



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 26, 1996

The Honorable Don Henderson
Chair
Senate Jurisprudence Committee
Texas State Senate
P.O. Box 12068
Austin, Texas 78711-2548

Letter Opinion No. 96-078

Re: Whether a justice of the peace may
serve as a Bexar County juvenile law
master (ID# 31206)

Dear Senator Henderson:

You ask whether a justice of the peace may serve as a Bexar County juvenile law master. You have submitted a letter from a Bexar County justice of the peace who asks whether article XVI, section 33 of the Texas Constitution prohibits him from holding these two positions. Apparently, the justice of the peace does not plan to accept compensation for his services as master.

Article XVI, section 33 provides as follows:

The accounting officers in this State shall neither draw nor pay a warrant or check on funds of the State of Texas, whether in the treasury or otherwise, to any person for salary or compensation who holds at the same time more than one civil office of emolument in violation of Section 40.

Thus, we must consider article XVI, section 40, which provides in pertinent part:

No person shall hold or exercise at the same time, more than one civil office of emolument, except that of Justice of the Peace

This language serves to exempt justices of the peace from the dual office holding prohibitions of article XVI, sections 33 and 40. *See Turner v. Trinity Indep. Sch. Dist.*, 700 S.W.2d 1 (Tex. App.—Houston [14th Dist.] 1983, no writ). Therefore, neither section 33 nor section 40 prohibits the justice of the peace from serving as master regardless of whether he accepts compensation for the latter position.¹

¹Given that sections 33 and 40 exempt the office of justice of the peace, we need not decide here whether a Bexar County juvenile law master is an officer for purposes of these constitutional provisions.

This is not the end of our inquiry, however, because the common-law doctrine of incompatibility may also bar the justice of the peace from serving as a juvenile law master. This doctrine bars one person from holding two offices if the duties of the offices are inconsistent or in conflict or if one office is subordinate to the other. See Attorney General Opinion JM-1047 (1989) at 1 (citing cases concerning whether justice of the peace may serve as jailer). It also prohibits an individual from holding an office and at the same time holding an employment that is subordinate to the office. Attorney General Opinion DM-55 (1991); Letter Advisory No. 114 (1975). As a threshold matter then, we must first determine whether the position of juvenile law master is an "office" or "employment" for purposes of the common-law doctrine of incompatibility.

We assume that the justice of the peace seeks an appointment as a part-time juvenile law master under sections 54.921 through 54.939 of the Government Code, which specifically govern the appointment of such masters in Bexar County.² Section 54.921 of the Government Code authorizes the judge of the 289th District Court to appoint part-time masters provided that the Bexar County Commissioners Court first determines that a need exists and approves the number of masters to be appointed. A master must be a citizen and resident of this state and have been licensed to practice law in this state for at least two years. Gov't Code § 54.922. A master serves at the will of the judge. *Id.* § 54.926(a).

Section 54.927 provides that the judge may refer to a master any civil case or portion of a civil case brought under titles 1 through 4 of the Family Code,³ in connection with rule 308a of the Texas Rules of Civil Procedure,⁴ or in connection with chapter 76 of the Human Resources Code.⁵ An order referring a matter to a master may limit the use or power of a master. *Id.* § 54.929(a). "Unless limited by published local rule, by written order, or by an order of referral, a master may perform all acts and take all measures necessary and proper to perform the tasks assigned in a referral." *Id.* § 54.929(b). The

²We have been unable to identify any other statutory authority for such an appointment.

³Title 1 of the Family Code governs the creation and dissolution of marriage; title 2 governs the parent-child relationship; title 3 pertains to delinquent children and children in need of supervision; and title 4 sets forth procedures governing protective orders and defines the offense of contributing to the delinquency or dependency of a child.

⁴Rule 308a of the Texas Rules of Civil Procedure authorizes a court that has ordered child support or possession or access to a child to appoint a member of the bar to investigate allegations that such an order has been violated.

⁵Chapter 76 of the Human Resources Code governs child support collection and related matters. Chapter 46 of the Human Resources Code, to which section 54.927 of the Government Code also refers, has been repealed. See Act of July 14, 1989, 71st Leg., 1st C.S., ch. 25, § 43, 1989 Tex. Gen. Laws 74, 93.

findings and recommendation of a master become the decree or judgment of the court only when adopted and approved by an order of the judge. *Id.* §§ 54.935-.937.

The decisive factor distinguishing a public officer from a public employee is “whether any sovereign function of government is conferred upon the individual to be exercised by him for the public largely independent of the control of others.” *See Aldine Indep. Sch. Dist. v. Standley*, 280 S.W.2d 578, 583 (Tex. 1955). Although section 54.929 appears to give masters latitude to perform the tasks assigned to them in a referral, a master serves at the will of the judge and the findings and recommendation of a master become the judgment of the court only when adopted and approved by an order of the judge. *Id.* §§ 54.926(a), .935-.937. For this reason, masters do not appear to exercise their judicial functions largely independent of the control of the court. Therefore, we conclude that masters are not officers for purposes of the common-law doctrine of incompatibility but are, rather, employees.

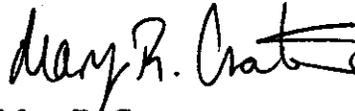
In addition, there is no incompatibility between the office of justice of the peace and the employment of part-time juvenile law master. A master under the foregoing provisions does not appear to be subordinate to a justice of the peace. A justice of the peace does not control the district court, or appoint, supervise, or determine the duties or salary of a part-time juvenile law master. *See Letter Opinion Nos. 94-77 (1994), 94-70 (1994)*. Therefore, the doctrine of incompatibility does not prohibit a justice of the peace from serving as a part-time juvenile law master under sections 54.921 through 54.939 of the Government Code.

Despite our conclusion that the common-law doctrine of incompatibility does not apply, we caution that conflicts may arise between the two positions. As the justice of the peace points out in his letter, for example, justice courts have limited jurisdiction over truancy matters. *See Fam. Code § 54.021* (authorizing juvenile court to waive its exclusive original jurisdiction and transfer child truancy matter to justice court). There may be other circumstances in which the jurisdiction of a justice court brings the justice of the peace into contact with matters pertaining to juvenile law or a particular juvenile matter. The justice of the peace states that as a master he would ask the court “to describe my duties in such a way that I would not have jurisdiction over a minor charged with truancy in any justice court.” We further note that both justices of the peace and part-time masters must comply with the Code of Judicial Conduct, with certain exceptions. *See Code Jud. Conduct, Canon 6, pts. C - D (1995), reprinted in Gov’t Code tit. 2, subtit. G, app. B.*

S U M M A R Y

Neither section 33 nor section 40 of article XVI of the Texas Constitution prohibits a justice of the peace from serving as a Bexar County part-time juvenile law master, regardless of whether the justice of the peace accepts compensation for the latter position. The two positions are not incompatible as a matter of law.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Mary R. Crouter". The signature is written in dark ink and is positioned above the typed name.

Mary R. Crouter
Assistant Attorney General
Opinion Committee