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August 29, 2022

Office of the Attorney General
Attention Opinion Committee
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We are requesting an opinion on the following matter currently pending in Hardin County.

Can a person serve as a Commissioner of an Emergency Service District and a volunteer firefighter at the same ESD at the same time?

I have researched and located a County Attorney Opinion Number CL-97-014 from Nueces County. Their County Attorney's opinion, at the time in 1997, was that a volunteer firefighter could not serve as a Commissioner of a Rural Fire Prevention District due to the doctrine of incompatibility. Now that Rural Fire Prevention Districts no longer exist and Emergency Service Districts have taken its place, we have an issue on this matter and are interested in seeking an opinion on whether or not this is acceptable.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to be "M. Minick", written over a horizontal line.

Matthew E. Minick
County Attorney
Hardin County, Texas

County of Nueces

File: Fire Districts



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COUNTY ATTORNEY OPINION NO. CL-97-014

TO: Dale Scott, President of Fire Commissioners, Nueces County Rural Fire Prevention District #2

FROM: Carl E. Lewis, Nueces County Attorney

RE: Request for opinion on whether a person can serve as a volunteer firefighter and be a fire commissioner at the same time

DATE: October 9, 1997

The Nueces County Attorney's office received a request from Mr. Dale Scott, President of Fire Commissioners for Nueces County Rural Fire Prevention District #2, for an opinion as to whether or not a person can serve as a volunteer firefighter and be a fire commissioner at the same time.

The Nueces County Rural Fire Prevention District #2 was created and functions pursuant to authority granted by the Nueces County Commissioners Court under Chapter 794 of the Texas Health & Safety Code. The Board of Commissioners of the fire prevention district are appointed by the county commissioners court to oversee the functioning of the fire prevention district. The board's powers and duties are enumerated in § 794.035 of the Texas Health & Safety Code, and include the authority to administer the district, cause inspections in the district, promote certain programs it considers proper, and to generally manage the affairs of the district.


The question to be answered in this opinion is whether or not a member of the board of fire district commissioners can serve as a volunteer firefighter. The answer to this question must be derived under the common law "doctrine of incompatibility". Under

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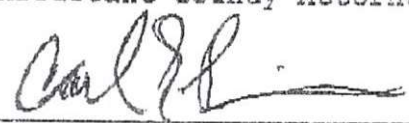
the doctrine of incompatibility, one person cannot simultaneously hold two incompatible offices. In determining incompatibility, the crucial question is whether the occupancy of both offices by the same person is detrimental to the public interest or whether the performance of the duties of one interferes with the performance of those of the other. Another consideration is whether one position is subordinate to the other. Thomas v. Abernathy Co. I.S.D., 290 S.W. 152 (Tex.Comm's App. 1927); Kagle v. Glen Rose I.S.D. No. 1, 50 S.W.2d 375 (Tex.Civ.App. - Waco 1932); see also Texas Attorney General Opinions JM-203 (1984) and JM-386 (1985).

Although the commissioners of a rural fire prevention district do not have direct supervisory authority over the volunteer firefighters in their district (the fire chief supervises the firefighters), it would appear that the duties of a fire commissioner and volunteer firefighter are incompatible. This is due to the fact that the firefighters, and the fire chief who supervises them, are accountable and obligated to report to the commissioners on the operations of the fire prevention district. It is possible that having a commissioner, who has authority over the fire chief, acting as a firefighter under the supervision of the chief could have a detrimental effect on the operation of the district. This situation could undermine the authority of the fire chief, and affect the morale of the other firefighters. Such a situation could cause a detrimental effect to the public interest, and therefore would be in violation of the doctrine of incompatibility.

In summary, it appears as if a commissioner of a rural fire prevention district cannot concurrently serve as a volunteer firefighter in that district because such would violate the "doctrine of incompatibility".



Randall L. Meredith
Assistant County Attorney



Carl E. Lewis
County Attorney