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OPINION COMMITTEE

FILE # ML-43469-04
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The Honorable Greg Abbott
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

RQ-0174-GA

Dear Attorney General Abbott:

Please accept this letter as a request on behalf of the Tornillo Water Improvement District for your opinion on the issue of whether, under the common-law doctrine of incompatibility, a board member of a water district established pursuant to Chapters 49 and 54 of the Texas Water Code, may serve simultaneously as a board trustee of the school district with overlapping jurisdiction. If a board member may not serve simultaneously, what is the consequence of the board member being elected to and accepting the second office of trustee? The facts of the situation are as follows:

The El Paso County Tornillo Water Improvement District ("TWID") was created in 1987 pursuant to Art. XVI, § 59 of the Texas Constitution and Chapters 49 and 54 of the Water Code (Act of June 18, 1987, 70th Leg., R.S. ch. 916, 1987 Tex. Gen. Laws 3097) A district created pursuant to Chapter 49, among other privileges, "may levy and collect a tax for operation and maintenance purposes." TEX. WATER CODE ANN. §49.107(a) (Vernon Supp. 2003). As such, TWID has the power of taxation over its jurisdiction which covers the southeastern part of El Paso County.

Likewise, the Tornillo Independent School District has the power of taxation. Section 11.152 of the Education Code states, "[t]he trustees of an independent school district may levy and collect taxes...". TEX. EDUC. CODE ANN. § 11.152 (Vernon 1996). Tornillo ISD's jurisdiction also covers the southeastern part of El Paso County and thus overlaps with TWID's geographical jurisdiction.

In May of 2003, a current TWID board member was elected to and subsequently accepted the office of trustee on the Tornillo ISD board. (Neither office is an office of emolument.)

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In our view, this issue is addressed in Attorney General Opinion JC-0557. In Opinion JC-0557, a member of a school district board of trustees sought to concurrently serve as a member of the board of directors of a groundwater conservation district established pursuant to Chapter 36 of the Texas Water Code. Tex. Att'y Gen. Op. No. JC-0557 (2002). A portion of the school district's boundaries overlapped a portion of the groundwater district's boundaries and both the school district and the groundwater district were taxing entities. *Id.* at 4. The Attorney General found that the trustee of the school district board was barred by the common-law doctrine of incompatibility from simultaneously serving as a member of the board of directors of the groundwater district. *Id.* at 6. The Attorney General reasoned that when two districts with overlapping geographical jurisdictions each have the power of taxation the potential for conflict is insurmountable. Where the object of each district is to maximize its own revenues, a single individual would have great difficulty in exercising his duties to two separate and competing masters. *Id.* at 5. As such, an individual would be barred by the doctrine of incompatibility from serving as a director or trustee on both boards.

Similar to Opinion JC-0557, the instant situation involves a water district's board member seeking to simultaneously serve as a trustee of a school district board. Both districts have the power to tax and their jurisdictions overlap one another. Accordingly, it appears the board member of the TWID should be precluded from simultaneously serving as a trustee on the Tornillo school board pursuant to the common-law doctrine of incompatibility.

The TWID board member contends that this is an inaccurate reading of JC-0557 and suggests that the common-law doctrine of incompatibility does not extend to the current situation. The board member reasons that because Opinion JC-0557 addresses a conflict arising from a board member of a Chapter 36 water district, and not a Chapter 49 water district, the opinion's findings and legal analysis do not pertain.

In an opinion issued earlier this year, the Attorney General did specifically apply the doctrine of incompatibility to a Chapter 49 water district. *See* Tex. Att'y Gen. Op. No. GA-0032 (2003) (finding that a member of the Board of Trustees of the San Jacinto College District may not simultaneously serve as a member of the Board of Directors of the Clear Brook Municipal Utility District under the doctrine of incompatibility when the two districts have overlapping jurisdictions and the power of taxation). The TWID board member also asserts that this opinion is inapplicable due to the fact that it involves membership on a college district board.

Therefore, we request an opinion as to whether a board member of a water district established pursuant to Chapters 49 and 54 of the Texas Water Code, may serve simultaneously as a board trustee of a school district with overlapping jurisdiction?

If a Chapter 49 water district board member is barred from concurrently serving on both boards by the common-law doctrine of incompatibility, the next question to be answered is, what is

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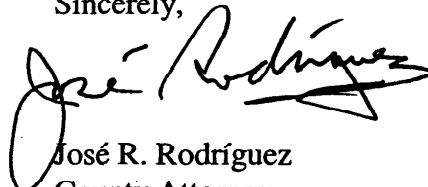
the consequence of a current water district board member's subsequent election to and acceptance of the office of trustee on a school district board?

In Attorney General Opinion JC-0363, the Attorney General stated, "... qualification for and acceptance of a second office operates as an automatic resignation from the first." Tex. Att'y Gen. Op. No. JC-0363 (2001) at 2, citing *Pruitt v. Glen Rose Indep. Sch. Dist.*, 84 S.W.2d 1004, 1006 (Tex. 1935). In JC-0363, the president of the Board of Directors of the Wilson County Memorial Hospital automatically terminated his term once he was elected to and assumed the office of Mayor. Similar to JC-0363, the TWID board member was elected to and assumed a second office, as trustee of the TISD board. Accordingly, the assumption of the board member's role as trustee on the Tornillo ISD board would appear to have serve as an automatic resignation of individual's prior office of board member on the TWID board although the member would continue to serve in a "holdover" capacity until appointment of a successor.

In conclusion, it is our understanding that an individual may not simultaneously hold the office of board member to a Chapter 49 water district, such as TWID, and the office of school board trustee for a school district with overlapping jurisdiction. It is also our understanding that when the TWID board member was elected to and assumed the office of trustee to the TISD Board, that individual's term as board member to the TWID was automatically terminated.

Your opinion on the issue would be greatly appreciated.

Sincerely,



José R. Rodríguez
County Attorney