



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 2, 1998

The Honorable Don Schnebly  
District Attorney  
Parker County  
Weatherford, Texas 76086

Letter Opinion No. 98-044

Re: Status of work performed by a county attorney while he simultaneously held the office of municipal judge (RQ-1053)

Dear Mr. Schnebly:

You have requested our opinion regarding the status of work performed by a county attorney while he simultaneously held the office of municipal judge. You indicate that the present county attorney of Parker County has served for the past eight years as municipal judge of the City of Willow Park, a paid position appointed by the Willow Park City Council. In 1996, he was elected county attorney of Parker County and assumed that office on January 1, 1997. He continued to serve as municipal judge, but did renounce the salary for that position. In November 1997, he resigned as municipal judge.

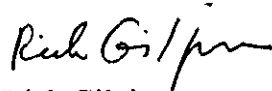
Article XVI, section 40 of the Texas Constitution provides that "no person shall hold or exercise at the same time, more than one civil office of emolument." A municipal judge holds an "office." Attorney General Opinion DM-428 (1996). Clearly, a county attorney, as an elected official, also does so. Furthermore, the office of municipal judge of the City of Willow Park is one "of emolument." An office is one "of emolument" if its emoluments are fixed by statute or by a governmental body. Attorney General Opinion JM-333 (1985). Thus, the refusal to accept the salary attached to the position does not remove it from the category of "office of emolument."

Qualification for and acceptance of a second office operates as an automatic resignation from the first office. *Pruitt v. Glen Rose Indep. Sch. Dist.*, 84 S.W.2d 1004 (Tex. 1935). As a result, when the individual of whom you inquire assumed the office of county attorney, he automatically vacated his office as municipal judge. Thus, he was the legitimate county attorney during 1997, both in fact and in law, and none of his acts as county attorney are in any way affected by his purported holding of the office of municipal judge.

S U M M A R Y

The county attorney of Parker County vacated his office of municipal judge of the City of Willow Park when he assumed the former position, and none of his acts as county attorney are affected by his purported holding of the office of municipal judge.

Yours very truly,



Rick Gilpin  
Deputy Chair  
Opinion Committee