



THE ATTORNEY GENERAL  
OF TEXAS

AUSTIN, TEXAS 78711  
March 28, 1963

WAGGONER CENTER  
ATTORNEY GENERAL

*Affirmed*  
V-63

Honorable F. T. Graham  
Criminal District Attorney  
Cameron County  
Brownsville, Texas

Opinion No. C-43

Re: Whether a county commissioner with an unexpired term of more than one year automatically resigns his office upon becoming a candidate for trustee of an independent school district, and related questions.

Dear Sir:

In your opinion request, you state that Mr. Tony Tamayo, Jr., was elected to the office of County Commissioner, Precinct No. Two, Cameron County, Texas, at the general election in November, 1962, for a four-year term. Mr. Tamayo was duly qualified and assumed the duties of such office on January 1, 1963. On or about the 5th day of March, 1963, Mr. Tamayo filed as a candidate for the office of trustee of the Brownsville Consolidated Independent School District. On the basis of these facts, you have requested an opinion on the following questions:

(1) Are the offices of county commissioner and trustee of a consolidated independent school district incompatible?

(2) If a county commissioner with an unexpired term in excess of one year announces or in fact does become a candidate for the office of trustee of a consolidated independent school district, does such announcement or candidacy constitute an automatic resignation of the office of county commissioner then held?

(3) In the event that such announcement or candidacy as set out in Question No. Two does constitute an automatic resignation and the creation of a vacancy, does the county commissioner hold the office "de jure" until his successor has been appointed?

Article XVI, Section 40 of the Texas Constitution provides that no person shall hold or exercise, at the same time, more than one civil office of emolument, except that of

Justice of the peace, county commissioner, and certain named offices not material to this opinion. This constitutional provision would not prevent the same person from holding the offices of county commissioner and trustee of an independent school district, not only because the office of county commissioner is expressly excepted but also because the office of trustee of an independent school district is not an office of emolument. However, the same person may not hold two offices which are incompatible, even though the holding of both offices is not prohibited by Article XVI, Section 40 of the Constitution. 34 Tex. Jur. 351, Public Officers, Sec. 18; Att'y. Gen. Op. 0-2640 (1940). The cited section of Texas Jurisprudence sets out the following tests for determining incompatibility:

" \* \* \* Offices are incompatible where their duties are or may be inconsistent or conflict, but not where their duties are wholly unrelated, are in no manner inconsistent and are never in conflict, and where neither officer is accountable or under the dominion of, or subordinate to, the other, or has any right or power to interfere with the other in the performance of any duty."

We have been unable to find any court decision settling the question of whether the two offices here involved are incompatible. In this connection, we have given attention to Thomas v. Abernathy County Line Independent School District, 290 S.W. 152 (Tex. Comm. App. 1927), cited in your brief, but we do not believe its holding is applicable to the office of county commissioner. That case held that the offices of city alderman and trustee of a school district located within such city are incompatible, for the reasons stated in the following quotation from the opinion:

"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, N.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 direction of the council or aldermen instead of to that of the trustees."

In regard to the matters mentioned in the court's opinion, both the school board and the city council are invested with discretion or duty. Unlike the city council, the commissioners court has no corresponding supervisory powers over the school property of an independent school district, nor does it have any authority over the policies adopted by the trustees for the administration of the school system.

Several prior Attorney General's opinions have dealt with this question. Attorney General's Opinion No. 0-998 (1939) held that the offices of county commissioner and county school trustee are incompatible, citing a number of statutes on which this conclusion was based and referring to an opinion written in 1929 which held that the offices of county commissioner and trustee of a school district were incompatible. Opinion No. 0-5145 (1943) held that the offices of county commissioner and trustee of a rural high school district are incompatible, mentioning specifically the duty of the commissioners court to canvass the returns of certain school district elections as creating an incompatibility. We do not agree that the duty of canvassing the returns of elections, which is largely ministerial in nature, creates an incompatibility between the offices, but there may be certain other duties of the commissioners court with respect to rural high school districts which would do so, and we express no opinion as to whether the result reached in Opinion No. 0-5145 is correct.

Opinion No. V-63, rendered in 1947, reviewed the former opinions and held that the offices of county commissioner and trustee of an independent school district are not incompatible. We have reconsidered this holding and have concluded that it is correct.

In your brief you mention a possible conflict of interest where the school board requests the commissioners court to pave or improve a certain road which, if paved, would materially affect travel of school buses. We are impressed by this argument, but we do not believe the supervisory authority of the commissioners court over the county roads within the district creates such a conflict of interest as to make the offices incompatible. Although the school board would have an interest in the response to its request, neither body is in

the position of controlling the actions of the other, and neither has any authority in the management of the affairs entrusted to the other. While the matter is not free from doubt, we adhere to the holding in Opinion No. V-63.

Your second question involves a construction of the provision in Article XVI, Section 65 of the Constitution, added by amendment in 1958, which reads:

"Provided, however, that if any of the officers named herein shall announce their candidacy, or shall in fact become a candidate, in any General, Special or Primary Election, for any office of profit or trust under the laws of this State or the United States other than the office then held, at any time when the unexpired term of the office then held shall exceed one (1) year, such announcement or such candidacy shall constitute an automatic resignation of the office then held, and the vacancy thereby created shall be filled pursuant to law in the same manner as other vacancies for such office are filled."

The officers named in Section 65 are those district, county and precinct officers whose terms were increased from two years to four years by the constitutional amendment adopted in 1954, and include county commissioners.

Section 65 of Article XVI provides that automatic resignation shall result from becoming a candidate "in any general, special or primary election, for any office of profit or trust under the laws of this State or the United States other than the office then held." It is settled that a trustee of an independent school district holds an office of trust under the laws of this State. Thomas v. Abernathy County Line Independent School District, supra; Kimbrough v. Barnett, 93 Tex. 201, 55 S.W. 120 (1900); Lee v. Leonard Independent School District, 24 S.W.2d 449 (Tex.Civ.App. 1930, error ref.). The crucial question is whether the term "any general, special or primary election" as used in Section 65 includes an election for trustee of an independent school district.

Before discussing this question, we would like to point out that operation of Section 65 of Article XVI does not depend on whether the same person may hold both offices at the same time. In Attorney General's Opinion No. WW-788, it was

concluded that the 1958 amendment had two purposes: (1) to reduce the duration of appointments resulting from relinquishment of the office then held upon election to the second office, and (2) to prevent the officer from engaging in a political campaign for another office at any time except during the last year of his term. Although candidacy for an office which could be held simultaneously with the office then held would not be contrary to the first purpose, it is contrary to the second purpose. As already noted, a person may lawfully hold the office of county commissioner or justice of the peace simultaneously with another office if the two offices are not incompatible. Certain offices which are filled at the general election for state and county officers are not incompatible with the offices of county commissioner and justice of the peace. Yet we think there can be no doubt that candidacy for any other office which is filled at the general election for state and county officers, at a time when the unexpired term of the office then held exceeded one year, would constitute an automatic resignation, regardless of whether both offices could be held by the same person.

The three types of elections for selection of public officers are general or "regular" elections, special elections (both of which are elections in the true sense that officers are elected thereat), and primary elections for nomination of candidates by political parties. A general election is one which recurs periodically at stated intervals as fixed by law, whereas a special election is one that arises from some exigency or special need outside the usual routine, such as to fill a vacancy in office. 18 Am. Jur. 181, Elections, Sec. 5. In this sense an election for school trustees regularly held on a date fixed by law is a general election. The answer to your second question turns on whether this is the meaning of the term as used in Section 65 of Article XVI, or whether its meaning is restricted to the biennial general election for state and county officers.

In Greenwood v. City of El Paso, 186 S.W.2d 1015 (Tex. Civ.App. 1945), the question for decision was whether the term "general election" as used in a statute requiring that the application of an independent candidate for a city office be signed by voters numbering five per cent of the entire vote cast in the city "at the last general election" meant the last general municipal election or the last general election for state and county officers. In reaching the conclusion that the term as there used had the latter meaning, the court said:

"The words 'general election' would, standing alone, mean the state-wide election held in pursuance of general law every two years, which election is for the selection of state, district, county and precinct officers. This is a popular meaning of the term. It is a fundamental rule of statutory construction that unless some good reason appears to the contrary, words used in the statute would be construed by the courts in accordance with their popular and generally understood meaning."

The court further observed, however, that the term "general election" may sometimes refer to the periodical elections held by cities for the selection of municipal officers (by extension, this observation would also apply to the periodical elections held by school districts), and held that in the oath which the signers of the application of an independent candidate for a city office were required to subscribe to, swearing that they were qualified voters "at the next general election," the term meant the next general city election.

The phrase "the general election" carries a different connotation from the phrase "any general election." The former suggests a specific general election, and would usually be taken to mean the one most commonly known--the November general election for state and county officers--unless used in context requiring a different interpretation. "Any general election" is not so limited in connotation. Throughout the Election Code, the phrase, "in all elections, general, special, or primary," or similar wording is frequently used when the provision is intended to apply to every type of election, by whatever authority it may be held, and clearly includes elections held by cities, school districts, and other political subdivisions of the State as well as elections for state and county officers. See, for example, Articles 1.05, 2.01, 3.03, 3.04, 9.01, and 9.02, Vernon's Election Code.

As used in Section 65 of Article XVI, we think the term "any general, special or primary election" was intended as an all-inclusive description of every kind of election at which offices of profit or trust under the laws of this State or of the United States are voted on. Without attempting to develop all of the arguments in support of the interpretation that the offices are not limited to those regularly filled at the general election for state and county officers, we think this interpretation is definitely confirmed by Article XI, Section 11 of the Constitution, which was submitted by the same

Legislature and adopted at the same election as the 1958 amendment to Section 65 of Article XVI. The pertinent portion of Article XI, Section 11 reads as follows:

"Sec. 11. A Home Rule City may provide by charter or charter amendment, and a city, town or village operating under the general laws may provide by majority vote of the qualified voters voting at an election called for that purpose, for a longer term of office than two (2) years for its officers, either elective or appointive, or both, but not to exceed four (4) years; provided, however, that tenure under Civil Service shall not be affected hereby.

"Provided, however, if any of such officers, elective or appointive, shall announce their candidacy, or shall in fact become a candidate, in any general, special or primary election, for any office of profit or trust under the laws of this State or the United States other than the office then held, at any time when the unexpired term of the office then held shall exceed one (1) year, such announcement or such candidacy shall constitute an automatic resignation of the office then held, and the vacancy thereby created shall be filled pursuant to law in the same manner as other vacancies for such office are filled."

We find in the second paragraph of this amendment a repetition, in identical language, of the elections and offices referred to in Section 65 of Article XVI, and it must be presumed that the language was intended to have like meaning in both amendments. Collingsworth County v. Allred, 120 Tex. 473, 40 S.W.2d 13 (1917); Garrett v. Mercantile Nat. Bank at Dallas, 140 Tex. 394, 168 S.W.2d 636 (1943). It is obvious that the offices for which candidacy will constitute an automatic resignation under Article XI, Section 11 are not limited to offices regularly filled at the general election for state and county officers, for the section was manifestly designed to make candidacy for another city office at a city election constitute a resignation, as well as candidacy for other offices at elections held by other political entities. This necessarily must be true, because the phrase "other than the office then held" would otherwise be meaningless, since the "office then held" could be filled only at a city election. Neither can this section be construed as referring only to

elections for city offices, because no office "under the United States" is filled at a city election. Construing the two sections together, we must conclude that in each section the language was intended to embrace all elections, including elections for school trustees. Accordingly, we are of the opinion that candidacy of the county commissioner for school trustee constituted an automatic resignation of the office of county commissioner.

Your third question, on whether the county commissioner continues to hold the office until his successor has been appointed, was answered in Attorney General's Opinion No. WW-1253 (1962). That opinion held that under Article XVI, Section 17 of the Constitution, providing that all officers shall continue to perform the duties of their offices until their successors shall be duly qualified, an officer whose resignation has been effected by operation of the provision for automatic resignation continues to serve as a "de jure" officer until his successor qualified for the office.

#### SUMMARY

The offices of county commissioner and trustee of an independent school district are not incompatible, and may be held by the same person.

Where a county commissioner becomes a candidate for the office of trustee of an independent school district at a time when the unexpired term of his office exceeds one year, his candidacy constitutes an automatic resignation of the office of county commissioner. Tex. Const. Art. XVI, Sec. 65. He continues to serve as a "de jure" officer until his successor is appointed and has qualified for the office. Tex. Const. Art. XVI, Sec. 17.

Yours very truly,

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Attorney General of Texas

By *Mary K. Wall*  
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APPROVED:

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