



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

March 21, 1988

Joe Warner Bell
Trinity County Attorney
P.O. Box 979
Groveton, Texas 75845

LO-88-32

Dear Mr. Bell:

You request our advice regarding whether an employee of a county road and bridge department may also serve as a constable and be compensated for both positions.

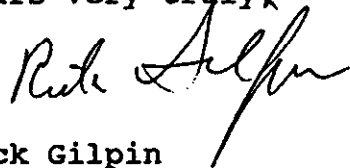
Article XVI, section 40, of the Texas Constitution prohibits a single individual from occupying more than one civil office of emolument. It is clear that an employee of a county road and bridge department is not an "officer." Consequently, no problem arises under this constitutional provision.

As to the common law doctrine of incompatibility, it arises in two specific instances: 1) where one individual is, in effect, his own supervisor (see Letter Advisory No. 114 (1976)---school teacher may not serve on board of trustees of same district); and 2) where conflicting loyalties might arise (see Attorney General Opinion JM-133 (1984)---county auditor may not serve as city councilman of municipality located in his county). In the situation you present, the constable is clearly not the supervisor of the county road and bridge department employee. As to the second possibility, there does not seem any reasonable likelihood that an instance would arise which would require competing loyalties. Both positions are county positions, and in both cases, the individual's primary loyalty would be to the county. Accordingly, we do not believe that the common law doctrine of incompatibility would prevent one individual, as a matter of law, from holding both positions.

Article II, section 1, if it applies at all below the state level, does not apply to dual office holding situations.

As a result, you are advised that an employee of a county road and bridge department may serve simultaneously as constable in that county, and may be compensated for both positions.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Rick Gilpin".

Rick Gilpin
Chairman
Opinion Committee

RG/ld