



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

Affirmed by W.W. 1442

**WILL WILSON
ATTORNEY GENERAL**

April 2, 1962

Hon. J. W. Edgar
Commissioner of Education
Texas Education Agency
Austin, Texas

Opinion No. WW-1295

Re: Whether a person employed
as tax assessor-collector
for a conservation and
reclamation district may
legally hold the office of
County School Trustee at
the same time.

Dear Mr. Edgar:

You have requested this office to render an opinion as to whether or not a person employed as tax assessor-collector for a conservation and reclamation district may legally hold at the same time the office of County School Trustee.

We first note that the office of County School Trustee has been held, in prior Attorney General opinions, to be a civil office of emolument, within the meaning of Section 40, Article XVI, Texas Constitution. Attorney General Opinions O-4628 (1942), V-1322 (1951). Therefore, in order to find that an individual is permitted to hold both the offices of County School Trustee and tax assessor-collector of a conservation and reclamation district, we must find that the latter office is not a civil office of emolument. Section 40, Article XVI, supra, specifically forbids the holding of more than one civil office of emolument. An examination of the particular office of tax assessor-collector here involved is indicated.

Section 135, Article 8280, V.C.S., establishes the Trinity Bay Conservation District. Subsection 12 of that enactment reads as follows:

"The Board of Directors may appoint a Tax Assessor-Collector for said District who shall serve at the will of the Board and shall qualify by taking the oath required of the Directors of the District, and making an official bond in such amount as may be fixed by the Board. The Board of Directors shall also appoint a Board of Equalization composed of three (3) qualified voters and freeholders of the District. The General Laws relating to the assessment, equalization and collection of county taxes shall apply to the

taxes of this District, except where same are in conflict with the provisions of this Act."

Since no particular information is furnished, we must assume that the tax assessor-collector here involved has the same general duties and responsibilities as other tax assessor-collectors who operate under the general laws of the State.

In 34 Texas Jurisprudence §2, at page 323, the following appears:

"'Office' embraces the ideas of tenure, duration, emolument and duties. Among the criteria for determining whether an employment is a public office are the following: the delegation of a portion of the sovereign functions of the government; the requirement of an official oath; that the powers entrusted are conferred by law and not by contract; and the fixing of the duration or term of office. It is the duty pertaining to the office and the nature of that duty, and not the extent of authority which make the incumbent an officer; and one is none the less an officer because his authority is confined to narrow limits."

In the light of the above information, we can now proceed with a closer examination of the office of tax assessor-collector for the Trinity Bay Conservation District. The office certainly holds a delegation of a portion of the sovereign functions of the government, by virtue of the incumbent's duty to collect the taxes for and on behalf of the District. Under Section 135, Article 8280, V.C.S., supra, the General Laws relating to the assessment, equalization and collection of county taxes shall apply to the taxes of this District. In our present context, this operates to place the tax assessor-collector upon approximately the same footing as a county tax assessor-collector. In Pruitt v. Glenside Independent School District No. 1, 84 S.W.2d 1004 (Comm. App., 1935), it was held that the office of county tax assessor-collector was a civil office of emolument. If we need to go further, it can be noted that the tax assessor-collector for the Trinity Bay Conservation District is required to take the same oath required of the Directors of the District, and make an official bond, and receives a salary.

In view of the foregoing, this office therefore holds that the office of tax assessor-collector for the Trinity Bay Conservation District is a civil office of emolument, within the meaning of Section 40, Article XVI, Texas Constitution. The office of County School Trustee has previously been held to be such

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a position. Therefore, it would be a violation of Section 40, supra, for the same individual to attempt to hold both offices. Your question is answered in the negative.

SUMMARY

Section 40, Article XVI, Texas Constitution, forbids the holding of more than one civil office of emolument. The offices of County School Trustee and Tax Assessor-Collector for a conservation district are both civil offices of emolument, and it is unconstitutional for one individual to hold both of the said offices.

Yours very truly,

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Attorney General of Texas

By 
Malcolm L. Quick
Assistant

MLQ:wb

APPROVED:

OPINION COMMITTEE

W. V. Geppert, Chairman
Henry Braswell
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REVIEWED FOR THE ATTORNEY GENERAL

BY: Houghton Brownlee, Jr.