



# Criminal District Attorney

## Calhoun County, Texas



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Investigator

SARA A. BILL  
Victim Assistance Coordinator

DAN W. HEARD RECEIVED

Criminal District Attorney

SHANNON E. SALYER  
Assistant Criminal District Attorney

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Assistant Criminal District Attorney

PAT BROWN NOLAND  
Assistant Criminal District Attorney

August 5, 2005

**RD-0373-GA**

AUG 09 2005

OPINION COMMITTEE  
FILE # ML-44310-05

I.D. # 44310

Attorney General of Texas  
Attn: Opinions Committee

Re: Request for opinion as to whether a substitute teacher is exempt from the dual office holding prohibition of Texas Constitution Article XVI

The city attorney of Port Lavaca has asked me to seek an opinion as to whether a substitute teacher can serve on a city council and receive payment for the council position and not violate the dual office holding prohibition of Texas Constitution Article XVI.

Specifically I ask whether a substitute teacher for an independent school district may receive a salary from service as a city councilman. I attach as Exhibit A Letter of Reasonable Assurance setting out the arrangement between the substitute teacher and the school district. Mr. Barr is an elected member of the Port Lavaca city council and is also employed from time to time as a substitute teacher by the Calhoun County Independent School District. Mr. Barr has not accepted pay from his city council position due to concern about whether he, as a substitute teacher—rather than a full time, contracted certified teacher, is exempted from the constitutional prohibition. Exhibit A also covers work as a substitute paraprofessional, but I am not asking about whether a paraprofessional, whether full time or substitute, can receive a salary from serving on city council.

There would seem to be no common law incompatibility between the position of substitute teacher and city councilman. It seems to me that all teachers, whether substitute or full time with a contract, are allowed to also receive a salary pursuant to Article XVI, section 40(b) (1) which exempts school teachers from the prohibition of Article XVI as follows:

“...a schoolteacher, retired schoolteacher, or retired administrator may receive compensation for serving as a member of a governing body of a school district, city, town, or local governmental district, including a water district....”

Accordingly unless the schoolteacher exemption is limited to only full time contractual schoolteachers, then a substitute or part time teacher, whether a certified teacher or not, should be exempted from the prohibition of dual office holding. I would appreciate your help with an opinion about this.

Very truly yours,

Dan W. Heard

**CALHOUN COUNTY ISD**

**029901**

**PERSONNEL POSITIONS:  
LETTER OF REASONABLE ASSURANCE**

**DPB (e-4.01)  
(EXHIBIT)**

**LETTER OF REASONABLE ASSURANCE**

TO: All Non-Contractual and Substitute Employees

DATE: April 14, 2003

Please accept this letter as means of informing you of reasonable assurance of employment when each school term resumes after a school break. By virtue of this notice, please understand that you may not be eligible for unemployment compensation benefits drawn on school district wages during any scheduled breaks including, but not limited to, the summer, Christmas, and spring breaks. This assurance is contingent on continued school operations and will not apply in the event of any disruption that is beyond the control of the district (i.e. lack of school funding, natural disaster, court orders, public insurrections, and/or war).

Nothing contained herein implies an employment contract. Your continued employment is on an at-will basis. Employers may terminate at-will employees at any time for any reason or for no reason, except for legally impermissible reasons, and at-will employees are free to resign at any time for any reason or for no reason.

Your service on behalf of the children in the district is appreciated and we hope that you will be able to continue your association with the district during the 2003-2004 school year.

*Larry W. Nichols*  
Larry W. Nichols, Superintendent of Schools

NOTICE: **KEEP ONE COPY  
RETURN SECOND COPY  
DO NOT CUT — RETURN ENTIRE PAGE**

Please complete the following information and return the original letter to the Personnel Office, Calhoun Co. ISD, 525 N. Commerce St., Port Lavaca, TX 77979 by May 14, 2003. (Failure to sign and return this notice by the date listed will be viewed as a resignation.)

I would like to retain my status as a CCISD employee. I agree to comply with the rules, regulations, and policies of Calhoun County Independent School District.  
(SUBSTITUTE ONLY: I will be available to work beginning *8-7-03*.)

I will be available to serve as a substitute at all campuses except *elementary schools.*

**Please check the position which is applicable to you.**


**SUBSTITUTE:**     Cafeteria     Maintenance/Custodian     Respite Prog.  
                          Paraprofessional     Teacher     Transportation

**NON-CONTRACTUAL:**     Cafeteria     Maintenance/Custodian     Respite Prog.  
                          Paraprofessional     Teacher     Transportation

*Kenneth R. Barr*  
Name (Print)

*7-1-03*  
Date

*Kenneth Barr*  
Signature

  
Social Security Number

*313 Willow Bend P. Lavaca 77979*  
Address (Street/P.O. Box) & City                      Zip Code

*361 552-6948*  
Telephone Number

**EXHIBIT "A"**