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MEMORANDUM

RECEIVED

By Opinion Committee at 11:19 am, Jan 24, 2023

To: Office of the Attorney General, Opinion Committee
From: Doyle "Dee" Hobbs, County Attorney
Williamson County Attorney's Office
Date: January 24, 2023
Subject: Request for Texas Attorney General Opinion

RQ-0498-KP
FILE# ML-49236-23
I.D.# 49236

1. Introduction

On **November 28, 2022** the Williamson County received a request pursuant to the Request for an Attorney General Opinion, of Section 402 of the Texas Government Code, from **Mike Snyder, Mayor for the city of Hutto, TX**, (hereinafter, "the requestor") seeking assistance in seeking an Attorney General Opinion on behalf of the City of Hutto, regarding whether a state employee, who receives all or part of their compensation from funds of the State of Texas, who is also an elected member of a municipal governing body, can receive compensation from the municipal elected position in addition to the state salary compensation.

Pursuant to Section 402.042(c), Texas Government Code, this brief is submitted to seek a ruling regarding the applicability of the below provision(s).

II. Applicability of Article XVI, Section 40(b) of the Texas Constitution

Under Article XVI, Section 40(b) of the Texas Constitution, individuals who receive compensation from state funds may not receive a "salary" for serving as members of the City Council.¹

As per a vote by the citizens of the City of Hutto on May 1st, 2021, Proposition D passed with 69.07% of the vote. Proposition D ask the voters "Shall Section 3.04 of the Hutto City Charter be amended to provide that the Mayor and the City Council Members shall receive as compensation the sum of five hundred dollars (\$500.00) and four hundred dollars (\$400.00), respectively, for attendance at each regular City Council meeting, rather than compensation being fixed by ordinance; provided however, that the Mayor and City Council Members shall not receive compensation for more than two (2) meetings in any one month?"

A city council member, who is employed as a "Legislative Director" for a member of the Texas House of Representatives, ran for and was elected to office on May 7th, 2022. This city council member receives compensation from state funds as a Legislative Director.

¹ TEX. CONST. art. XVI, § 40(b).

Under Article XVI, Section 40(a) of the Texas Constitution, “No person shall hold or exercise at the same time, more than one civil office of emolument....”¹

Under Article XVI, Section 40(b) of the Texas Constitution, “State employees or other individuals who receive all or part of their compensation.... shall not be barred from serving as members of the governing bodies of school districts, cities, towns or other local governmental districts.”²

In Tex. Att’y Gen. Op. JM-704, in response to the question “whether a member of the Lufkin City Planning and Zoning Commission may also serve as director of the Angelina and Neches River Authority”, your office stated “Members of the Lufkin City Zoning and Planning Commission are civil officers of emolument. If a director of the Angelina and Neches River Authority has performed services which entitle him to receive compensation, he serves in that position as a civil officer of emolument. Article XVI, section 40, of the Texas Constitution bars one person from holding these two offices at the same time”.³

In Tex. Att’y Gen. Op. GA-0250, in response to the question “can the per diem contemplated by the 1955 Amendment to the Chapter 101 of the Session Laws as amended be disavowed, relinquished or rescinded in any manner as to remove such disqualification?”, your office stated “Judicial decisions and this office have determined that compensation attached to an office is an incident of office that the office holder cannot repudiate.”⁴

In Tex. Att’y Gen. Op. No. GA-0530, in response to question B “Whether certain expenses may be reimbursed without constituting salary for purposes of article XVI, section 40(b)(1)”, your office stated “Home-rule cities do not depend on the legislature for specific grants of authority but, instead, have a constitutional right of self-government and look to the legislature only for specific limitations on their power”.⁵

In Tex. Att’y Gen. Op. No. GA-0540, in response to the question “whether an individual may simultaneously serve as a constable in Goliad County and as a member of the board of directors of the Goliad County Groundwater Conservation District”, your office stated “[T]he right to the compensation attached to a public office is an incident to the title to the office. *Markwell v. Galveston County*, 186 S.W.2d 273, 277 (Tex. Civ. App.—Galveston 1945, writ ref’d). The fact that the officer may decline the compensation, or accept less than the full amount, is irrelevant.” Your office further stated that “A constable also holds an “office of emolument”. The conclusion of your office was that “we conclude that an individual may not, under article XVI, section 40(a) of the Texas Constitution, simultaneously serve as both a Goliad County constable and as a member of the board of directors of the district.”⁶

III. Conclusion

For the foregoing reasons, Williamson County, on behalf of the City Mayor of Hutto, respectfully requests the Texas Attorney General, Opinions Division, issue an opinion on whether a state employee who receives all or part of their compensation from funds of the State of Texas, and who is also an elected as a member of a municipal governing body, can receive compensation from the elected municipal position while still collecting his state employee salary from the state?

If you have any questions concerning this request, please feel free to call Mike Snyder, City Mayor of the City of Hutto. Thank you.

Sincerely,



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