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January 12, 1968

Hon. Charles R. Barden
Executive Secretary
Texas Air Control Board
1100 West 49th St.
Austin, Texas 78756

Opinion No. M-193

Re: Construction of the 1967
Amendment to Section 33
of Article XVI of the
Constitution of Texas.

Dear Mr. Barden:

Your request for an opinion on the above subject matter asks the following questions:

"(1) May the accounting officers of this State draw or pay a warrant upon the State Treasury in favor of an appointed member of the Texas Air Control Board for per diem and travel and other necessary expenses while in the performance of official duty for the Texas Air Control Board, if at the same time the member is serving on the planning and advisory group of the National Center for Air Pollution Control, as explained above, for which service he receives from the Federal government a consulting fee and payment of travel and other necessary expenses incurred in his work with the NCAPC planning and advisory group?

". . .

"(5) May the accounting officers of this State draw or pay a warrant upon the State Treasury in favor of an appointed member of the Texas Air Control Board for per diem and travel and other necessary expenses while in the performance of official duty for the Texas Air Control Board, if at the same time the member is serving on the faculty of a State-supported university in a program which is devoted in part to the scientific and engineering aspects of various environmental health problems, including

air pollution, as explained above, for which service he receives from the university a salary, per diem, or other remuneration for his time, and payment of travel and other necessary expenses incurred in his work for the university?

". . . "

Prior to the 1967 amendment, Section 33 of Article XVI of the Constitution of Texas provided in part:

"The Accounting Officers of this State shall neither draw nor pay a warrant upon the Treasury in favor of any person for salary or compensation as agent, officer or appointee, who holds at the same time any other office or position of honor, trust, or profit, under this State, or the United States except as prescribed in this Constitution."

The 1967 amendment to Section 33 of Article XVI added the following provision:

"It is further provided, until September 1, 1969, and thereafter only if authorized by the Legislature by general law under such restrictions and limitations as the Legislature may prescribe, that a non-elective State officer or employee may hold other non-elective offices or positions of honor, trust or profit under this State or the United States, if the other offices or positions are of benefit to the State of Texas or are required by State or federal law, and there is no conflict with the original office or position for which he receives salary or compensation. No member of the Legislature of this State may hold any other office or position of profit under this state, or the United States."

In construing a constitutional amendment the courts will look to the evils intended to be remedied and the good to be accomplished. Markowsky v. Newman, 134 Tex. 440, 136 S.W.2d 808 (1940); Hamilton v. Davis, 217 S.W. 431

(Tex.Civ.App. 1920, error ref.). Furthermore, different sections, amendments or provisions of the Constitution which relate to the same subject matter should be construed together and considered in light of each other. Purcell v. Lindsay, 314 S.W.2d 283 (1958); Collingsworth County v. Allred; 40 S.W.2d 13 (1931). In Collingsworth County v. Allred, supra, the court stated in 40 S.W.2d 15:

"The Constitution must be read as a whole, and all amendments thereto must be considered as if every part had been adopted at the same time and as one instrument, and effect must be given to each part of each clause, explained and qualified by every other part. Gilbert v. Kobbe, 70 N.Y. 361. Different sections, amendments, or provisions of a Constitution which relate to the same subject-matter should be construed together and considered in the light of each other. Dullam v. Willson, 53 Mich. 392, 19 N.W. 112, 51 Am.Rep. 128; State v. Astoria, 79 Or. 1, 154 P. 399."

In Markowsky v. Newman, supra, the court stated:

"Another rule of construction is generally, it may be said, that in determining the meaning, intent and purpose of a constitutional provision the history of the times out of which it grew and to which it may be rationally supposed to have direct relationship, the evils intended to be remedied and the good to be accomplished, are proper subjects of inquiry. Travelers Insurance Company v. Marshall, 76 S.W.2d 1007."

Therefore, the amendment to Section 33 of Article XVI should be considered in light of not only the prohibition previously contained in Section 33, but also the prohibition contained in Sections 12 and 40 of Article XVI relating to the same subject matter. Section 12 of Article XVI of the Constitution of Texas provides:

"No member of Congress, nor person holding or exercising any office of profit or trust, under the United States, or either of them, or under any foreign power, shall be eligible as

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a member of the Legislature, or hold or exercise any office of profit or trust under this State."

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

"No person shall hold or exercise, at the same time, more than one Civil Office of emolument,"

Thus, while Sections 12, 33 and 40 prohibit certain dual office holding in Texas, the 1967 amendment to Section 33 of Article XVI specifically authorized the holding of more than one office or position of honor, trust or profit under this State or the United States. While the amendment has not been construed by the courts of this State, we are of the opinion that the rules of construction quoted above should be applied. Applying the foregoing, it is noted that the amendment specifically authorizes until September 1, 1969, a non-elective state officer or employee to hold other non-elective offices or positions of honor, trust or profit under this State or the United States if such other offices or positions are of benefit to the State and there is no conflict with the original office or position. After September 1, 1969, such non-elective state officer or employee may hold other offices or positions only if authorized by the legislature by general law under such restrictions and limitations as the legislature may prescribe.

We find no conflict in the duties of a member of the Texas Air Control Board and a member of the planning and advisory group of the National Center for Air Pollution Control as outlined in your letter, nor do we find any conflict in the duties of the members of the Texas Air Control Board and those duties of the faculty of a state-supported university in a program outlined in your request. Therefore, you are advised that the Comptroller of Public Accounts may issue warrants upon the State treasury in favor of an appointed member of the Texas Air Control Board for per diem and travel and other necessary expenses while in the performance of official duties for the Texas Air Control Board even though such member is serving on the planning and advisory group of the National Center for Air Pollution Control, or is serving as a faculty member in a state-supported university. Furthermore, neither Sections 12, 33 or 40 prohibit a member of the Texas Air Control Board

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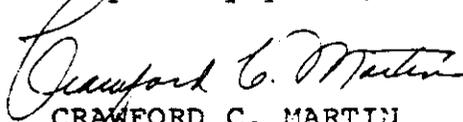
from serving either on the planning and advisory group of the National Center for Air Pollution Control or as a member of the faculty of a state-supported university.

We have not quoted your remaining questions as they were predicated upon a negative answer to questions no. 1 and no. 5.

S U M M A R Y

The 1967 amendment to Section 33 of Article XVI of the Constitution of Texas until September 1, 1969, specifically permits a non-elective state officer or employee to hold other non-elective offices or positions of honor, trust or profit under this State or the United States. Neither Sections 12, 33 or 40 of Article XVI now prohibits a member of the Texas Air Control Board from serving on a advisory group of the National Center for Air Pollution Control or as a faculty member of a state-supported university.

Very truly yours,



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