



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

November 10, 1992

Honorable R. F. Horka
District Attorney
P. O. Box 1409
Kountze, Texas 77625

Letter Opinion No. 92-73

Re: Whether an individual may be employed both as a constable elected by the people of his precinct and as a courtroom bailiff for a district court of the same county (ID# 17433)

Dear Mr. Horka:

You have requested our opinion regarding whether an individual may be employed simultaneously as a constable and as a courtroom bailiff for the 356th District Court, located in the same county.

In criminal matters, article 36.24 of the Code of Criminal Procedure requires the "sheriff of the county" to

furnish the court with a bailiff during the trial of any case to attend the wants of the jury and to act under the direction of the court. . . .

Various provisions of chapter 53 of the Government Code authorize particular courts to appoint courtroom bailiffs, but none of these statutes are applicable to the 356th District Court.¹ In any event, the statutes make clear that a courtroom bailiff, while attending court, is under the control of the presiding judge.

Article XVI, section 40 of the Texas Constitution prohibits one individual from simultaneously holding more than one "office of emolument." The position of constable, an elected official who receives compensation, is obviously an "office of emolument." See Local Gov't Code §§ 154.001 - 154.002. On the other hand, it is

¹Grand jury bailiffs, who are appointed by both the court and the district attorney, are governed by article 19.36 of the Code of Criminal Procedure. You indicate that your inquiry does not relate to such persons.

equally clear that a courtroom bailiff, who, as noted, is always under the direct supervision of the presiding judge, does not occupy an "office of emolument."

The common-law doctrine of incompatibility precludes one person from holding two positions whenever one might "impose its policies on the other or subject it to control in some other way." Attorney General Opinions JM-129, JM-133 (1984). A constable's duties consist primarily in executing service of process and attending sessions of justice court. Local Gov't Code § 86.021. No provision of any statute indicates that the position of constable would be incompatible with that of courtroom bailiff in district court. See Attorney General Opinion JM-485 (1986) (common-law doctrine of incompatibility does not, as a matter of law, prohibit a constable from serving simultaneously as jailer).

We conclude, therefore, that a constable is not precluded from serving simultaneously as a courtroom bailiff for a district court located in the county which he also serves as constable.

S U M M A R Y

A constable is not precluded from serving simultaneously as a courtroom bailiff for a district court located in the county which he also serves as constable.

Yours very truly,



Rick Gilpin
Deputy Chief
Opinion Committee