



The Attorney General of Texas

June 8, 1984

JIM MATTOX
Attorney General

Supreme Court Building
P. O. Box 12548
Austin, TX. 78711-2548
512/475-2501
Telex 910/874-1367
Telecopier 512/475-0266

714 Jackson, Suite 700
Dallas, TX. 75202-4506
214/742-8944

4824 Alberta Ave., Suite 160
El Paso, TX. 79905-2793
915/533-3484

31 Texas, Suite 700
Houston, TX. 77002-3111
713/223-5886

806 Broadway, Suite 312
Lubbock, TX. 79401-3479
806/747-5238

4309 N. Tenth, Suite B
McAllen, TX. 78501-1685
512/682-4547

200 Main Plaza, Suite 400
San Antonio, TX. 78205-2797
512/225-4191

An Equal Opportunity/
Affirmative Action Employer

Honorable Nick D. Woodall
Criminal District Attorney
Rockwall County Courthouse
Rockwall, Texas 75087

Opinion No. JM-163

Re: Whether an individual may be employed both as a secretary to a criminal district attorney and as a court reporter for a county court

Dear Mr. Woodall:

You have asked whether an individual may be employed as a secretary for the criminal district attorney and as a court reporter for the county court.

There is no general prohibition which would prohibit county employees from holding more than one position of employment within the county. The positions about which you inquire are clearly not "offices" to which the dual office holding prohibition of the state constitution may apply. See Tex. Const. art. XVI, §40.

You state that your secretary is a "full-time, salaried employee" who is the only certified court reporter in the county and works for the county court intermittently when needed. Your characterization of the employee as "full-time" is of little consequence in answering your question. The status of a county employee as "full-time" is meaningless in the sense that there is no definition of full-time or requirement, for example, that employees work a 40 hour work week. You state that the hours observed by your secretary in performing duties in your office are determined solely by you and are variable. In essence, your secretary is being paid to perform specified duties and is not necessarily employed for a specified time during the day during which she cannot have other employment.

Where office hours have been legally adopted for county employees, we believe that "full-time" employees may not have other employment during those hours. See V.T.C.S. art. 2372h (hours of work in counties over 500,000); art. 2372h-6 (civil service system in counties over 200,000 population).

In Attorney General Opinion MW-415 (1981) this office concluded that one person could legally serve in the positions of deputy county clerk and deputy district clerk. Thus, a person may hold more than one position within county government.

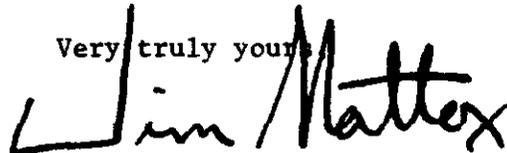
The office of criminal district attorney for Rockwall County is created by article 326k-77, V.T.C.S. Under the statute, it is his duty to prosecute all criminal offenses in district and inferior courts of Rockwall County. He is authorized to appoint "stenographers, clerks, and other personnel as are required for the proper and efficient operation and administration of the office." Id. §5. The salaries of his administrative personnel are paid by the commissioners court as are necessary expenses.

You state that your secretary is employed by the Rockwall County Court in her private capacity from time to time to serve as a certified court reporter. See V.T.C.S. art. 2321 (appointment of court reporter for each court of record); art. 2324 (duties of court reporter); art. 2324b (regulation and certification of court reporters); art. 2327 (appointment of certified shorthand reporters in civil cases pending in county courts); Tex. R. Civ. P. 376b, 376c (duties of court reporter). We do not believe that your secretary is barred as a matter of law from serving as a court reporter in the Rockwall County Court. We do not, however, address the propriety, as a matter of policy, of your secretary serving as court reporter in a criminal case in which you serve as prosecutor. See art. 2324b, §13(a).

S U M M A R Y

The secretary for the Rockwall County Criminal District Attorney may serve as a court reporter for the Rockwall County Court in non-criminal matters.

Very truly yours,



J I M M A T T O X
Attorney General of Texas

TOM GREEN
First Assistant Attorney General

DAVID R. RICHARDS
Executive Assistant Attorney General

Prepared by David Brooks
Assistant Attorney General

APPROVED:
OPINION COMMITTEE

Rick Gilpin, Chairman
David Brooks
Colin Carl
Susan Garrison
Jim Moellinger
Nancy Sutton