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OPINION COMMITTEE

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Via Certified Mail, Return Receipt Requested

Hon. Greg Abbott
Office of the Attorney General
Attn: Opinions Committee
P. O. Box 12458
Austin, Texas 78711

RQ-0874-GA

Re: Request for Attorney General Opinion

May a sitting member of the Board of Trustees of an Independent School District serve simultaneously in the dual offices of School Board Trustee *and* as the Mayor of a Type A general law municipality having overlapping geographical jurisdictions?

Dear Attorney General Abbott:

Please accept this letter as a request tendered under §402.042, Texas Government Code, for an opinion for clarification of the common law doctrine of incompatibility regarding whether there is any distinction between a Mayor vs. an alderman of a general law city in regards to the well-known ban prohibiting a Trustee of an Independent School District from serving simultaneously in the capacity as a city alderman.

FACTUAL BACKGROUND

The School District: The geographic boundaries of the Culberson County-Allamoore Independent School District include all of Culberson County, Texas, and a portion of eastern Hudspeth County, Texas.

The Town: The Town of Van Horn, Texas, is a Type A general law municipality incorporated under the laws of the State of Texas, and located wholly within the geographical boundaries of the Culberson County Independent School District.

The Office Holder: Mr. Robert Morales is currently an elected and sitting member of the Board of Trustees of the Culberson County-Allamoore Independent School District. Mr. Morales has approximately two (2) years remaining in his term of office as a School Board Trustee. Mr. Robert Morales has recently filed an application to run for the office of Mayor of the Town of Van Horn in the upcoming municipal election to be held on May 8, 2010.

Questions: (a) Does the common law doctrine of incompatibility prohibit a school board trustee from serving simultaneously as the mayor of a Type A general law municipality whose boundaries lie wholly within the geographic boundaries of the independent school district?

(b) Is there a material difference or distinction in the office of 'mayor' vs. the office of an 'alderman' insofar as the common law doctrine of incompatibility applies to the prohibition of a school board trustee from serving simultaneously as an alderman of a Type A general law municipality?

B R I E F

It clearly appears to be the law in Texas that a school board trustee is *prohibited* from serving simultaneously as a city alderman. The prohibition of dual office-holding in this scenario has its roots in the common law doctrine of incompatibility. See, *Thomas v. Abernathy County Line Indep. Sch. Dist.*, 290 S.W. 152 (Tex. Comm'n. App. 1927, *judgm't. adopted*).

The *Thomas* case is discussed at length in **Tex. Atty. Gen. Opinion No. JM-634 (1987)** as follows:

One impediment to dual office holding is the common law rule of incompatibility; this doctrine prohibits one person from holding two offices if the duties are in conflict or if one is subordinate to the other. See *Thomas v. Abernathy County Line Independent School District*, 290 S.W. 152 (Tex. Comm'n App. 1927); *State v. Martin*, 51 S.W.2d 815 (Tex. Civ. App.--San Antonio 1932, no writ); Attorney General Opinion Nos. JM-133, JM-129 (1984); Letter Advisory Nos. 114 (1975); 86 (1974).

In *Thomas v. Abernathy County Independent School District*, *supra*, the incorporated town was within the school district territory. Two school trustees were subsequently elected to the office of town alderman. Since the boundaries of the school district and the city overlapped, the competing interests of the two jurisdictions raised the potential for conflict. The court was especially sensitive to this potential for conflict when it concluded:

In our opinion the offices of school trustee and alderman are incompatible; for under our system there are in the city council or board of aldermen various directory or supervisory powers exercisable in respect to school property located within the city or town and in respect to the duties of school trustee performable within its limits--e.g., there might well arise a conflict of discretion or duty in respect to health, quarantine, sanitary, and fire prevention regulations. See articles 1015, 1067, 1071, R.S. 1925. If the same person could be a school trustee and a member of the city council or board of aldermen at the same time, school policies, in many important respects, would be subject to discretion of the council or aldermen instead of to that of the trustees.

Id. at 153. In reaching its conclusion concerning incompatibility, the *Thomas* court established for the offices in question a safeguard against conflicting duties attenuating faithful public service. Grounded in this concern, the incompatibility doctrine "protects the integrity of state institutions by promoting impartial service by public officials." Attorney General Opinion JM-203 (1984) at 3. A city council or board of aldermen thus

has powers and duties which conflict with the legal role of school trustees. Accordingly, the court held that the public offices of trustee of an independent school district and alderman or councilman were incompatible positions. *Id.*; see also Letter Advisory No. 149 (1977).

A similar opinion may be found in **Tex. Atty. Gen. Op. LO-93-22 (1993)**, which clearly prohibits a school board trustee from serving in the dual role as a municipal alderman, stating as follows:

The common-law doctrine of incompatibility prohibits a single individual from simultaneously holding two positions. One branch of the doctrine has been designated by this office as the "conflicting loyalties" rule, and it is applicable in situations in which a person holds positions in two different political subdivisions that have some degree of overlapping geographical jurisdiction.

The original Texas case relying on the doctrine of incompatibility held that "the offices of school trustee and alderman are incompatible," because aldermen exercise "various directory or supervisory powers... in respect to school property located within the city or town and in respect to the duties of school trustee performable within its limits." *Thomas v. Abernathy County Line Indep. Sch. Dist.*, 290 S.W. 152, 153 (Tex. Comm'n App., 1927, judgment adopted). In holding that the offices of community college district trustee and county commissioner were incompatible as a matter of law, this office has said that, "since the boundaries of the district and the county are coterminous, the potential for ... conflict always exists." Attorney General Opinion JM-129 at 3. Particularly in instances in which both governing bodies exercise the taxing function, the possibility of "conflicting loyalties" is paramount and obvious. As this office declared in Attorney General Opinion JM-129, since the "county and the junior college district could have conflicting interests with respect to tax collection," it follows that "one person serving as junior college trustee and county commissioner could not serve the best interests of both." *Id.* at 2.

In our opinion, therefore, a member of a school district board of trustees may not serve simultaneously as a member of a city council in an instance in which the two political subdivisions have any amount of overlapping geographical jurisdiction.

See also, **Tex. Atty. Gen. Opinion GA-0015 (2003)**--discussion of 'conflicts' inherent in overlapping boundaries of two political subdivisions--stating: "*As a general matter, where the geographical boundaries of two governmental bodies overlap there is always the potential for conflict, particularly where both entities collect taxes*". And, stating further: "*It is also well established that when two governmental bodies are authorized to contract with each other, one person may not serve simultaneously as a member of both.*"

The issue at hand is, therefore, whether the case law and Attorney General opinions cited above which clearly apply to a city 'alderman'-- apply likewise to a city's 'mayor'? In general, it is thought that there is no material distinction in the positions of 'mayor' vs. 'alderman', at least the extent that any such distinction might be germane to the issue of dual office-holding as a school board trustee.

It is understood, however, that **Tex. Atty. Gen. Opinion MW-563 (1982)** might be read as creating 'distinctions' between the municipal offices of mayor vs. alderman. This opinion cites the *City of Centerville v. Adkisson*, 291 S.W.2d 798 (Tex. Civ. App.--Waco 1956, no writ), holding that a mayor

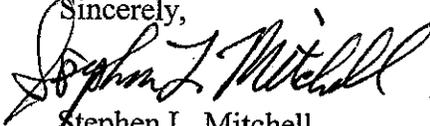
was not an 'alderman' within the meaning of article 1033, V.T.C.S.¹, which required the 'consent of two-thirds of the aldermen elected.' Likewise, MW-563 opines that a mayor is not an 'alderman' within the meaning of article 997, V.T.C.S.²

SUMMARY

It is my belief that the distinctions drawn between a mayor vs. an aldermen referenced in the above opinion [MW-563 (1982)] are neither relevant, nor applicable, to the question posed herein regarding dual office-holding in the context of the same person serving simultaneously *both* as a mayor and as a school board trustee.

In short, it would seem that the same common law doctrine of incompatibility which prohibits a city alderman from serving simultaneously as a school board trustee would apply likewise to prohibit a city mayor from serving simultaneously as a school board trustee.

However, I have been unable to find either case law, or an Attorney General Opinion, which speaks directly to the doctrine of incompatibility as it applies to a school board trustee who seeks to serve simultaneously as the mayor of a Type A general law municipality. This is the question which I respectfully ask the Attorney General's office to clarify and to resolve.

Sincerely,

Stephen L. Mitchell

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¹ Art. 1033, V.T.C.S.- is now found in Sec. 302.101, Tax Code.

² Art. 997-V.T.C.S.- is now found in Sec. 52.003, Local Gov't. Code.