



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 14, 1997

Mr. Charles Moser
President, Brazos River Authority
P.O. Box 7555
Waco, Texas 76714-7555

Letter Opinion No. 97-027

Re: Whether an individual may simultaneously occupy the positions of assistant municipal judge and director of a river authority (ID# 39098)

Dear Mr. Moser:

You have requested our opinion regarding whether a member of the board of directors of the Brazos River Authority may continue to serve as a director if she accepts an appointment as municipal judge of the City of Mexia.

Article XVI, section 40, Texas Constitution, provides, in relevant 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, County Commissioner, Notary Public and Postmaster. . . . It is further provided that a nonelective State officer may hold other nonelective offices under the State or the United States, if the other office is of benefit to the State of Texas or is required by the State or Federal law, and there is no conflict with the original office for which he receives salary or compensation.

You indicate that a member of the board of directors of the Brazos River Authority is appointed by the governor, and is compensated therefor at the rate of \$100.00 per diem for each day of service. It is clear that such position constitutes a "civil office of emolument." Likewise, a compensated municipal judge, whose position is nonelected, holds a "civil office of emolument." Attorney General Opinion DM-428 (1996). Thus, the director may simultaneously serve as a municipal judge only if the holding of that office "is of benefit to the state of Texas" and "there is no conflict" between the two positions.¹

¹We presume that there is no "conflict" between the two positions of municipal judge and director of a river authority. As we said in Attorney General Opinion DM-428, "the matter of conflict raises essentially an incompatibility question." Attorney General Opinion DM-428 (1996) at 3; *see also* Attorney General Opinion JM-1266 (1990).

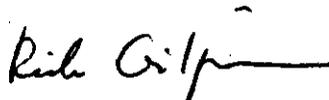
In DM-428, we considered whether an individual was eligible to serve as a municipal judge in more than one jurisdiction. We addressed the "benefit" issue at some length, and concluded that "[i]n a particular instance--whether the holding of two identified municipal judgeships by a single named person constitutes a 'benefit' to the state--this is a factual inquiry." *Id.* at 3. As we noted, this office cannot make factual determinations, and "the courts are best qualified to determine whether the holding of more than one particular municipal judgeship by a particular individual constitutes a 'benefit' to the state." *Id.* at 4.

Likewise, in the situation you pose, the "benefit" question calls for a factual inquiry, which this office cannot undertake. Neither is the board of directors of the Brazos River Authority authorized to do so. Although chapter 574, Government Code, would seem to give some role to the board in the process, that role is limited to "finding that the officer has satisfied Article XVI, Section 40." Gov't Code § 574.001. In our opinion, the board is in no better position than this office to determine whether the holding of a particular judgeship would constitute a "benefit to the state." We hold, therefore, that a member of the board of directors of the Brazos River Authority may not simultaneously serve as a municipal judge unless a court finds that the holding of the second office is "of benefit to the State of Texas."²

S U M M A R Y

A member of the board of directors of the Brazos River Authority may not serve as an assistant municipal judge unless a court finds that the holding of the second office is "of benefit to the State of Texas."

Yours very truly,



Rick Gilpin
Deputy Chief
Opinion Committee

²Of course, as suggested in Attorney General Opinion DM-428 (1996), the legislature might enact a statute that finds, as a *general* matter, that the holding of more than one office is "of benefit to the state." Such a statute might specifically include, *inter alia*, municipal judges and members of the boards of directors of river authorities.