



**THE ATTORNEY GENERAL  
OF TEXAS**

AUSTIN, TEXAS 78711

*See: Ruiz v. State  
540 SW 2d 809*

**JOHN L. HILL  
ATTORNEY GENERAL**

May 23, 1975

The Honorable William R. Pemberton  
Bee County Attorney  
Beeville, Texas 78102

Letter Advisory No. 106

Re: Whether a public school  
teacher may also be a Justice  
of the Peace.

Dear Mr. Pemberton:

You advise that a teacher in a Bee County Independent School District has been elected a Bee County Justice of the Peace.

You ask:

May a teacher in an Independent School District act as Justice of the Peace? If so, may he be paid a salary for acting as Justice of the Peace?

A justice of the peace is an officer of the judicial branch of government. Tex. Const. art. 5, §1. A public school teacher is employed in the executive branch of government. Attorney General Opinion H-6 (1973).

Article 2, section 1 of the Texas Constitution confers power on the Legislative, Executive and Judicial Department of state government, specifying:

. . . and no person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others except in the instances herein expressly permitted.

By the plain language of this article, a school teacher "of" the executive department is prohibited from exercising the judicial power attached to the office of justice of the peace, unless the combination comes within "the instances. . . expressly permitted" elsewhere in the Constitution. Attorney General Letter Advisory No. 55 (1973).

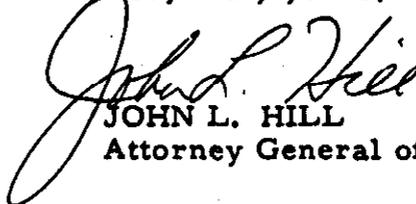
The only constitutional provision which might apply is article 16, section 40. This provision, last amended in 1972, generally prohibits dual office holding but contains several exceptions. In pertinent part, article 16, section 40 of the Constitution provides:

No person shall hold or exercise at the same time, more than one civil office of emolument, except that of Justice of the Peace, County Commissioner, Notary Public and Postmaster [military officers and men, and officers and directors of soil and water conservation districts] unless otherwise specially provided herein. . . . (Emphasis added).

A very similar situation was considered in Attorney General Opinion H-6 (1973). There a junior college instructor was also a member of the Ector County Commissioners Court, and wished to be paid for both activities. County Commissioners are also officers of the judicial branch of government (Tex. Const. art 9 § 3) and they, like justices of the peace, are expressly excepted from the dual office holding prohibitions of article 16, section 40.

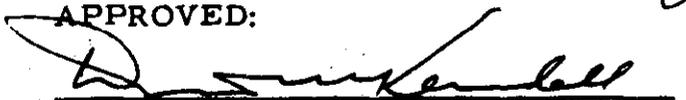
In H-6 we concluded that the article 16, section 40 exceptions applied only to that article. They do not in our opinion constitute exceptions to the requirement in article 2, section 1 that there be a separation of powers between the executive and judicial branches. As a consequence, we must answer your question in the negative. A school teacher may not also hold the office of a justice of the peace.

Very truly yours,



JOHN L. HILL  
Attorney General of Texas

APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman  
Opinion Committee

jwb