



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 29, 1998

The Honorable Tom Maness
Jefferson County Criminal District Attorney
P.O. Box 2553
Beaumont, Texas 77704

Letter Opinion No. 98-100

Re: Whether an employee of a regional planning
commission may simultaneously serve as an
elected member of a port commission (RQ-1164)

Dear Mr. Maness:

You have requested our opinion as to whether an employee of a regional planning commission may simultaneously serve as an elected member of a port commission.

Article XVI, section 40 of the Texas Constitution prohibits an individual from holding "at the same time, more than one civil office of emolument." Section 391.003 of the Local Government Code provides that "[a]ny combination of counties or municipalities or of counties and municipalities may agree, by ordinance, resolution, rule, order, or other means, to establish a [regional planning] commission. You contend that a member of the governing body of a regional planning commission does not hold a "civil office of emolument." We need not address this issue, however, because the person of whom you inquire is the "director of emergency services" for the Deep East Texas Regional Planning Commission. According to the job description you have furnished, he "reports to" the executive director of the commission. He is not a member of the board of directors of the commission; rather, he is a salaried employee. Thus, he is not encompassed within the definition of "public officer" announced by the Texas Supreme Court in *Aldine Independent School District v. Standley*, 280 S.W.2d 578 (Tex. 1955): he does not exercise "any sovereign function of the government . . . largely independent of the control of others." As a result, an employee of the Deep East Texas Regional Planning Commission is not prohibited by article XVI, section 40 of the Texas Constitution from simultaneously holding another position that constitutes an "office."

Neither is an employee of the regional planning commission barred by the common-law doctrine of incompatibility from serving as a commissioner of the Port of Beaumont Navigation District. As a member of the board of the navigation district, such an individual has neither appointment nor supervisory power over employees of the regional planning commission. As to the "conflicting loyalties" aspect of incompatibility, it has no application unless both positions are "offices." Letter Opinion Nos. 96-148 (1996), 95-052 (1995), 93-027 (1993). Since, as we have determined, the person of whom you inquire does not, as an employee of the regional planning commission, hold an "office," he is not barred by the common-law doctrine of incompatibility from simultaneously serving as an employee of the Deep East Texas Regional Planning Commission and as a commissioner of the Port of Beaumont Navigation District.

S U M M A R Y

An individual is not prohibited from simultaneously serving as an employee of the Deep East Texas Regional Planning Commission and as a commissioner of the Port of Beaumont Navigation District.

Sincerely,

A handwritten signature in black ink that reads "Sarah J. Shirley". The signature is written in a cursive style with a large, looping "S" at the beginning.

Sarah J. Shirley
Chair, Opinion Committee