



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 15, 1992

Honorable Michael J. Guarino
Criminal District Attorney
Galveston County
405 County Courthouse
Galveston, Texas 77550

Letter Opinion No. 92-10

Re: Whether a county commissioner
may serve as a trustee of a school
district (RQ-129)

Dear Mr. Guarino:

You ask whether a Galveston County Commissioner may serve as a trustee of the Texas City Independent School District, which is located in Galveston County. The common-law doctrine of incompatibility prohibits one person from holding two offices where one office might impose its policies on the other or subject it to control in some other way. Attorney General Opinion JM-129 (1984); *see Thomas v. Abernathy County Line Indep. School Dist.*, 290 S.W. 152 (Tex. Comm'n App. 1927); *State ex rel. Brennan v. Martin*, 51 S.W.2d 815 (Tex. Civ. App.--San Antonio 1932, no writ).

Attorney General Opinion JM-129 held that the doctrine of incompatibility prevented a member of a board of trustees of a community college from serving as a county commissioner. *See also* Letter Opinion No. 88-132 (1988) (holding that the reasoning of Attorney General Opinion JM-129 applied to service as a member of a board of trustees of a school district and as a county commissioner). This opinion first cited section 130.121 of the Education Code, which authorizes a junior college district to have its taxable property assessed and its taxes collected by the county tax assessor-collector, and stated that the interests of the county and junior college might conflict over the exercise of this authority.

In addressing a question of incompatibility between the office of school trustee and the office of county commissioner, we would ordinarily consider whether any conflicts arose from statutes governing the taxing power of each district. School districts are, however, presently subject to a statute that places taxing authority in county education districts. Educ. Code chs. 16, 20, § 20.942, 20.945; *see Carrollton-Farmers Branch Indep. School Dist. v. Edgewood Indep. School Dist.*, 35 Tex. Sup. Ct.

J. 374 (Jan. 30, 1992). This possible ground of incompatibility does not exist at present. Future legislation on taxation by school districts should be examined to determine whether it gives rise to an incompatibility between the two offices.

Attorney General Opinion JM-129 also noted that section 2.04 of the Education Code could create an incompatibility between the two offices. This statute provides in part:

No public road shall be opened across land owned and used by any school district . . . without the consent of the . . . trustees of that institution and approval of the governor, unless the land is subject to sale under the general laws of Texas. The roads already opened across such land may be closed by the authorities in charge whenever they deem it necessary to protect the interest of the institution

Educ. Code § 2.04.

Attorney General Opinion JM-129 stated that the authority of the junior college district under section 2.04 of the Education Code might conflict with the authority of the commissioners court to construct and improve roads. *See generally* V.T.C.S. art. 6702-1. However, an incompatibility of office will arise only if the Texas City Independent School District owns and uses lands that are subject to the road-building authority of the Galveston County Commissioners Court. Thus, whether there is incompatibility as to road building cannot be answered solely by consulting the statutes. Facts as to the location of school district property are also relevant. *See generally Thomas*, 20 S.W. at 152 (fact that school district owned property within city limits was relevant to determining that office of school trustee was incompatible with office of city alderman). We do not know the relevant facts in this case and therefore cannot resolve this question. Presumably you will have access to the facts and will be able to apply the law we have stated to the facts to determine whether incompatibility arises from the authority of each entity with respect to roads built through school district property

You have raised no other possible basis of incompatibility, nor are we aware of any.

S U M M A R Y

At present, there are no conflicts as to taxing authority between the offices of county commissioner and trustee of a school district that would render the offices incompatible. Future legislation on taxation by school districts should be examined to determine whether it gives rise to a common law incompatibility between the two offices. Whether the authority of the school board under section 2.04 of the Education Code creates an incompatibility between the two offices depends on facts as to the location of land owned and used by the school district.

Very truly yours,

A handwritten signature in cursive script that reads "Susan Garrison".

Susan Garrison
Assistant Attorney General
Opinion Committee