



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 29, 1991

Honorable Hugh Parmer
Chairman
Senate Committee on Intergovernmental
Relations
P. O. Box 12068, Capitol Station
Austin, Texas 78711

LO-90-55A

Dear Mr. Parmer:

We are hereby withdrawing Letter Opinion 90-55 (1990), addressed to you and dated August 30, 1990. This letter opinion states that article XVI, section 40, of the Texas Constitution bars a legislator from also serving as a city fireman, because the latter service constitutes a "position of profit under this State" within that constitutional provision.

Letter Opinion 90-55 addressed only the question of whether a firefighter occupies a position of profit, and did not consider the language "under this State." Moreover, the authority it cited, Begich v. Jefferson, 441 P.2d 27 (Alaska 1968), did not consider the employees of a political subdivision. Begich v. Jefferson construed constitutional language that was virtually identical to the quoted language of the article XVI, section 40, Texas provision. The Alaska court, however, stated that "a position of profit" under the constitutional provision meant "an appointive position on the state or federal levels of government." It determined that a teacher, principal or superintendent of a state-operated school held a position of profit under the state. Thus, the authority cited in Letter Opinion 90-55 did not apply to employees of political subdivisions.

Since Letter Opinion 90-55 (1990) did not fully address the relevant constitutional language, we are withdrawing it.

Yours very truly,

Susan Garrison
Acting Chairman
Opinion Committee

SG/lcd

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