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OPINION COMMITTEE

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March 18, 2005

Greg Abbot
Office of Attorney General
Attorney General Opinion Division
300 W 15th St, Suite 205
Austin, Texas 78711-2548

RQ-0329-GA

RE: Whether the San Jacinto County Auditor may at the same time serve as the accountant for the San Jacinto County Emergency Services District.

Dear Sirs:

This office has been asked for a legal opinion as to whether or not the County Auditor may at the same time serve as the accountant for the Emergency Services District (ESD) for the county. It is my understanding that the position with the ESD is a paid position. It is also my understanding that the compensation would be less than ten percent of the gross salary of the Auditor's income for the previous year.

Chapter 171 of the Local Government Code prohibits an appointed or elected official having an interest in an entity which the official may have to have oversight. A substantial interest is defined in part as ten percent (10%) or more of the gross income of the official.

There also appears to be a conflict under Article 16 §40 of the Texas Constitution wherein it states in pertinent part:

"No personal shall hold or exercise at the same time more
Than one civil office of enrolment..."

The County gives funds to the ESD and also appoints the members of the ESD board. Further the County ESD is subject to audit by the County through the County's Auditor. This fact alone is a serious problem since the Auditor would be auditing the books he himself prepared. This negates the purpose of a second independent audit and could be construed as an appearance of impropriety.

Further the specific facts of the issue of the county Auditor also serving as accountant for the ESD are in conflict. The Attorney General addressed the legality of a fire chief also serving as a member of city council. Although the two positions were in the same governmental entity the common law doctrine of incompatibility because one person may not hold two offices where one office has any control or oversight over the other position. Attorney General Opinion No. MW-432. The County Auditor is responsible for oversight of the use of County funds to the ESD board.

Further the Auditor must take an oath that he will not have any personal interest in any county contract. VTCA Local Government Code § 84.07 (b) (2).

Please do not hesitate to call if you need any additional information to give an opinion on the above request.

Very truly yours,



Mark E. Price
Criminal District Attorney

Cc: County Judge F. Faulkner
Commissioner M. Griffith
Commissioner R. Wells
Commissioner D. Brandon
Commissioner J. Johnson
County Auditor R. Stelly
ESD Board