



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

May 2, 1988

Honorable George P. Morrill II
Bee County Attorney
Bee County Courthouse
Beeville, Texas

LO-88-49

Dear Mr. Morrill:

You ask whether a county commissioner in Bee County may serve as a member of the Beeville City Council. Your specific questions are:

1. May our County Commissioner be elected and serve as a City Councilman, while serving out his term as County Commissioner, receiving compensation for both offices?
2. May our County Commissioner be elected and serve as a City Councilman, while serving out his term as County Commissioner if he waives his right to receive compensation as a City Councilman?
3. If both positions cannot be held and served in at the same time, and assuming the Commissioner is elected to the City Council and takes office on May 10th, does he by his action vacate his office as County Commissioner, and if not, what is the effect of his action?

You are correct in pointing out that article XVI, section 40, of the Texas Constitution, which governs dual office holding, does not apply to county commissioners. Nonetheless, we believe that the common-law doctrine of incompatibility prevents a county commissioner from serving as a city council member of a city within the county.

The doctrine of incompatibility prohibits one person from occupying two offices when one office may "thereby

impose its policies on the other and subject it to control in some other way." Attorney General Opinion JM-129 (1984). In Attorney General Opinion JM-133 (1984) we held that the doctrine of incompatibility prevented an individual from serving as county auditor and as a city councilman of a city located in that county. The main reason that those offices were found to be incompatible -- i.e., that cities and counties may contract with each other -- also applies to the offices of county commissioner and city council member. Therefore, the doctrine of incompatibility prevents one person from holding both of those offices.

If the county commissioner you ask about accepted and qualified for the office of city council member, he would automatically vacate his position as county commissioner. Attorney General Opinion MW-170 (1980).

You also ask whether an individual may serve in both offices if he waives his right to compensation in one of the offices. Whether a person receives compensation for one or both offices is not relevant in determining whether two offices are incompatible. Moreover, even for purposes of determining whether a person holds an "office of emolument" under article XVI, section 40, of the Texas Constitution, relinquishment of compensation does not alter the character of an office. Attorney General Opinion JM-704 (1987). If an officeholder is entitled to compensation, his office is an "office of emolument" even if he refuses to accept the compensation. Id.

Very truly yours,



Sarah Woelk
Assistant Attorney General
Opinion Committee

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