



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**JOHN L. HILL
ATTORNEY GENERAL**

February 22, 1974

Mr. Dempsie Henley, Chairman
Texas Commission for Indian Affairs
P. O. Box 348
Liberty, Texas 77575

Letter Advisory No. 78

Re: Dual Employment
Executive Director of the
Texas Commission for Indian
Affairs as Executive Director
of the Alabama-Coushatta
Indian Housing Authority.

Dear Mr. Henley:

You have asked our opinion as to whether the Texas Commission of Indian Affairs, of which you are chairman, is authorized to make payments of \$200 per month to the Executive Director of the Alabama-Coushatta Indian Housing Authority when that individual is at the same time the Executive Director of the Texas Commission for Indian Affairs. Your letter states that the housing authority funds are "not considered State Funds."

The specific question you ask is:

"The Texas Commission for Indian Affairs wishes your opinion on the authority of the Commission to pay the Executive Director from State funds for his State work and pay the same person from Local Housing Authority funds for the additional work for the Housing Authority."

The Commission for Indian Affairs was created in 1965 by Acts 1965, 59th Leg., p. 552, ch. 279, now found as Article 5421z. No provision is made for an executive director. However, the Appropriations Act for fiscal 1974 and 1975 (Acts 1973, 63rd Leg. ch. 659, p. 1786) does make an appropriation for the salary of an executive director of the Commission for Indian Affairs.

Article 5421z, in its sec. 12 dealing specifically with the Alabama-Coushatta Indian Reservation, provides:

"The Commission may negotiate with any agency of the United States in order to obtain grants to assist in the development of the Reservation. "

Pursuant to this authority the Alabama-Coushatta Indian Tribal Council made application for a public housing project on the reservation.

Section 1402 (11) of Title 42, USC. , provides:

"The term 'public housing agency' means any state, county, municipality, or other governmental entity or public body. . . which is authorized to engage in the development or administration of low rent housing or slum clearance. . . "

In Attorney General Opinion C-520 (1965) this office, after citing sec. 12 of Article 5421z of Vernon's Texas Civil Statutes and sec. 1402(11) of Title 42 USC, said:

". . . [I]t is our opinion that the Texas Commission for Indian Affairs is a 'public housing agency' within the provisions of Section 1402(11) of Title 42, U. S. C. A. As Section 12 of House Bill 1096 [Article 5421z, V. T. C. S.] specifically authorizes the Commission to negotiate for the purpose of obtaining grants for development of the Alabama-Coushatta Reservation, the Commission is thereby within the definition of a 'public housing agency' in Section 1402(11) of Title 42. Also, Section 1402(11), Title 42 provides that the United States government may contract directly with the Texas Commission for Indian Affairs in contracts for financial assistance as the Commission's primary responsibility is the development of the human and economic resources of the Alabama-Coushatta Indian Reservation. "

Section 40 of Article 16 of the Constitution of Texas, as amended in 1972, generally provides that no person shall hold or exercise at the same time more than one civil office of emolument. One exception is that "a non-elective State officer may hold other nonelective offices under the State or the United States, if the other office is of benefit to the State of Texas or is required by the State or Federal law, and there is no conflict with the original office for which he receives salary or compensation."

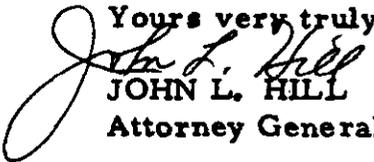
While we do not have a description of the duties either of the Executive Director of the Texas Commission of Indian Affairs or of the Executive Director of the Alabama-Coushatta Indian Housing Authority, in our opinion both of these are civil offices and the Executive Director of the Texas Commission of Indian Affairs, at least, is a nonelective state officer. See Attorney General Letter Advisory No. 63 (1973) for a general discussion of the meaning attributed to these terms in this context.

We think the position of Executive Director of the Alabama-Coushatta Indian Housing Authority is another "nonelective office under the State or the United States". See Willis v. Potts, 377 S.W. 2d 622 (Tex. 1964). Therefore, the Executive Director of the Texas Commission of Indian Affairs may at the same time hold the other office, though it be a civil office of emolument, so long as (1) his holding of the office of Executive Director of the Alabama-Coushatta Indian Housing Authority is of benefit to the State of Texas (or is required by State or Federal law), and (2) there is no conflict between it and his office as Executive Director of the Texas Commission of Indian Affairs.

The provisos above have been presumptively satisfied if the requirements of Article 6252-9a, V. C. T. S., have been met. See Attorney General Opinion H-5 (1973). But they involve what are essentially and ultimately judicial questions. We have not been furnished sufficient information to determine whether a conflict exists between the two positions. See Attorney General Letters Advisory No. 62, 63 and 64 (1973).

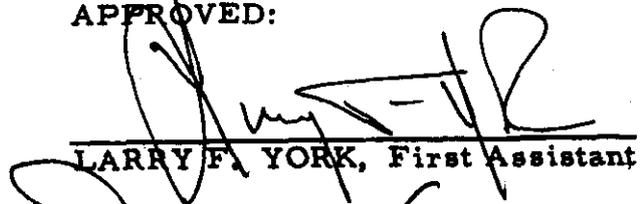
Assuming the above two provisos have been satisfied, we are of the opinion that the same person may legally hold the office of Executive Director of the Texas Commission of Indian Affairs, and at the same time occupy the position of Executive Director of the Alabama-Coushatta Housing Authority, and be paid for both.

Yours very truly,

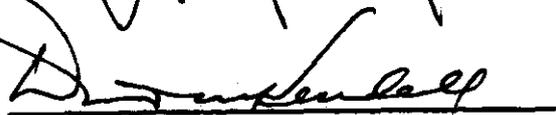

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APPROVED:



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