



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 30, 1994

Mr. José R. Rodríguez
County Attorney
El Paso County Courthouse
500 East San Antonio, Room 203
El Paso, Texas 79901

Letter Opinion No. 94-077

Re: Whether a public school teacher may
also serve as a constable (ID# 26175)

Dear Mr. Rodríguez:

You ask whether a teacher employed by the El Paso Independent School District may at the same time hold a position as an elected constable for Precinct 7, El Paso County, Texas. Precinct 7 includes territory located within the boundaries of the independent school district.

You refer us to article XVI, section 40 of the Texas Constitution, which provides that "[n]o person shall hold or exercise at the same time, more than one civil office of emolument." A public school teacher is an employee and not an officer within article XVI, section 40. *Tilley v. Rogers*, 405 S.W.2d 220, 224 (Tex. Civ. App.--Beaumont 1966, writ ref'd n.r.e.); Letter Advisory No. 137 (1977). See also Letter Opinion 93-96, 93-37 (1993). Thus, article XVI, section 40 of the Texas Constitution does not prohibit a public school teacher from serving as an elected constable.

We will also consider whether the common-law doctrine of incompatibility would prevent one person from serving as constable and as a teacher under the circumstances you describe. The common-law doctrine of incompatibility prevents one person from holding two offices if the duties are inconsistent or in conflict, or if one office is subordinate to the other. *Thomas v. Abernathy County Line Indep. Sch. Dist.*, 290 S.W. 152 (Tex. Comm'n App. 1927, judgm't adopted); see also Attorney General Opinion JM-1266 (1990). It does not reach the time constraints and other practical difficulties that an individual may encounter in attempting to hold an office and a public employment. This doctrine also prevents a public employee from holding a public office which appoints, supervises, and controls the employee. See *Ehlinger v. Clark*, 8 S.W.2d 666 (Tex. 1928); Letter Advisory No. 114 (1975). We have already established that a public school teacher does not hold an office. Thus, the individual who serves as constable for Precinct 7, El Paso County, and a public school teacher in the El Paso Independent School District does not hold two incompatible offices. Nor is there any relationship of supervision or accountability between the constable and the teacher. See Attorney General Opinion JM-519 (1986) (office of school board member is not incompatible with office of constable). Accordingly, the common-law doctrine of incompatibility does not bar a

teacher employed by the El Paso Independent School District from at the same time holding a position as an elected constable for Precinct 7, El Paso County, Texas.

S U M M A R Y

Neither article XVI, section 40, of the Texas Constitution, nor the common-law doctrine of incompatibility prevents a teacher employed by the El Paso Independent School District from at the same time holding a position as an elected constable for Precinct 7, El Paso County, Texas.

Yours very truly,

A handwritten signature in black ink that reads "Susan L. Garrison". The signature is written in a cursive style with a large, prominent initial "S".

Susan L. Garrison
Assistant Attorney General
Opinion Committee