



# THE ATTORNEY GENERAL OF TEXAS

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October 26, 1973

Overruled by *H-137*

*John L. Hill*

The Honorable Richard N. Countiss  
District Attorney  
84th Judicial District  
First National Bank Bldg.  
Borger, Texas

Letter Advisory No. 65

Re: Dual employment  
County auditor/teacher/  
probation officer

Dear Mr. Countiss:

Your letter requests our opinion as to the propriety of one individual:

- (a) being employed and paid as the county auditor while at the same time being employed by an independent school district as a teacher; and
- (b) being employed as a county auditor and also as a paid county probation officer.

You further ask whether there is any combination of the three positions which is permissible.

In Attorney General Opinion H-7 (1973) we listed the three limitations on the holding of dual offices: (1) the common-law doctrine that one person may not hold two incompatible offices; (2) the separation of powers of Article 2, § 1 of the Texas Constitution; and (3) the limitations imposed by §§ 33 and 40 of Article 16 of the Texas Constitution.

Each of the possible combinations you suggest must meet all three before it is acceptable. The county auditor, appointed by the district judge or judges having jurisdiction in the county (Article 1645, V. T. C. S.) and removable by them (Article 1676, V. T. C. S.), is a member of the Judicial Department and occupies a "public office", Attorney General Letter Advisory No. 63 (1973).

A teacher, on the other hand, is "of" the Executive Department of the State government. In the language of Article 2, § 1 of the Constitution, "being of one of these departments", he may not "exercise any power

properly attached to either of the others." Therefore, without deciding whether a teacher occupies a "civil office" within § 40 of Article 16, we are of the opinion that a teacher may not exercise a judicial power as auditor. Compare Attorney General Opinion H-6 (1973), Opinion H-7 (1973), Letter Advisory No. 20 (1973) and Letter Advisory No. 22 (1973).

The county probation officer, likewise is required to be appointed by the district judge or judges [ Article 42.12, §10, V. T. C. C. P. ; Attorney General Opinions M-336 (1968) and M-1264 (1972) ]; and, therefore, he also exercises powers of the Judicial Department, which, for the same reasons, cannot be exercised by a teacher. The position of probation officer is, in our opinion, a civil office and, since he is paid, it is one of emolument.

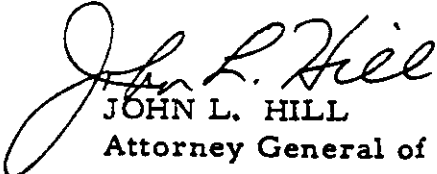
Although both the auditor and probation officer are "of" the Judicial Department, and thus a person is not disqualified from holding both offices by Article 2, §1, we are of the opinion that, because of the nature of the duties of the auditor, he is, as a matter of law, disqualified from occupying the position of probation officer.

Article 1651, V. T. C. S. , charges the auditor with "general oversight of all the books and records of all the officers of the county, district or state" who "receive or collect any money, funds, or fees . . . belonging to, the county; and he shall see to the strict enforcement of the law governing county finances."

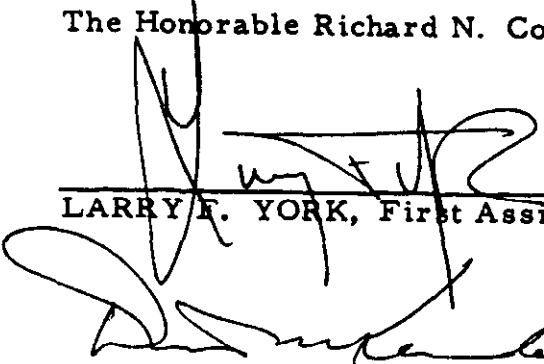
In our opinion, for the county auditor to occupy another county office would render it difficult, if not impossible, for him to properly fulfill these duties. The offices would necessarily be incompatible.

To your questions, we answer that there is no combination of the three offices that any one person may occupy.

Very truly yours,

  
JOHN L. HILL  
Attorney General of Texas

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LARRY F. YORK, First Assistant



DAVID M. KENDALL, Chairman  
Opinion Committee