



ID# 14134  
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November 1, 1991

Madeleine Johnson  
Opinions Committee  
Office of the Attorney General  
of Texas  
P.O. Box 12548  
Austin, Texas 78711-2548

RECEIVED  
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Opinion Committee

Dear Ms. Johnson,

This office formally requests an Attorney General's Opinion on the following three questions:

(1) May a trustee on the board of trustees of an independent school district junior college district simultaneously serve as a councilperson on the governing body of a home rule municipality that is within the junior college district and is the municipality in which the junior college campus is located?

(2) May a trustee on the board of trustees of an independent school district junior college district simultaneously serve as a councilperson on the governing body of a general law municipality that is within the junior college district but is not the municipality in which the junior college campus is located?

(3) May a trustee on the board of trustees of an independent school district junior college district simultaneously serve as a trustee on the board of trustees of an independent school district located within the junior college district?

The opinion rendered by your office on these three issues will resolve questions as to who may seek and hold city and school board elective offices in the May 2, 1992 elections in Gregg County. The filing period for these elections begins forty-five (45) days prior to the election date. Therefore, this office requests an opinion prior to March 17.

The Kilgore College District is an independent school district junior college district organized in accordance with V.T.C.A. Education Code §130.082 (Vernon 1991). The junior college campus is located within the city of Kilgore, Texas. The Kilgore College district's boundary lines are coterminous with the contiguous territory made up of the Kilgore, White Oak, Sabine, Overton, Gladewater, Leverett's Chapel and West Rusk Independent School Districts. Kilgore College is governed by a board of trustees consisting of nine (9) members. The college district is divided into three (3) voting units and each voting unit is represented by three (3) trustees. The trustees serve staggered, six (6) year terms. The trustees do not receive any remuneration or emolument of office. However, the trustees are reimbursed for expenses related to the position. V.T.C.A. Education Code §130.082 (Vernon 1991).

The city of Kilgore is a home rule municipality organized in accordance with V.T.C.A. Local Government Code §5.001 (Vernon 1991). Its governing body consists of a mayor and five (5) city council members who are elected at large and serve two (2) year terms. Kilgore city council members receive \$50.00 per month.

The city of New London is a general law municipality organized in accordance with V.T.C.A. Local Government Code §5.001 (Vernon 1991). Its governing body consists of a mayor and five (5) city council members who are elected at large and serve two (2) year terms. New London city council members receive \$12.00 per month. The West Rusk Independent School District, which is located within the junior college district, is the school district in which the city of New London is located.

The Kilgore, Sabine, White Oak, Overton, Gladewater, Leverett's Chapel and West Rusk Independent School Districts are each governed by boards of trustees elected from each particular school district. The trustees who serve on the board of trustees for each of these school districts receive no salary.

The Junior College, in addition to its property and campus in the city of Kilgore and the Kilgore Independent School District, operates a "farm" on property located within and subject to the present and future ordinances of both the city of New London and the city of Overton, Texas. Therefore, it is clear that the college has real property and operations subject to ordinances of both municipalities addressed.

This office is not aware of any Attorney General's Opinions that directly address the above three questions. Moreover, this

office is unaware of any Statutes, local municipal ordinances, or policies which would prohibit the simultaneous holding of the offices in question. In addition, since the college board trustees would not be simultaneously holding two offices of emolument, the Texas Constitution, Article 16, Section 40, would not be violated. Vernon's Ann. Tex. Const. Art. 16, §40 (Vernon 1958). Therefore, it seems that the common law doctrine of incompatibility poses the only potential prohibition against the simultaneous holding of the offices in question.

Thomas v. Abernathy County Line Independent School District, 290 S.W. 152 (Comm. of App. of Texas, 1927) articulated the proposition that the common law doctrine of incompatibility prevents a person from accepting two offices where one office might thereby impose its policies on the other or subject it to control in some other way. Subsequent Attorney General's Opinions have also described the doctrine of incompatibility as prohibiting one person from holding two offices if the duties are in conflict or if one is subordinate to the other. Attorney General Opinion JM-129 (1984) and Attorney General Opinion JM-634 (1987).

Other than defining the term itself, case law and Attorney General's Opinions on the issue of incompatibility of office do not provide a consistent resolution of the issue. In Thomas v. Abernathy County Line Independent School District, supra, the Court held that a person could not simultaneously hold the offices of school district trustee and city alderman in a city within the boundaries of the school district. However, in State ex rel. Brennan v. Martin, 51 S.W. 2d 815 (Tex. Civ. App.--San Antonio 1932, no writ), the Court held that no incompatibility existed between the offices of school district trustee and city tax assessor.

Attorney General Opinion JM-129 (1984) states that the simultaneous holding of the offices of county-wide junior college trustee and county commissioner is prohibited by the common law doctrine of incompatibility. However, Attorney General Opinion V-63 (1947) maintains that the simultaneous holding of the offices of county commissioner and independent school district trustee is not prohibited by the common law doctrine of incompatibility.

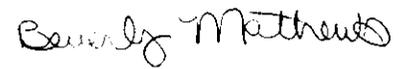
Attorney General Opinion JM-634 (1987) asserts that the common law rule of incompatibility prevents a person from simultaneously serving as school district trustee and city councilperson. However, Attorney General Opinion O-7237 (1946) maintains that a school district trustee may simultaneously serve as a trustee for a junior college in the same county and district if he does not receive compensation for both positions.

Your help in resolving these three questions on the issue of incompatibility of office will be greatly appreciated. These three questions are of great importance to Gregg County and an opinion on these issues is needed as quickly as possible. Therefore, if you have any questions, or require additional information which may

be useful in reaching an opinion, please contact me immediately.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Beverly Mathews".

BEVERLY MATHEWS  
Assistant District Attorney

BM/gs