



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**JOHN L. HILL,
ATTORNEY GENERAL**

April 2, 1973

Honorable Price Daniel, Jr.
Speaker of the House
State of Texas
House of Representatives
Austin, Texas

Letter Advisory No. 4

Re: Employment of legislators
as teachers with a public
junior college district while
the Legislature is not in
session.

Dear Speaker Daniel:

Your recent letter poses questions concerning employment of members of the House of Representatives as instructors in junior college districts. Specifically, you mentioned two individuals who were employed "prior to taking the oath of office."

The amendment of § 40 of Article 16 of the Constitution of Texas adopted last November, added the following language: "No member of the Legislature of this State may hold any other office or position of profit under this State, or the United States, except as a Notary Public, if qualified by law". This language in the main, was copied from § 33 of Article 16.

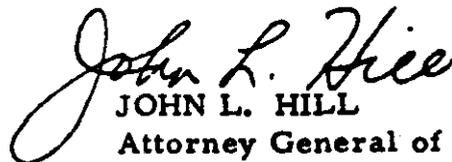
Employment as a teacher at a State junior college is an "office or position of profit under this State" and it is our opinion that one person may not serve as a teacher and at the same time be a member of the House of Representatives. See Boyett v. Calvert, 467 S. W. 2d 205 (Tex. Civ. App., Austin, 1971, err. ref., n. r. e.)

We call to your attention that, where a person who holds an office or position of profit under the State is elected or appointed to another, and the two positions are such that they cannot be held at one time by the same person, acceptance of and qualification for the second office operates ipso facto as a resignation of the former office. Pruitt v. Glen Rose Independent School District, 126 Tex. 45, 84 S. W. 2d 1004 (1935).

We do not believe the limitations imposed by §§ 33 and 40 of Article 16 of the Constitution depend upon whether or not the Legislature is in session. We would also call to your attention §§ 18 and 19 of Article 3 of the Constitution.

We hope that we have answered your questions.

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:


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