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BRYAN, TEXAS 77803

RQ-240

October 15, 1991

Ms. Madeleine Johnson
Opinion's Committee
Attorney General's Office
P.O. Box 12548
Austin, Texas 78711-2548

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Opinion Committee

Dear Ms. Johnson,

An opinion is requested for the following question:

May a Justice of the Peace hold an unpaid peace officer's commission thru the constable in his precinct, any other constable in Brazos County, or any constable or sheriff outside this county.

The closest case or opinion I am able to locate is Attorney General's Opinion JM 1047 which states the Justice of the Peace may not be a jailer as it would be a conflict of interest.

Thank you for your assistance.

Yours truly,

A handwritten signature in cursive script, appearing to read "Sandra L. Dent".

Sandra L. Dent
Assistant County Attorney



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ID# 14148
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November 5, 1991

Ms. Madeleine Johnson
Opinion's Committee
Attorney General's Office
P.O. Box 12548
Austin, Texas 78711-2548

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Opinion Committee

Dear Ms. Johnson:

Below please find my Memorandum of Law on the following opinion requested:

May a Justice of the Peace hold an unpaid peace officer's commission through the constable in his precinct, any other constable in Brazos County, or any constable or sheriff outside Brazos County.

MEMORANDUM OF LAW

The office of Justice of the Peace is created by art. 5 §18 of the Texas Constitution. Jurisdiction of the justice court is found in art. 5 §19, TEX. CONST., (Vernon Ann. Civ. St. 1991). The justice court maintains original jurisdiction in criminal matters of misdemeanor cases punishable by fine only. In addition to presiding over these criminal misdemeanor cases, the Justice of the Peace is empowered to issue search warrants. Tex. Code Crim. Proc. art. 18.01.

In Op. Atty. Gen. 1989, No. JM-1047, it was held that under the common law doctrine of incompatibility one could not serve as Justice of the Peace in a county and as a jailer in the same county as his duties as magistrate conflict with those of a jailer as an employee of the sheriff. This doctrine clearly holds true when the jurisdiction of the Justice of the

Peace and sheriff overlap. Also, as the constable is the law enforcement officer for the justice court, it only follows that the Justice of the Peace couldnot hold a peace officers commission through the constable in his precinct. Tex. Code Crim. Proc. art. 2.12

However, if a constable in another precinct or sheriff of another county commissioned the Justice of the Peace and their jurisdiction was not overlapping, then it appears there is no conflict of interest. The justice would not be hearing cases filed and would not be available to them for search warrants.

It would not be a bar to a commissioned Justice of the Peace because he held more than on office. (Vernon Ann. Civ. St. art. 16§40. If these were inconsistent offices then his qualification for the second would act as a resignation of the first office. (Vernon Ann. Civ. St. §66.001); State v. Brinkerhoff, 66 Tex. 45, 17 SW 109; Centeno v. Inselmann, 519 SW2d 889 (Tex. Civ. App. 1975). It is this resignation of office the Justice of the Peace wishes to avoid.

CONCLUSION

When a Justice of the Peace holds a peace officer's commission from a Law enforcement agency that does not overlap the jurisdiction of his office, there would not be any inconsistency or incompatibility of the offices.

Thank you for your assistance in this matter.



Sandra L. Dent
Assistant County Attorney