



THE ATTORNEY GENERAL  
OF TEXAS

AUSTIN, TEXAS 78711

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August 6, 1971

Honorable David Wade, M. D.  
Commissioner

Texas Department of Mental  
Health and Mental Re-  
tardation

P. O. Box 12668, Capitol Station  
Austin, Texas 78711

Opinion No. M-923

Re: Construction of Article  
6252-9a, Vernon's Civil  
Statutes.

Dear Dr. Wade:

Your request for an opinion on the above subject matter reads in part as follows:

"Employees of this Department occasionally receive offers to serve in other nonelective offices or positions of honor, trust or profit under this state. In this situation Section 2 of Article 6252-9a, sets out the procedure to be followed to obtain a finding that the requirements of Section 1 of this Act have been fulfilled.

"However, when the sequence of employment is reversed, i. e., an individual not employed directly by the state but rather is employed for example by a city or county in a nonelective position seeks or is offered employment with this Department, a question arises as to what procedure should be followed in order to determine whether this individual may accept the position with the Department and come within the authorization of Section 1 of Article 6252-9a, Vernon's Annotated Civil Statutes.

"Wherefore, your opinion and advice with respect to the following question is respectfully requested.

"Before an individual who holds a nonelective office or position of honor, trust or profit under this state although not employed directly by the state may accept an offer of employment with this Department, what procedure is to be followed in order to determine whether such proposed dual employment would come within the authorization of Section 1 of Article 6252-9a, Vernon's Annotated Civil Statutes?"

Article 6252-9a, Vernon's Civil Statutes, provides:

"Sec. 1. A nonelective state officer or employee may hold other nonelective offices or positions of honor, trust, or profit under this state or the United States, if his holding the other offices or positions is of benefit to the State of Texas or is required by state or federal law, and if there is no conflict between his holding the office or position and his holding the original office or position for which the officer or employee receives salary or compensation.

"Sec. 2. Before a nonelective state officer or employee may accept an offer to serve in other nonelective offices or positions of honor, trust, or profit, the officer or employee must obtain from the governing body, or if there is no governing body, the executive head of the agency, division, department, or institution with which he is associated or employed, a finding that the requirements of Section 1 of this Act have been fulfilled. The governing body or executive head shall make an official record of the finding and of the compensation to be received by the nonelective officer or employee from such additional nonelective office or position of honor, trust, or profit including specifically salary, bonus, per diem or other type of compensation.

"Sec. 3. The governing body or executive head shall promulgate rules and regulations necessary to carry out the purposes of this Act."

The above statute implements Section 33 of Article 16, Constitution of Texas, which prohibits certain dual office holding. However, the Constitution expressly makes exception for the Legislature to prescribe restrictions and limitations under which non-elective state officers and employees may hold other non-elective offices or positions of honor, trust, or profit under this State or the United States, and provided 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. This Section of the Constitution provides those absolute requirements but does not make provision as to whether the present or prospective employer is to make such findings. No procedure by the prospective employer covering the second employment is therein set out.

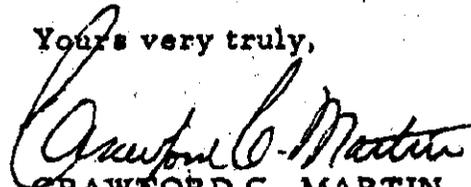
We must read the Constitution and statute together to determine the requirements, and we have concluded that while no statutory procedure is expressly provided for the governing body or executive head to make an official record of the compensation and finding that the above statutory and constitutional requirements have been fulfilled, compliance with such requirements is equally binding on the prospective employer. Consequently, in offering the employment, it is incumbent on the prospective employer to have satisfied himself that the holding of the second office or position by the employee is of benefit to the State of Texas or is required by state or federal law, and there is no conflict of duties or interest involved in the holding of the two offices or positions. In addition, the governing body or executive head with which the employee is already associated must make a finding that the requirements of Section 1 of Article 6252-9a have been fulfilled and make an official record of the finding and of the compensation to be received by the non-elective officer or employee from the second position, as provided in Section 2 of that statute. There is nothing in the law which requires that the finding of one department or agency or political subdivision is necessarily binding on another independent agency, department or subdivision.

#### SUMMARY

When an agent, non-elective state officer, or appointee who is employed by the state or one of its political subdivisions seeks another employment with the state, it is necessary that the governing body or executive head of the

agency or department make the findings and records required by Sections 1 and 2 of Article 6252-9a, V. C. S.; also, it is necessary that the prospective employer offering the second non-lective office or employment be satisfied that the constitutional and statutory requirements for the holding of the second office or position have been fulfilled; that is, that it is of benefit to the State of Texas or is required by state or federal law, and there is no conflict of duties or interests involved in the holding of the two offices or positions.

Yours very truly,

  
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APPROVED:  
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