



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**WAGGONER CARR
ATTORNEY GENERAL**

February 25, 1966

Hon. Clarence L. Darter
County Attorney
Childress County
Childress, Texas

Opinion No. C-627

Re: Whether a constable may
act as a deputy tax
assessor-collector for
one day in a poll tax
drive put on by the
Jaycees.

Dear Mr. Darter:

In view of the provisions of Section 40 of Article XVI of the Constitution of Texas, you have requested our opinion as to whether an individual vacated his office of constable upon the acceptance of the position of deputy tax assessor-collector for only one day in a poll tax drive put on by the Jaycees. You state in your request that the constable accepted this position along with other Jaycees in the community as a civic project, receiving as compensation the sum of \$1.00.

Section 40 of Article XVI of the Constitution of Texas provides:

"No person shall hold or exercise, at the same time, more than one civil office of emolument, except . . ." (Exceptions not applicable)

In Attorney General's Opinion O-4313 (1942), in determining whether membership upon an Alien Enemy Hearing Board constituted a civil office of emolument within the meaning of Section 40 of Article XVI of the Constitution of Texas, this office applied the rule announced in Barney v. Hawkins, 79 Mont. 506, 257 P. 411 (1927), 53 A.L.R. 583. The Court's analysis of the authorities upon the question of what constitutes an office is stated in Barney v. Hawkins, supra, as follows:

"After an exhaustive examination of the authorities, we hold that five elements are indispensable in any position of public employment, in order to make it a public office of a civil nature: (1) It must be created by the Constitution or by the Legislature or created by a municipality or other body through authority conferred by the Legislature; (2) it must

possess a delegation of a portion of the sovereign power of government, to be exercised for the benefit of the public; (3) the powers conferred, and the duties to be discharged, must be defined, directly or impliedly, by the legislature or through legislative authority; (4) the duties must be performed independently and without control of a superior power, other than the law, unless they be those of an inferior or subordinate office, created or authorized by the Legislature, and by it placed under the general control of a superior officer or body; (5) it must have some permanency and continuity, and not be only temporary or occasional." (Emphasis added)

Applying the above-quoted analysis to the facts stated in your request, it is our opinion that the constable in question did not accept another civil office of emolument. There was no permanency or continuity involved, by the acceptance of the position of deputy tax assessor-collector for one day, in the poll tax drive by the Jaycees.

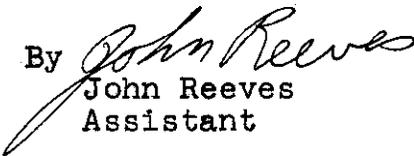
Therefore, you are advised that the constable in question did not vacate his office of constable.

SUMMARY

A person holding the office of constable did not vacate such office by the acceptance of the position of deputy tax assessor-collector for one day in a poll tax drive put on by the Jaycees of a community.

Yours very truly,

WAGGONER CARR
Attorney General

By 
John Reeves
Assistant

JR:ms

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APPROVED:

OPINION COMMITTEE
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Linward Shivers
Howard Fender

APPROVED FOR THE ATTORNEY GENERAL
By: T. B. Wright