



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**JOHN L. HILL
ATTORNEY GENERAL**

July 31, 1974

The Honorable Wilson E. Speir
Director
Texas Dept. of Public Safety
5805 N. Lamar Blvd.
Austin, Texas 78773

Letter Advisory No. 82

Re: Whether county civil
defense director occupies
"civil office" within Art.
16, Sec. 40, Texas Constitu-
tion.

Dear Colonel Speir:

You ask:

Is a county civil defense director a "civil office"
as defined in Article 16, Sec. 40 of the Texas
Constitution, within the context of your Letter
Advisory No. 63 dated October 24, 1973?

Section 40 of Article 16 of the Constitution provides, generally that
"[n]o person shall hold or exercise at the same time, more than one Civil
Office of emolument" There are numerous exceptions.

In Attorney General Letter Advisory No. 63 we said that "a civil
office . . . is something more than public employment and something
less than a public office." We set out six criteria of a "public office"
and stated that a "civil office" has similar characteristics except that
a "civil office" need not be created by law and its occupant need not be
independent of control by others in the performance of his duties.

The Texas Disaster Act of 1973, Article 6889-6, V. T. C. S.,
directs the Governor to designate a director of the Division of Disaster
Emergency Services. Executive Order No. DB-6 designates the director
of the Department of Public Safety to fill the position and Executive Order

No. DB-8 designates each mayor and county judge as a municipal disaster coordinator/director or a county disaster coordinator/director, respectively.

The designations of the mayors and county judges are made concurrent with their terms of office. They will cease to be a disaster coordinator/director when they cease to be the mayor or the county judge. The duties of the coordinator/director are of the same general characteristics as other duties imposed by law upon such officer and, insofar as has been brought to our attention, are not incompatible with such other duties. In our view the executive order does not create new offices; it purports merely to assign - pursuant to legislative delegation of the power to do so - additional duties to the officers and magistrates specified. Jones v. Alexander, 59 S. W. 2d 1080 (Tex. 1933).

These officers thus remain occupants of a "civil office" as that term is used in Section 40 of Article 16 of the Constitution. They serve ex-officio.

You further advise:

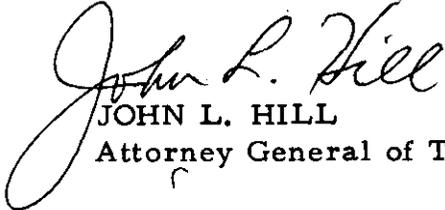
For many years under both the old Civil Protection Act of 1951 and the above-referred to Disaster Act of 1973, mayors and county judges have appointed personnel of their city or county to act for them as Coordinator/Director of their respective civil defense programs. For example, mayors have appointed the city manager, fire chief, policeman, Director of Public Works or other city official to perform the duties of civil defense and disaster relief Coordinator/Director. In the same way the county judges have designated the sheriff, deputy sheriff, or county fire marshal to perform the additional responsibilities.

While we have no doubt that mayors and county judges may receive assistance in the discharge of their additional duties as designated disaster coordinator/directors, there is no provision in the Disaster Act

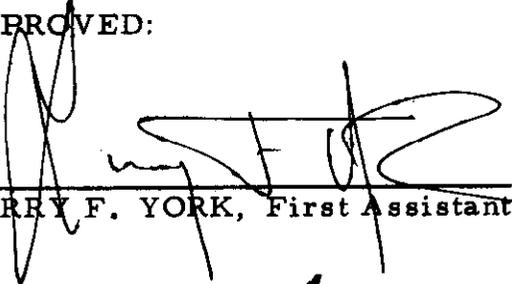
of 1973 or in Executive Order No. DB-8 which would permit them to relieve themselves of the title or responsibility by attempting to confer either upon some other person.

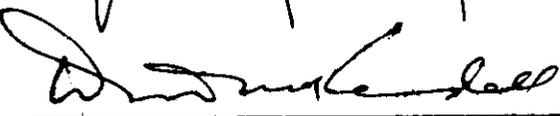
It may be that some cities or counties have by local ordinance or resolution (or informally) established offices or positions bearing similar titles which are designed to perform similar functions. In the absence of specific information about particular positions we are unable to determine whether the positions so created would be "civil offices," within the meaning of Article 16, Sec. 40 of the Constitution. Letter Advisory No. 63 (1973).

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:


LARRY F. YORK, First Assistant


DAVID M. KENDALL, Chairman
Opinion Committee