



THE ATTORNEY GENERAL
OF TEXAS

AUSTIN, TEXAS 78711

JOHN L. HILL
ATTORNEY GENERAL

May 14, 1973

The Honorable Charles Herring
Chairman, Jurisprudence Committee
Texas State Senate
Austin, Texas 78711

Letter Advisory No. 31

Re: Dual employment - An
Executive Director of a
State agency - A Director
of a River Authority

Dear Senator Herring:

We acknowledge receipt of your letter of May 10, 1973 asking, on behalf of the Committee on Jurisprudence of the Senate, whether or not the Assistant Executive Director of a State agency, such as the Assistant Executive Director of the Aeronautics Commission or the Animal Health Commission, who is not subject to confirmation by the Senate, may serve at the same time as a Director of a River Authority. You cite our Opinion H-10 as answering the question but indicate that you wanted to be certain before the employment of various individuals was effectuated.

In dual employment situations, the basic question is posed by Section 40 of Article 16 of the Constitution which provides in part:

"No person shall hold or exercise at the same time, more than one civil office of emolument . . . except the officers and directors of soil and water conservation districts, unless otherwise specifically provided herein. . . . State employees or other individuals who receive all or part of their compensation either directly or indirectly from funds of the State of Texas and also are not State officers, shall not be barred from serving as members of the governing bodies of . . . local governmental districts; provided, however, that such State employees . . . shall receive no salary for serving as members of such governing bodies. . . ."

We see no problem involving the separation of powers or of incompatibility but those are two additional questions which must always be con-

sidered in determining the matter of dual employment.

Difficulty in applying this section grows largely from the fact that "civil office" is not subject to easy definition. An officer of the state is one upon whom a sovereign function of the government is conferred to be exercised by him for the benefit of the public largely independent of the control of others. Aldine Independent School District v. Standly, 280 S. W. 2d 578 (Tex. 1955). Those not officers are employees, but employees may occupy civil offices of emolument to the extent they are entrusted with carrying out sovereign powers of the state and not merely ministerial tasks.

The Director of Aeronautics, a position created by statute (Article 46c-7, V. T. C. S.) and given specific duties, would be a public officer. However, his assistant would not, although he would occupy a civil office of emolument. The statute creating the Texas Animal Health Commission (Article 7009, V. T. C. S.) does not specifically call for an executive director. However that may be, we may safely assume that his assistant executive director would occupy a civil office, and not a public office.

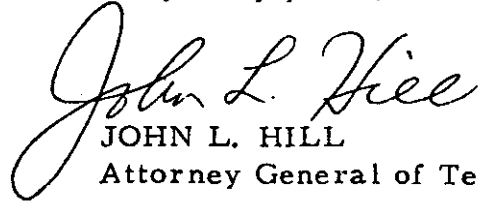
If the River authority to which you refer may be classified as a soil or water conservation district, and it seems that river districts are generally classed as soil and water conservation districts under Title 128, V. T. C. S., then a position as its director is exempt from the prohibition by Section 40, Article 16, of dual employment.

In any event, we believe the men to whom you refer would qualify as "state employees . . . who are not state officers," and, under the 1972 amendment to Section 40 would be entitled to serve as members of the governing board of a "local governmental district" of which the Director of a river authority would be one. However, if they qualify for their second employment under this exception, it specifically provides "that such State employees . . . shall receive no salary for serving as a member of the governing body."

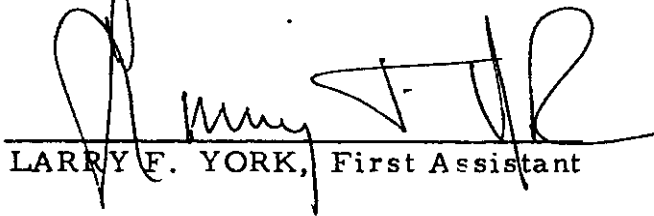
It is therefore our opinion that the assistant executive director of a state agency may also sit as a member of a state river authority. If he does so because of the exemption of members of soil and water conservation districts, he may draw the emoluments of both offices. If, on the other hand, he does so under the 1972 amendment, he will not be eligible to recover his pay.

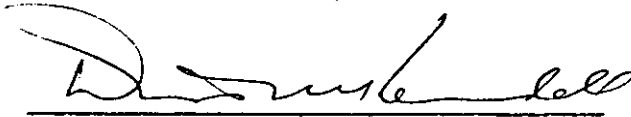
In addition to Attorney General Opinion H-10, we would refer you to Opinions H-6 and H-7 as well as to Letters Advisory Nos. 19, 20, 21, 22 and 23 (1973).

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:


LARRY F. YORK, First Assistant


DAVID M. KENDALL, Chairman
Opinion Committee