



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

February 23, 1988

Honorable Janet Nichols
Mayor
City of Rice
P. O. Box 97
Rice, Texas 75155

LO-88-22

Dear Mayor Rice:

Thank you for your letter of January 11, 1988, requesting legal guidance from this office. Chapter 402, subchapter C, of the Government Code prohibits us from issuing legal advice or written opinions to any persons other than those specified in that statute. We can, however, direct your attention to existing legal authorities that answer your first question.

You ask whether the mayor of your city may act as either municipal court judge. Article XVI, section 40, of the Texas Constitution prohibits one person from holding two civil offices of emolument. If a mayor receives compensation, he holds a civil office of emolument. Attorney General Opinion LA-64 (1973). The office of municipal court judge is also a civil office of emolument. Attorney General Opinion JM-333 (1985). Therefore, if the mayor of your city is paid, he may not serve as municipal court judge.

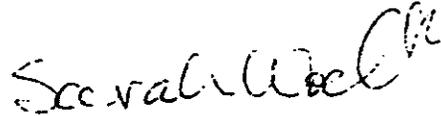
You also ask whether the mayor may act as a magistrate. Article 2.09 of the Code of Criminal Procedure makes mayors magistrates. Article 2.09 merely gives mayors additional powers. See Code Crim. Proc. §§ 2.09 (duties of magistrates); 2.10 (examining trials). See also Attorney General Opinion C-718 (1966). It does not confer a separate office on a mayor. Therefore, a

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mayor may exercise the powers of a magistrate without violating article XVI, §40.

We hope you will find this information helpful, and we regret that we cannot be of further assistance.

Yours very truly,

A handwritten signature in cursive script that reads "Sarah Woelk". The signature is written in dark ink and is positioned above the typed name.

Sarah Woelk
Assistant Attorney General
Opinion Committee

SW/bc

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