



Office of the Attorney General
State of Texas

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ATTORNEY GENERAL

October 27, 1998

The Honorable Pete P. Gallego
Chair, Committee on General Investigating
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Letter Opinion No. 98-094

Re: Whether a district judge may simultaneously
serve as a trustee of an independent school district
(RQ-1130)

Dear Representative Gallego:

You have requested our opinion as to whether a district judge may simultaneously serve as a trustee of an independent school district. You indicate that a member of the board of trustees of the Eagle Pass Independent School District is the Democratic nominee for the office of district judge for the 294th Judicial District. She has no opponent in the November election. If elected, she would assume office in January, 1999. Her term as member of the board of trustees ends in May, 2000. You ask whether she may continue to serve on the board after she is sworn in as district judge.

Article XVI, section 40 of the Texas Constitution, does not bar the dual service in the situation you pose because the office of school trustee is not one "of emolument." School trustees are required to serve without compensation. Educ. Code § 11.061.

In Attorney General Opinion JM-213, this office held that an individual was barred by section (6)A of article V, section 1-a of the Texas Constitution, from simultaneously serving as a school trustee and a county court at law judge. Attorney General Opinion JM-213 (1984). The constitutional provision states that "any Justice or Judge of the courts established by this Constitution or created by the Legislature . . . may . . . be removed from office for," *inter alia*, "willful violation of the Code of Judicial Conduct." Canon 4.H of the Code of Judicial Conduct provides:

A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his or her country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

Code of Judicial Conduct, Gov't Code tit. 2, subtit. G, app. B, canon 4.H. Clearly, a school trustee holds a "position that is concerned with issues of fact or policy." Attorney General Opinion JM-213

did not consider, however, another provision of the Code of Judicial Conduct. Canon 8.B.(2) provides: “‘Should’ or ‘should not’ relates to aspirational goals and as a statement of what is or is not appropriate conduct but not as a binding rule under which a judge may be disciplined.” A judge could not therefore be “removed from office” for a willful violation of canon 4.H. Thus, while it may not be “appropriate” for a district judge to simultaneously serve as a member of a school board of trustees, such dual service does not operate as a disqualification to hold one or the other office.

We must also address the common-law doctrine of incompatibility, which has three aspects: “self-appointment,” “self-employment,” and “conflicting loyalties.” Letter Opinion No. 95-029 (1995). The first two are not relevant to the question before us. The “conflicting loyalties” doctrine is applicable whenever one governmental body has the authority to impose its will on the other in any matter whatsoever. *Thomas v. Abernathy County Line Indep. Sch. Dist.*, 290 S.W. 152 (Tex. Comm’n App. 1927, judgm’t adopted). In the situation you pose, it might be argued that a district court possesses an ongoing potential to “impose its will” on a school district. Indeed, in Letter Opinion No. 95-029, we found that such potential precluded a school trustee from serving as the county attorney in a county that embraced the school district.

With respect to judicial offices, an appellate decision has addressed the matter. In *Turner v. Trinity Independent School District*, 700 S.W.2d 1 (Tex. App.--Houston [14th Dist.] 1983, no writ), the court held that a school trustee was not prohibited by the common-law doctrine of incompatibility from simultaneously holding the office of justice of the peace. The court declared:

[T]he offices of Justice of the Peace and school board trustee are not incompatible because neither office is accountable to, under the dominion of, or subordinate to the other, and neither has any right to interfere with the other in the performance of any official duty. . . . A justice of the peace has limited jurisdiction. . . . If a case involving the Board should happen to come before Chandler in his capacity as Justice of the Peace, he could simply recuse himself under TEX.REV.CIV.STAT.ANN. art. 2378.

Turner is distinguishable from a situation involving a district judge. Unlike a justice of the peace, a district court does not have “limited jurisdiction.” Furthermore, the quoted language in *Turner* is dicta. The actual basis of the decision is the proviso to article XVI, section 40 of the Texas Constitution, that 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, shall not be barred from serving as members of the governing bodies of school districts.” The *Turner* court, however erroneously, concluded that this proviso “was intended to expressly allow state employees or ‘other individuals’ to serve as uncompensated members of local

school districts.” *Turner*, 700 S.W.2d, at 2.¹ Consequently, *Turner* is not dispositive on the matter before us.

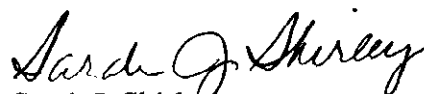
As noted previously, in Letter Opinion No. 95-029, *supra*, we held that a county attorney was barred by the “conflicting loyalties” doctrine from simultaneously serving as a member of a school district board of trustees. In our opinion, the same reasoning is applicable to a district judge. Article V, section 21 of the Texas Constitution requires the county attorney to “represent the State in all cases in the District and inferior courts in their respective counties.” Furthermore, “various statutes require the county attorney to initiate action against school trustees under particular circumstances.” Letter Opinion No. 95-029 (1995). In addition, a county attorney “is authorized to investigate possible election fraud,” and to “bring removal actions involving school trustees,” as well as “quo warranto proceedings.”

If a county attorney is barred by the doctrine of “conflicting loyalties” from serving on a school district board of trustees because he “is constitutionally and statutorily vested with the authority to investigate matters and institute proceedings regarding the possible criminal conduct of school district officers,” a similar prohibition must attach to a district judge, in whose court such proceedings would be adjudicated. It would be anomalous indeed if the prosecuting, but not the adjudicating, official were precluded from performing such dual service. We conclude that a district judge may not simultaneously serve as a member of a school district board of trustees located within the jurisdiction of his court.

S U M M A R Y

A district judge may not simultaneously serve as a member of a school district board of trustees located within the jurisdiction of his court.

Yours very truly,



Sarah J. Shirley
Chair, Opinion Committee

¹“Erroneously,” because 1) justices of the peace are neither “state employees” nor “other individuals who receive all or part of their compensation either directly or indirectly from funds of the State of Texas”; and 2) the court treats the article XVI, section 40, proviso as affirmative permission to serve on the governing boards of local districts, regardless of the common-law doctrine of incompatibility. In reality, the proviso means only that such dual service “shall not be barred” by article XVI, section 40.