



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**JOHN L. HILL
ATTORNEY GENERAL**

July 6, 1973

The Honorable Bobby J. Phillips
County Attorney
Panola County Courthouse
Carthage, Texas 75633

Letter Advisory No. 54

Re: Dual employment - a
member of Hospital
Board as member of
City Commission

Dear Mr. Phillips:

Your letter requests our opinion as to whether a member of the Panola General Hospital Board, located within the City of Carthage, Texas, may become a member of and serve on the City Commission of the City of Carthage, Texas.

Section 40 of Article 16 of the Constitution of Texas was amended in November, 1972, so as to specifically provide that:

"State employees or other individuals who receive all or part of their compensation either directly or indirectly from funds of the State of Texas and who are not State officers, shall not be barred from serving as members of the governing bodies of school districts, cities, towns, or other local governmental districts; individuals shall receive no salary from serving as members of such governing bodies."

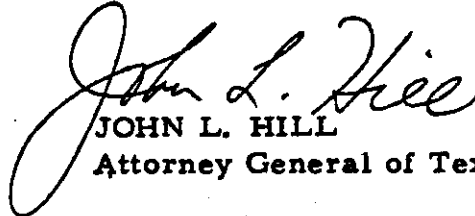
This provision, in our opinion, was intended as an exception to the first provision of §40 that "no person shall hold or exercise at the same time, more than one civil office of emolument" Attorney General Opinion H-6 (1973). It was not, however, intended as an exception to another impediment to office holding -- the common law doctrine of incompatibility applied in Thomas v. Abernathy County Line Independent School District, 290 S. W. 152 (Tex. Comm. App., 1927); and see Pruitt v. Glen Rose Independent School District No. 1, 84 S. W. 2d 1004 (Tex. 1935); 47 Tex. Jur. 2d, Public Officers, §28, p. 42 and cases cited; Attorney General Opinion H-7 (1973).

The Honorable Bobby J. Phillips, page 2 (LA No. 54)

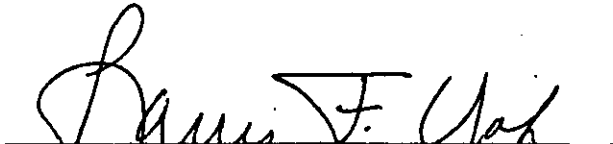
Your letter states that the two positions in question have several conflicting duties and that "there would probably be many duties and powers of the City Commission which would conflict with the duties and powers of the Hospital Board located within the city limits of the City of Carthage."

In most instances whether or not two offices are incompatible is a fact question upon which we are unable to render an opinion. It is our opinion, however, that if, as you say, the two positions are incompatible and the duties of one conflict with the independent exercise of the other, then one person may not occupy both positions, even if such person should forego a salary for one or both of the positions.

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:


LARRY F. YORK, First Assistant


DAVID M. KENDALL, Chairman
Opinion Committee