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OPINION COMMITTEE



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July 23, 2013

RQ-1137-GA

Office of the Attorney General
Honorable Greg Abbott
P.O. Box 12548
Austin, Texas 78711-2548

Re: Request for Opinion as to whether a constable of Navarro County is prohibited from serving as a commissioner of Navarro County Emergency Services District Number One by article XVI, §40 of the Texas Constitution.

Dear General Abbott:

One of the commissioners appointed to serve on the Navarro County Emergency Services District Number One ("ESD") board is an elected constable of Navarro County. It appears that this is an incompatible set of positions because the remuneration for the ESD exceeds compensation for expenses. However, the ESD differs from other districts because it is created by a special election and filled by appointment by the commissioner's court, it is unclear if it is incompatible.

This office looked to opinion GA-0540 as a guide to answer the question. GA-0540 concludes that an individual is barred from simultaneously serving as a Goliad County constable and as a member of the board of directors of the Goliad County Groundwater Conservation District. Tex. Att'y Gen. Op. No. GA-0540. Both offices are offices of emolument. A constable is a "precinct officer" and also entitled to compensation. A member of a governing board holds an "office," and any amount in excess of actual expenses is an

emolument. Since the provisions of the Water Code create remuneration beyond compensation, it is an office of emolument. The ability to decline compensation or accept less than the full amount is irrelevant.

It would seem that under this standard, a constable could not also hold a position on an Emergency Services District, since a board member in an ESD is entitled to compensation. The district was created by a special election on November 6, 2006. Tex. Health & Safety Code Ann. § 775. An “emergency services commissioner is entitled to receive compensation of not more than \$50 per day for each day the commissioner actually spends performing the duties of a commissioner” with a few conditions. § 775.038.

However, there seems to be a difference between the groundwater district in GA-0540 and the ESD here. The Goliad district was created by an act of the Texas legislature. Vacancies on its board are appointed from the membership of the board. The ESD was created by a special election according to the Health and Safety Code. Its commissioners are appointed by the Commissioner’s Court of Navarro County. Furthermore, the commonlaw standards of incompatibility do not indicate that a constable could not serve as an ESD commissioner.

The Navarro County District Attorney’s Office requests this opinion to clarify whether the governors of districts created by special election and controlled by a commissioner’s court are offices of emolument, disqualifying them from holding a second office.

Sincerely,

R. Lowell Thompson
Criminal District Attorney
Navarro County



James R. Kingman
Assistant Criminal District Attorney