

CHIEF ASSISTANT DISTRICT ATTORNEY  
MARISELA SALINAS JACAMAN

DEPUTY CHIEF ASSISTANT DISTRICT ATTORNEY  
PEDRO J. GARZA, JR.

LINDA GARZA-MARTINEZ  
SERGIO LOZANO  
MELINDA VIDAURRI-GALVAN  
PEDRO A. GUAJARDO  
JORGE L. TREVINO, JR.  
EDWARD A. NOLEN  
ABUNDIO RENE CANTU  
RAUL GUERRA  
URIEL DRUKER  
LORRAINE M. LAUREL  
SARA A. MARTINEZ  
RODERICK C. LOPEZ  
PAUL THOMSON  
CLARISSA G.G. CANALES  
R. BRENDA ANDERSON  
CLAUDIA SANDOVAL  
V. MELISSA SALDANA  
RAMON A. VILLAFRANCA, JR.  
ALEJANDRA C. SOLIS  
CARLOS QUEZADA

**ISIDRO R. ALANIZ**  
DISTRICT ATTORNEY  
49TH JUDICIAL DISTRICT

CHIEF INVESTIGATOR  
O. J. HALE

DEPUTY CHIEF INVESTIGATOR  
RICARDO MENDEZ

RICARDO ROMO  
ARTURO MUNOZ, III  
GERARDO GONZALEZ  
FEDERICO GUTIERREZ  
JACINDA E. VELA  
ROBERT CASAREZ  
CORNELIO FLORES  
FAUSTINO LOPEZ, JR.  
ROBERT RUIZ

INTERNATIONAL AFFAIRS OFFICER  
LIC. ISMAEL DELGADO

DOMESTIC VIOLENCE COUNSELORS  
ALBERT PEREZ  
MATTIE SMITH-GOMEZ

COUNTIES OF

WEBB



ZAPATA

September 24, 2009

Via: Certified Return Receipt Requested

The Honorable Greg Abbot  
Office of the Attorney General  
Opinions Committee  
P. O. Box 12548  
Austin, Texas 78711

FILE # ML-46178-09  
I.D. # 46178

**RECEIVED**

OCT 01 2009

**OPINION COMMITTEE**

**RQ-0828-GA**

Re: May a city manager of a general law city with a council-city manager form of government serve simultaneously on the board of trustees of an independent school district whose boundaries contain the municipality?

Dear Attorney General Abbot:

Please accept this letter as a request pursuant to Texas Government Code 402.042 for an opinion for clarification on the common law doctrine of incompatibility regarding whether a city manager of a general law city with a council-city manager form of government may serve on the board of trustees of an independent school district whose district boundaries contain the municipality.

**Question:**

**Does the common law doctrine of incompatibility prohibit a city manager of a general law city with a council-city manager form of government from serving as a school board trustee whose district boundaries contain the municipality?**

The common law doctrine of incompatibility prohibits conflicts that may arise from holding two public positions. See, Texas Attorney Gen. Op. GA—32 (2003) at 4. The doctrine recognizes and prohibits three kinds of conflicts that may arise from holding two public offices: (1) self-appointment; (2) self-employment; and (3) conflicting loyalties. See, *Thomas v. Abernathy County Line Indep. Sch. Dist.*, 290 S. W. 152 (Tex. Comm'n App. 1927, *judgm't adopted*), *Ehlinger v. Clark*, 8 S. W. 666 (Tex. 1928), Tex. Att'y Gen. Op. No. GA-32(2003). Self-appointment incompatibility is not applicable here because the school board does not appoint the city manager nor does the city manager appoint the members of the school board.

Similarly, self-employment incompatibility does not apply because the school board does not supervise the city manager nor does the city manager supervise members of the school board.

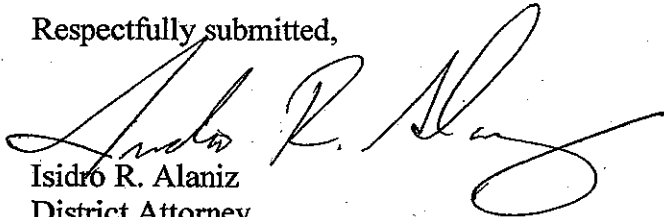
The third component of common-law incompatibility-conflicting loyalties-prohibits a person from holding two positions in separate governmental units which may have conflicting interests. *See*, Tex. Att’y Gen. Op. No. GA-328-(2005) at 2, 4. In order for conflicting loyalties to be applicable, both positions must be “offices.” *See*, Tex. Att’y Gen. Op. Nos. GA-195 (2004) at 102, GA-127 (2003) at 3, JC-54 (1999) at 2, JM-1266 (1990) at 4. The Attorney General applies the following test to determine whether a position is an “office” under the conflicting loyalties doctrine: “[T]he determining factor which distinguishes a public office from an employee is whether any sovereign function of the government is conferred upon the individual to be exercised by him for the benefit of the public largely independent of the control of others.” *See*, *Aldine Indep. Sch. Dist. V. Standley*, 280 S. W. 2d 578, 583 (Tex. 1955). According to this test, a “civil office” is any elected office or a non-elected office which nevertheless exercises a sovereign function government. A “mere employee” does not hold a civil office. Therefore, the question becomes whether a city manager exercises sovereign functions largely independent of the control of others or whether a city manager is a mere employee of the city.

In Texas, a council-city manager form of government combines the strong political leadership of elected officials in the form of the mayor and council with the strong managerial experience of an appointed manager. All power is concentrated in the elected mayor and council. The mayor and council members are the leaders and policy makers elected to represent the community and concentrate on policy issues that are responsive to citizen’s needs while the manager carries out the council’s policies and ensures that the entire community is being served. The Mayor and Council is the legislative body for the community. Power is centralized in the elected Mayor and Council which approves the budget and determines the tax rate. The Mayor and Council also focuses on the community’s growth, land use development, capital improvement plans, capital financing, and strategic planning. The Mayor and Council hire a professional manager to carry out the administrative responsibilities and supervise the manager’s performance.

The city manager is hired to serve the Mayor and Council and the community and to bring to the municipality the benefits of training and experience in administering local government projects and programs on behalf of the governing body. The manager prepares a budget for the Mayor and Council’s consideration, recruits, hires, and supervises the government’s staff, serves as the mayor and council’s chief advisor, and carries out the Mayor and Council’s policies. The city manager makes policy recommendations to the Mayor and the Council but the Mayor and Council may or may not adopt them and may modify the recommendations. The city manager is ultimately bound by whatever action the Mayor and Council takes.

In Texas, city managers serve the pleasure of the Mayor and Council. They can be fired by a majority of the Council, consistent with local laws, ordinances or employment agreements they may have with the Mayor and Council. Under the *Aldine* test, it appears the city manager would be considered a mere employee not exercising sovereign functions. However, this question is not squarely addressed by any Attorney General Opinion or in case law; therefore, guidance from the Attorney General is necessary.

Respectfully submitted,



Isidro R. Alaniz  
District Attorney  
Webb & Zapata Counties

IRA:cvg

cc: Mr. Juan J. Cruz, Esq. (via: facsimile 956-717-0539)