



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 12, 1993

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

Letter Opinion No. 93-27

Re: Whether a police officer employed by
the City of Houston may simultaneously
serve as a paid city commissioner in the City
of Galena Park (ID# 19167)

Dear Senator Whitmire:

You have requested our opinion regarding the eligibility of a salaried police officer of the City of Houston to serve simultaneously as a paid commissioner for the City of Galena Park.¹ You indicate that the individual in question was elected City Commissioner of Galena Park in March, 1992, and that at the time of his election he was employed as a police officer in Houston. He continues to hold both positions.

With certain exceptions not applicable here,² article XVI, section 40, of the Texas Constitution prohibits a person from holding, at the same time, "more than one civil office of emolument." Prior to our recent decision in Attorney General Opinion DM-212 (1993), this office had consistently held that, as a matter of law, a municipal police officer holds a "civil office" for purposes of article XVI, section 40.³ As a result of Attorney General Opinion DM-212, a municipal police officer no longer *ipso facto* holds an "office." Whether a particular individual, by virtue of that position, holds an "office" depends upon whether he thereby exercises "any sovereign function of the government . . . largely independent of the control of others." Such a determination necessarily raises questions of fact which cannot be addressed in the opinion process. We

¹Both Houston and Galena Park are in Harris County.

²The principal exceptions are for the offices of justice of the peace and county commissioner.

³A "civil office of emolument" is simply a civil office to which compensation is attached.

can say, however, 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."⁴

Another impediment to the simultaneous holding of two positions is the common-law doctrine of incompatibility. That doctrine prohibits one individual 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). As this office said in Attorney General Opinion JM-1266 (1990) at 4:

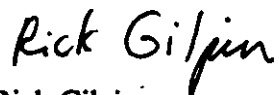
the "conflicting loyalties" type of incompatibility . . . has never been held to apply to a situation in which one position is an *office* and the other an *employment*. [Emphasis in original.]

In our opinion, this conclusion is sound, and there appears to be no discernible reason for extending the "conflicting loyalties" doctrine to include a situation in which one position is an office and the other is an employment. Accordingly, under the circumstances you have described, if the municipal police officer does not thereby occupy an "office" for purposes of article XVI, section 40, neither is he in contravention of the common-law doctrine of incompatibility by simultaneously holding the two positions. If, on the other hand, his police duties are such that they elevate him to the status of "officer," his dual employment may perforce be said to violate *both* article XVI, section 40, *and* the common-law doctrine of incompatibility.

S U M M A R Y

A municipal police officer is not as a matter of law prohibited from serving as an elected commissioner of another city in the same county.

Yours very truly,



Rick Gilpin
Deputy Chief
Opinion Committee

⁴Article XVI, section 40, also provides that "[s]tate 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" may serve "as members of the governing bodies" of, *inter alia*, "cities [and] towns." Municipal police officers do not, however, receive any portion of their compensation "from funds of the State of Texas."