



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 22, 1993

Honorable Albert G. Valadez  
District Attorney  
104 West Callaghan  
Fort Stockton, Texas 79735

Letter Opinion No. 93-54

Re: Whether a sheriff may also serve as a  
volunteer fireman (ID# 20119)

Dear Valadez:

You ask whether a county sheriff may also serve as a member of a volunteer fire department in the county. You say that the "volunteer firemen are not paid," but that "they receive a discount on their personal water usage from the city in which they reside," and also that the sheriff's office "presently provides communications services through radio dispatch for the Volunteer Fire Department."<sup>1</sup>

As noted in Attorney General Opinions JM-1209 (1990) and JM-1251 (1990), volunteer fire departments are neither "political subdivisions" nor "departments of local government." Hence, we do not believe volunteer firemen are public, or "civil," officers such as to be within the restrictions on dual office holding set out in article XVI, section 40 of the Texas Constitution. Similarly, we do not believe volunteer firemen would be subject to the branch of the common-law doctrine of incompatibility applicable to holding two "offices." *See, e.g.*, Attorney General Opinion JM-1266 (1990).

The doctrine of incompatibility also prevents an officer from employing himself. Attorney General Opinion DM-55 (1991). Although we do not have before us the terms of any agreements between the volunteer fire department and the county, we do not see how in this instance a volunteer fireman could be characterized as in the employ of the sheriff, even if there is some cooperation or coordination between the volunteer fire department and the sheriff's office. Thus, we do not think the self employment branch of the doctrine of incompatibility would prevent the sheriff from working as a volunteer fireman.

We turn finally to chapter 171 of the Local Government Code, which addresses the area of conflicts of interest among local public officials such as sheriffs, and preempts any common law relating to conflicts of interest which might otherwise be applicable. *Id.* §§ 171.001, 171.007. Although highly unlikely, it is perhaps conceivable that a volunteer

---

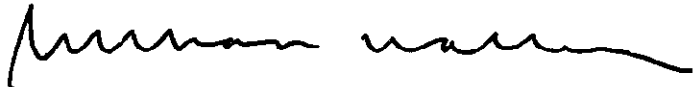
<sup>1</sup>Although we recite the facts you present, we caution that we limit this opinion to the question whether the sheriff may also serve as a volunteer fireman. We do not here opine as to the propriety of the arrangements regarding utility discounts or communications services you allude to.

fireman receiving utility discounts or other benefits by reason of his service in the volunteer fire department might be found to have a "substantial interest" in the latter entity within the meaning of chapter 171. *See id.* §§ 171.001, 171.002, 171.009. But even in that remote eventuality, chapter 171 would not prevent a public official such as a sheriff from serving in the department. Rather, it might at most require the official's disclosure of such interest and his abstention from participation in any decisions involving the entity in which he has an interest. *Id.* § 171.004.

**S U M M A R Y**

Nothing in Texas law prevents a sheriff from also serving as a member of a volunteer fire department.

Yours very truly,

A handwritten signature in black ink, appearing to read "William Walker", written in a cursive style.

William Walker  
Assistant Attorney General  
Opinion Committee