they represent one of four precincts within the county and are typically responsible for building and maintaining county roads and bridges within their precinct. The Commissioners Court, as a body, conducts the general business of the county and consists of the County Judge and the four Commissioners. The Court adopts the county's budget and tax rate, approves all budgeted purchases of the county, fills vacancies in elective and appointive offices, sets all salaries and benefits, has exclusive authority to authorize contracts, and, provides and maintains all county buildings and facilities.

The powers and duties of the Blinn College Board of Trustees is found at Texas Education Code Sec. 130.084.

POWERS AND DUTIES. (a) The governing board of a junior college district shall be governed in the establishment, management, and control of a public junior college in the district by the general law governing the establishment, management, and control of independent school districts insofar as the general law is applicable.

(b) The governing board of a junior college district may set and collect with respect to a public junior college in the district any amount of tuition, rentals, rates, charges, or fees the board considers necessary for the efficient operation of the college, except that a tuition rate set under this subsection must satisfy the requirements of Section 54.051(n). The governing board may set a different tuition rate for each program, course, or course level offered by the college, including a program, course, or course level to which a provision of Section 54.051 applies, as the governing board considers appropriate to reflect course costs or to promote efficiency or another rational purpose.

It is clear that Texas Education Code §130.0827 has limited the general duties of a junior college trustee as it pertains to a Blinn College Board of Trustee Member appointed by the Brazos County Commissioners' Court. That statute's effect on the doctrine of incompatibility and the reasoning of JM-129 should be determined by the Office of the Attorney General.

Sincerely,



Rodney W. Anderson
Brazos County Attorney