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NUECES COUNTY COURTHOUSE  
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**RQ-0534-KP**

February 29, 2024

**VIA CERTIFIED MAIL RRR**

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

**RE: Request for Attorney General Opinion**

Dear Attorney General Paxton:

On behalf of the Nueces County Commissioners' Court, the Nueces County Attorney requests the opinion of the Texas Attorney General. The question relates to the application of the common law doctrine of incompatibility where a specific member (the "**Applicable NCHD Board Member**") of the Nueces County Hospital District ("**NCHD**") Board of Managers ("**NCHD Board**") simultaneously serves as a member of the NCHD Board and as a member of the Corpus Christi Regional Transit Authority ("**CCRTA**") Board of Directors ("**CCRTA Board**"). The Applicable NCHD Board member was initially sworn in as an NCHD Board member and then subsequently sworn in as CCRTA Board member.

The OAG has addressed many aspects of the doctrine of incompatibility; however, they OAG has never addressed the issue presented here which may the simultaneous service on two boards.

**I. QUESTION:**

Whether simultaneously holding board positions for the hospital district and the regional transportation authority runs afoul of the common law doctrine of incompatibility when the NCHD 1) does not directly impose ad valorem taxes in Nueces County independently of the Nueces County Commissioners Court, and 2) may only assess a sales and use taxes with the Commissioners Court's approval<sup>1</sup> but only in order to reduce the ad valorem taxes.

<sup>1</sup> Tex. Const. Art. 9, § 4 (permitting the Texas legislature to authorize certain countywide hospital districts "to levy a tax not to exceed seventy-five (\$.75) cents on the One-Hundred (\$100.00) Dollars valuation of all table property within the district ...")

## II. BACKGROUND:

### 1. Background Regarding Question

The issue of whether the NCHD and the CCRTA both have taxing authority within the same overlapping jurisdiction (i.e., Nueces County) merits careful attention, particularly since the OAG has repeatedly opined that a person's simultaneous holding of two public offices with overlapping taxing authority creates an insurmountable conflict under the common law doctrine of incompatibility. *See* Op. Tex. Att'y Gen. No. GA-0014 (2003) (*citing* Op. Att'y Gen. No. JC-0557 (2002)). The stated basis for this determination is that “[w]here the object of each district is to maximize its own revenues, a single individual would have great difficulty in exercising his duties to two separate and competing masters.” Op. Att'y Gen. No. JC-0557 (2002).

Whether the NCHD would be construed as having taxing authority such that common law incompatibility would apply herein is nuanced. While the Texas Constitution grants the Texas Legislature authority to enact legislation permitting certain county-wide hospital districts like NCHD to levy ad valorem taxes,<sup>2</sup> the Nueces County Commissioners Court must either accept or reject the request by NCHD.

Section 281.096(b) of the Texas Health & Safety Code provides that “[t]he board of the hospital district may not exercise a power granted by Subsection (a) to the commissioners court with respect to the imposition or collection of an ad valorem tax imposed for the benefit of the hospital district. The 14<sup>th</sup> District Court of Appeals has suggested that Section 281.096 means that “Commissioners Court has the sole authority to levy and collect taxes to support the Hospital District.”<sup>3</sup> Based on the above, it does not appear that NCHD, which is governed by Section 281.096, would be construed as having direct ad valorem taxing authority.

We are unable to locate any Texas cases or OAG opinions that draw a distinction for incompatibility purposes where one of the entities has direct taxing authority within the overlapping jurisdiction (e.g., CCRTA) and the other entity has only indirect taxing authority in the overlapping jurisdiction (e.g., NCHD).

Here the difference may be substantive, and that is why the Nueces County Commissioners Court asks the Attorney General to review and provide an opinion in response to this issue. CCRTA and NCHD have direct or indirect authority to impose two different types of taxes (i.e., sales and use taxes in the case of CCRTA and ad valorem taxes in the case of NCHD), such that the actual conflict may not be present in this situation. If the entities are not actually in competition with each other for the same source of tax revenue and because one of the entities does not have direct taxing authority, then the OAG could arguably conclude that this distinction does matter and that the entities' overlapping taxing authority within the same jurisdiction does not always lead to insurmountable incompatibility. *But see* Op. Tex. Att'y Gen. No. KP-0125 (2017)

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<sup>2</sup> Tex. Const. Art. 9, § 4 (permitting the Texas legislature to authorize certain countywide hospital districts “to levy a tax not to exceed seventy-five (\$.75) cents on the One-Hundred (\$100.00) Dollars valuation of all table property within the district ...”),

<sup>3</sup> *Harris Cty. Hosp. Dist. v. Tetac Partners I*, 257 S.W.3d 303 n.13 (Tex. App.—Houston [14th] Dist. 2008).

(finding that “to the extent the District's sales and use taxation authority differs from the City's ad valorem property taxation authority, this office previously dismissed such a distinction in this context.”); Op. Tex. Att’y Gen. No. GA-0307 (2005) (concluding that an individual’s simultaneous service to two entities with differing types of taxing authority was incompatible).

## 2. *Relevant Law Regarding Common Law Incompatibility*

Texas common law doctrine of incompatibility pertains to the holding of two public offices and comprises three aspects: (1) self-appointment, (2) self-employment, and (3) conflicting loyalties. *Tex. Att’y Gen. Op. No. JC-0564* (2002) at 1. Conflicting loyalties, arises when the interests of the two entities may conflict and when voting on behalf of one public entity may impact the interests of the other public entity. *Id.*

It is not contested that both NCHD Board member and CCRTA Board member positions are public offices. Thus, to determine whether the two public offices give rise to conflicting loyalties incompatibility, it is necessary to analyze “whether the occupancy of both 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).

According to case law and OAG opinions, (i) if the geographic boundaries of the two public entities overlap, “there is at least a potential for conflicting loyalties[;]” (ii) if two public entities have the right to contract with each other, “there probably exist sufficient potential conflicting loyalties to render the two positions incompatible[;]” and (iii) if the two public entities both exercise taxing authority, “the potential for conflict is probably insurmountable.” *See Op. Tex. Att’y Gen. No. JM-1266* (1990) (citations omitted). While both entities having eminent domain authority in the same overlapping may be a factor in determining whether two public offices are incompatible, the OAG has not concluded that possessing the power of eminent domain is dispositive. (Tex. Att’y Gen. Op. No. GA-0786 (2010) at 5).

## 3. *The NCHD*

The NCHD is a political subdivision of the State of Texas,<sup>4</sup> created pursuant to Article IX, Section 4 of the Texas Constitution on July 18, 1967. The NCHD’s enabling statute is Section 281.002 of the Texas Health and Safety Code, and it is fully responsible for providing medical and hospital care of the needy residents of Nueces County. The NCHD is composed of seven board members who are appointed by the Nueces County Commissioners.

The NCHD and its board have broad powers. Section 281.047 of the Texas Health and Safety Code states that the “board shall manage, control, and administer the hospital or hospital system of the district.” Section 281.048 states, “the board may adopt rules governing the operation of the hospital or hospital system.” The NCHD also has contracting authority and is permitted to contract,

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<sup>4</sup> *See Quinn v. Mem’l Med. Ctr.*, 764 S.W.2d 915, 917 (Tex. App.—Corpus Christi—Edinburg 1989, no writ) (“The Nueces County Hospital District, doing business as Memorial Medical Center, is a political subdivision of the State of Texas. *Salcedo v. El Paso Hospital District*, 659 S.W.2d 30, 31 (Tex. 1983); *Sharpe v. Memorial Hospital of Galveston County*, 743 S.W.2d 717, 718 (Tex.App.—Houston [1st Dist.] 1987, no writ).”)

collaborate, or enter into joint ventures with other governmental entities in the performance of its duties.<sup>5</sup> Additionally, the NCHD has eminent domain authority in Nueces County “to acquire any interest in real, personal, or mixed property located in the district if the property interest is necessary or convenient for the exercise of the rights or authority conferred on the district by this chapter.”<sup>6</sup>

#### 4. *The CCRTA.*

The CCRTA was established on August 10, 1985, by public vote to provide quality, accessible and affordable transportation to Nueces County and San Patricio County.<sup>7</sup> It is a political subdivision of the State of Texas,<sup>8</sup> and it is an “Authority” defined as a “rapid transit authority created under this chapter or under Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973.”<sup>9</sup>

The CCRTA Board consists of eleven appointed individuals from the City of Corpus Christi (five appointed members), Nueces County (three appointed members), Small Cities Committee of Mayors (two appointed members), and the Board Chair (Board-appointed).<sup>10</sup>

The CCRTA and its board have broad powers. Section 2.02 of the bylaws of the CCRTA state that “the property and business of the Authority shall be managed by the Board of Directors which may exercise all powers of the Authority and do all lawful acts. [Sec. 451.101].”<sup>11</sup> Chapter 451 of the Texas Transportation Code permits the CCRTA to “contract with any person.”<sup>12</sup> While the CCRTA and the NCIID may be able to contract with one another, we find no written evidence of a contract between the two in recent memory. Under Section 451.058 of the Texas Transportation Code, the CCRTA “may acquire by eminent domain any interest in real property, including a fee simple interest and the use of air or subsurface space” including in Nueces County. Under Section 451.363 of the Texas Transportation Code, the CCRTA “may impose any kind of tax except ad valorem taxes,” and the CCRTA imposes a sales and use tax within its jurisdiction in Nueces County.<sup>13</sup>

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<sup>5</sup> See Tex. Health & Safety Code §§ 281.051 and 285.091; Tex. Gov’t Code § 791.011.

<sup>6</sup> Tex. Health & Safety § 281.054.

<sup>7</sup> See Ordinance No. 18285 in accordance with Art. 1118x, V.A.C.S.

<sup>8</sup> Tex. Transp. Code Ann. § 451.052 states, “(c) An authority is a governmental unit under Chapter 101, Civil Practice and Remedies Code, and the operations of the authority are not proprietary functions for any purpose, including the application of Chapter 101, Civil Practice and Remedies Code.”

<sup>9</sup> 451.001 2 a

<sup>10</sup> <https://www.ccrta.org/board-of-directors/>

<sup>11</sup> <https://www.ccrta.org/wp-content/uploads/2024/01/CCRTA-Bylaws-08022023-1.pdf>

<sup>12</sup> Tex. Transp. Code § 451.055.

<sup>13</sup> See CCRTA FY2023 Operating and Capital Budget, available at <https://www.ccrta.org/wpcontent/uploads/2022/10/Proposed-FY2023-Operating-Capital-Budget.pdf> (identifying sales tax revenue of \$37,509,003).

#### **IV. Conclusion**

We seek clarity whether a person may simultaneously serve as a board member of the NCHD and the CCRTA. An opinion addressing these particular issues would be appreciated as soon as it may be obtained as it is an issue of great importance to the citizens of Nueces County.

Thank you for your consideration of this issue.

Respectfully submitted,

A handwritten signature in black ink, consisting of several large, overlapping loops and a long horizontal stroke extending to the right.

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Jenny P. Dorsey  
NUECES COUNTY ATTORNEY