



Office of the Attorney General
State of Texas

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August 11, 1995

Honorable John Whitmire
Chair
Criminal Justice Committee
Texas State Senate
P.O. Box 12068
Austin, Texas 78711

Letter Opinion No. 95-048

Re: Whether a municipal police officer may simultaneously hold the position of city council member in a different city (ID# 33904)

Dear Senator Whitmire:

You request our opinion as to whether a Houston police officer may simultaneously serve as an elected member of the city council of the City of Magnolia. The council position is uncompensated.

Article XVI, section 40, of the Texas Constitution prohibits one person from holding, at the same time, more than one "office of emolument." In the situation you present, while the council position is clearly an "office," it is not an "office of emolument" because it is uncompensated. Thus, article XVI, section 40, does not prohibit the scenario you describe.

The other impediment to the simultaneous holding of two positions is the common-law doctrine of incompatibility, which prohibits a person from occupying "two offices where one office might thereby impose its policies on the other or subject it to control in some other way." Attorney General Opinion JM-129 (1984) at 1. This "conflicting loyalties" type of incompatibility has never been held to apply to a situation in which one position is an "office" and the other a mere "employment." Attorney General Opinion JM-1266 (1990) at 4. Thus, the issue raised by your question is whether the position of municipal police officer is an "office."

We addressed an almost identical issue in Letter Opinion No. 93-27 (1993), in which we held that a Houston police officer was not precluded, as a matter of law, from serving as an elected commissioner of the City of Galena Park.¹ The opinion noted that, under the rationale of Attorney General Opinion DM-212 (1993), "a municipal police officer no longer *ipso facto* holds an 'office.'" Letter Opinion No. 93-27 (1993) at 1. Whether such an individual does in fact "hold[] an 'office' depends upon whether he thereby exercises 'any sovereign function of the government . . . largely independent of the

¹One of the principal distinctions between the two is that, under the facts described in Letter Opinion No. 93-27 (1993), the position of city commissioner was compensated.

control of others.” *Id.* (quoting *Dunbar v. Brazoria County*, 224 S.W.2d 738, 740-41 (Tex. Civ. App.—Galveston 1949, writ ref’d)). That determination “necessarily raises questions of fact which cannot be addressed in the opinion process.” *Id.* Although we concluded, in Letter Opinion No. 93-27, that the ultimate resolution of the issue rested upon factual determinations, we also declared that “under ordinary circumstances, a municipal police officer performs his duties under the direction and control of others, and thus, does not hold an ‘office.’” *Id.* at 2.

For purposes of the common-law doctrine of incompatibility, there appears to be no significant distinction between the question you raise and that resolved in Letter Opinion No. 93-27. In both cases, the geographic boundaries of the City of Houston extend into the county in which the individual holds his elected office.² Accordingly, we affirm our holding in that opinion: Unless the individual’s duties as a member of the Houston police department “are such that they elevate him to the status of ‘officer,’” he is not prohibited from serving simultaneously as a Houston police officer and as an elected member of the city council of Magnolia.

S U M M A R Y

A municipal police officer of the City of Houston is not as a matter of law prohibited from serving simultaneously as an elected member of the city council of Magnolia.

Yours very truly,



Rick Gilpin
Deputy Chair
Opinion Committee

²Most of the territory of the City of Houston lies in Harris County, which is also the county of the City of Galena Park. The City of Magnolia is in Montgomery County, into which the City of Houston extends.