



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GORDAL C. MANN  
ATTORNEY GENERAL

Honorable C. E. Patterson  
County Attorney  
Brewster County  
Alpine, Texas

Dear Sir:

Opinion No. 0-3966  
Re: Whether county attorney may  
serve as independent school  
district trustee.

We have received your letter of recent date which we quote in part as follows:

"The undersigned is the regular elected county attorney of Brewster County, Texas, having been so elected in November, and qualified as such on January 1, 1941. I have been asked to serve as a Trustee for the Alpine Independent School District, and as such will receive no salary, fees or compensation.

"Can I as County Attorney legally serve as said Trustee, by appointment as such Trustee?"

You did not specify in your letter under what act the Alpine Independent School District was created. We shall, therefore, assume that it was created under the general authority of Chapter 13, Title 49, of the Revised Civil Statutes of Texas. Article 2775 thereof reads as follows:

"In each independent district that shall hereafter be organized, the county judge of the county in which said independent district is situated shall order an election for seven trustees, who shall constitute the school board of such district, and all of whom shall serve without compensation. All of the qualified voters of each such district shall be entitled to vote at any election for trustees hereunder." (Emphasis supplied)

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We shall also assume that there now exists a vacancy in the board which the remaining trustees are authorized to fill under the provisions of Article 2777.

Section 40 of Article XVI, of the Constitution, prohibits the holding of more than one office of emolument. However, this section does not apply to the office of trustee of an independent school district since under the above quoted statute such trustee serves without compensation. *Thomas v. Abernathy County Line Independent School Dist.*, 278 S. W. 313 (reversed on other grounds, 290 S. W. 152); 34 Tex. Jur. 349.

It is the settled law in this State that a person cannot hold two incompatible offices at the same time. *Kugle v. Glenn Rose Independent School Dist. No. 1*, 50 S. W. (2d) 375. However, we know of no reason why the duties of an independent school district trustee should in any way be inconsistent or in conflict with the duties of a county attorney. It is our opinion, therefore, that the two offices are not incompatible.

In view of the foregoing you are respectfully advised that a county attorney may at the same time serve as a trustee of an independent school district created under the general law.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Glenn R. Lewis*  
Glenn R. Lewis  
Assistant

By *George W. Sparks*  
George W. Sparks

APPROVED SEP 23, 1941

*Gerald Mann*  
ATTORNEY GENERAL OF TEXAS

GWS:ej

