



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 1, 1994

Mr. Kenneth H. Ashworth  
Commissioner  
Texas Higher Education  
Coordinating Board  
P.O. Box 12788  
Austin, Texas 78711

Letter Opinion No. 94-080

Re: Whether an individual may "be employed simultaneously in a full-time faculty position at both a public junior college and a state university without violating the state constitution or other state law" (ID# 27929)

Dear Commissioner Ashworth:

You have requested our opinion regarding whether an individual may "be employed simultaneously in a full-time faculty position at both a public junior college and a state university without violating the State Constitution or other state law."

Article XVI, section 40, of the Texas Constitution prohibits any person from simultaneously holding more than one "civil office of emolument." It is well established, however, that a professor at a state-supported university does not thereby occupy an "office." *Tilley v. Rogers*, 405 S.W.2d 220, 224 (Tex. Civ. App.--Beaumont 1966, writ ref'd n.r.e.). See also Attorney General Opinion DM-212 (1993); Letter Opinion Nos. 93-96, 93-37 (1993). Another provision of article XVI, section 40, declares that

State employees or other individuals who receive all or part of their compensation either directly or indirectly from funds of the State of Texas, and who are not State officers, shall not be barred from serving as members of the governing bodies of school districts, cities, towns, or other local governmental districts; provided, however, that such State employees or other individuals shall receive no salary for serving as members of such governing bodies.

Since neither position of which you inquire is that of a member of the "governing body" of a "local governmental district," this portion of article XVI, section 40, is inapplicable. See Letter Opinion Nos. 93-96 (1993); 90-39 (1990).

Furthermore, no branch of the common-law doctrine of incompatibility is relevant to the situation you pose, whether "self-appointment," "self-employment," or "conflicting loyalties." See Attorney General Opinion JM-1266 (1990); Letter Opinion No. 94-20 (1994). Finally, codification of title 5 of the Government Code has now removed all doubt that any *general statute* imposes limitations upon dual state *employment*. See Gov't

doubt that any *general statute* imposes limitations upon dual state *employment*. See Gov't Code, ch. 574.<sup>1</sup> We conclude that there is no constitutional, statutory, or common-law impediment to an individual's simultaneously holding full-time teaching positions at both a state university and a public junior college. Whether policies or regulations of either institution might prohibit such dual employment raises questions of fact which we cannot resolve through the opinion process.

### S U M M A R Y

There is no constitutional, statutory, or common-law impediment to an individual's simultaneously holding full-time teaching positions at both a state university and a public junior college.

Yours very truly,



Rick Gilpin  
Deputy Chief  
Opinion Committee

---

<sup>1</sup>Section 574.001 provides:

A nonelective state officer may not accept an offer to serve in another nonelective office unless the officer obtains from the governing body or, if there is not a governing body, the executive head of the agency, division, department, or institution with which the officer is associated a finding that the officer has satisfied Article XVI, Section 40, of the Texas Constitution.

With the enactment of this statute in 1993, the constitutional revisors belatedly acknowledged the validity of Attorney General Opinion H-5 (1973), which declared that the 1972 amendments to article XVI, sections 33 and 40, had impliedly repealed article 6252-9a, V.T.C.S., to the extent that it was applicable to state *employees*.