



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

April 20, 1990

Honorable Clayton L. Hall  
County Attorney  
Red River County Courthouse  
Clarksville, Texas 75426

LO-90-18

Dear Mr. Hall:

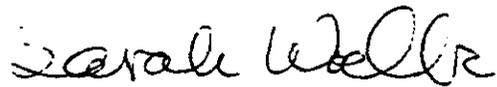
You ask whether an individual may serve as a member of the Clarksville City Council and as a member of the board of the Red River County Water District. You inform us that the city will be contracting with the water district.

The common-law doctrine of incompatibility prohibits one person from occupying two offices when one office may "thereby impose its policies on the other and subject it to control in some other way." Attorney General Opinion JM-129 (1984). In Attorney General Opinion JM-133 (1984) we held that the doctrine of incompatibility prevented an individual from serving as county auditor and as a city councilman of a city located in that county. The main reason that those positions were found to be incompatible was that the city and county might contract with each other. See also Attorney General Letter Opinion LO-88-49 (county commissioner may not serve as member of city council). Because you inform us that the city of Clarksville will likely be contracting with the Red River County Water District, we conclude that membership on the Clarksville City Council is incompatible with membership on the board of the Red River County Water District.

You also ask about the dual office holding provision in the Texas Constitution, which prohibits a person from holding two "offices of emolument." Tex. Const. art. XVI, § 40. That provision is applicable only if a person receives compensation for serving in each of the offices. See Attorney General Opinion JM-118 (1983). You do not inform us whether members of the Clarksville City Council or members of the Red River County Water District receive compensation. Therefore, we can not determine whether article XVI, section 40, is applicable to the situation you describe.

Your brief in regard to article XVI, section 40, does, however, raise the issue of whether the Red River County Water District is a "State soil and water conservation district" for purposes of article XVI, section 40. You note that article XVI, section 40, makes officers of such districts exempt from constitutional prohibitions on dual office holding. State soil and water conservation districts are provided for in chapter 201 of the Agriculture Code. We assume from your letter that the Red River County Water District was not created pursuant to the provisions of that chapter and is therefore not a state soil and water conservation district.

Very truly yours,



Sarah Woelk  
Assistant Attorney General  
Opinion Committee

SW/lcd

Ref.: ID# 9243