



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**JOHN L. HILL
ATTORNEY GENERAL**

August 4, 1975

RQ 1119

The Honorable Henry Wade
District Attorney
Dallas, Texas 75202

Letter Advisory No. 112

Re: Whether a person may serve
both as city councilman and deputy
sheriff.

Dear Mr. Wade:

You have requested our opinion concerning whether a person may simultaneously hold the offices of city councilman and deputy sheriff.

Article 2, section 1 of the Texas Constitution provides that the powers of government shall be divided into three departments; legislative, judicial, and executive, and that:

no person . . . being of one of these departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted.

In Attorney General Opinion H-7 (1973) we interpreted this provision to mean:

. . . that an employee of one department is barred from assuming any position or office in either of the other two departments if he exercises governmental powers in any department.

See also Attorney General Letter Advisory No. 65 (1974); Monaghan v. School District No. 1, Clackamas County, 315 P.2d 797 (Oregon 1957); State v. Burch, 80 N. E. 2d 294 (Ind. 1948); Saint v. Allen, 126 So. 548 (La. 1930).

Article 5 section 23 of the Texas Constitution creates the office of Sheriff as part of the judicial branch. Since a deputy sheriff is an employee of the sheriff's department he is of the judicial branch. See State v. Moore, 57 Tex. 307 (1882). Accordingly, as a general matter he may not exercise legislative powers.

City councils have been repeatedly held to exercise legislative powers. Kimbrough v. Walling, 371 S. W. 2d 691 (Tex. Sup. 1963); Davis v. City of Lubbock, 326 S. W. 2d 699 (Tex. Sup. 1959); Ex Parte Naylor, 249 S. W. 2d 607 (Tex. Crim. App. 1952); City of Nassau Bay v. Nassau Bay Telephone Co., Inc., 517 S. W. 2d 613 (Tex. Civ. App. -- Houston 1974, writ ref'd. n. r. e.); City of Grand Prairie v.

Turner, 515 S. W. 2d 19 (Tex. Civ. App. --Dallas 1974, writ ref'd. n. r. e.); Hanzal v. City of San Antonio, 221 S. W. 237 (Tex. Civ. App. --San Antonio 1920, writ ref'd.). In addition, article 2, section 1 has been held to prohibit the exercise of judicial, legislative, and executive powers by a city council. City of San Antonio v. Zogheib, 70 S. W. 2d 333 (Tex. Civ. App. --Eastland 1934), rev'd on other grounds 101 S. W. 2d 539 (Tex. Supp. 1937); Gulf Refining Co. v. City of Dallas, 10 S. W. 2d 151 (Tex. Civ. App. --Dallas 1928, writ. dismiss'd.).

Consequently, in our opinion since a deputy sheriff is of the judicial branch he may not also hold the office of city councilman and thereby exercise legislative powers, unless he is so permitted by article 16, section 40, of the Texas Constitution. Attorney General Opinion H-6 (1973). Article 16, section 40 provides in part:

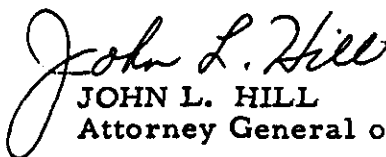
State employees or other individuals who receive all or part of their compensation either directly or indirectly from funds of the State of Texas and who are not State officers, shall not be barred from serving as members of the governing bodies of school districts, cities, towns, or other local governmental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

However, we do not believe a deputy sheriff is within the scope of this provision. While section 3 of article 3912d, V. T. C. S., concerns the payment of fees by the State, these fees are for services performed for the State in its role as a litigant and do not constitute salary payments. The body of article 3912d provides that deputies receive their salaries from the county. See also V. T. C. S. art. 3890. It is therefore our opinion that any exception to article 2, section 1, which is contained in article 16, section 40, is not applicable.

SUMMARY

A deputy sheriff of Dallas County may not also hold the office of city councilman; as a member of the Judicial Department he may not exercise legislative powers.

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman
Opinion Committee

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