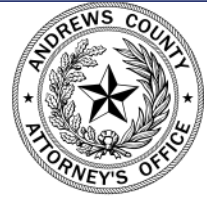


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By Opinion Committee at 2:42 pm, Jul 25, 2024



**OFFICE OF
THE COUNTY ATTORNEY
ANDREWS COUNTY, TEXAS**



Misdemeanor and Felony Prosecution

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RQ-0551-KP

July 25, 2024

Via Email: opinion.committee@oag.texas.gov

Office of the Attorney General
Attn: Opinion Committee
PO Box 12548
Austin, Texas 78711-2548

Re: Request for opinion – Incompatibility of Volunteer Fire Chief and County Commissioner.

Texas Attorney General Opinion Committee:

I am respectfully requesting an Attorney General's Opinion regarding whether, under the dual office holding doctrine of incompatibility, a county commissioner is prohibited from also holding the position of chief of the local volunteer fire department.

Factual Background

On May 28, 2024, Vernon 'Buddy' Hobbs won the runoff election for the republican spot for county commissioner precinct 3. A copy of the runoff election results is attached hereto as Exhibit 1. At this time, there are no other candidates for this seat, and Mr. Hobbs is the presumptive county commissioner elect.

The Andrews Volunteer Fire Department ("AVFD") is a 501(c)(3) charitable organization that provides fire and emergency response services to the citizens of Andrews County. Funding for the

AVFD is provided by Andrews County and the City of Andrews. This funding varies depending on the specific needs of the AVFD in a given year. However, in previous years this funding has exceeded two million dollars. Andrews County currently maintains a trust account where all AVFD funds are deposited.¹ On behalf of the AVFD, Andrews County purchases, titles in Andrews County's name, and provides insurance for all large equipment needed by the AVFD. Additionally, funds from Andrews County are used for training, emergency call-out pay, and ½ of the retirement pension. A copy of the interlocal agreement governing the duties of Andrews County and the City of Andrews with regard to funding the AVFD is attached hereto as Exhibit 2. Because the AVFD funds are held by Andrews County, the approval of the budget is included in the annual budget of Andrews County. A copy of the AVFD accounts held by Andrews County is attached hereto as Exhibit 3. The property on which the AVFD is located is currently owned by the City of Andrews, and the AVFD is allowed to use it subject to terms governed by the City of Andrews. A copy of the deed related to the property is attached hereto as Exhibit 4.

Currently, Mr. Hobbs also serves as the Fire Chief for the AVFD. Part of his duties include preparing and presenting the general budget and monetary requests to Andrews County. Specifically, he meets, on behalf of the AVFD, with the county judge and auditor and presents any budgetary modifications or requests for the coming year.² These requests are generally related to the amount of money Andrews County will appropriate to the AVFD and not approval or disapproval of specific line items. At this time, the fire chief is not paid a salary above and beyond the same call-out fee per emergency response that is paid to each volunteer firefighter. The Andrews Commissioners' Court

¹ The AVFD has requested that this account be closed and those funds transferred to a private account managed by the AVFD. However, as of this request, that closure and transfer has not taken place.

² The City of Andrews also meets with the AVFD to appropriate its portion of funds, which are, again, held by Andrews County for the benefit of the AVFD.

does not have to approve the AVFD chief once they are elected by the AVFD members. Additionally, Andrews County does not set the specific duties of the fire chief or volunteer firefighters.

Dual Officeholding – Civil Office of Emolument

Previously, the Attorney General's Office has found that a volunteer firefighter does not hold an "office" under Article XVI, section 40 of the Texas Constitution. Tex. Att'y Gen. LO-94-046, at 2-3; LO-88-085 at 1; Op. No. JC-0199 at 1 (1990); Op. No. KP-0369 at 1-2 (2021). Thus, Article XVI, section 40 of the Texas Constitution does not preclude the service as both a commissioner and a volunteer firefighter.

Dual Officeholding – Incompatibility³

The common-law doctrine of incompatibility prevents a person from holding two offices if one office might impose its policies on the other or subject it to control in some other way. Tex. Att'y Gen. Op. DM-156 at 5 (1992). The three aspects of incompatibility are self-appointment, self-employment, and conflicting loyalties, any one of which is sufficient to bar an individual from serving in two positions at the same time. *See* Tex. Att'y Gen. Op. No. JM-1266.

This office has found three opinions from your office that deal with similar sets of facts to the question presented here. First, in Attorney General Letter Opinion 94-070, the Texas Attorney General's Office considered whether common law incompatibility prohibited a member of the Hudson City Council from serving as a member of the Hudson Volunteer Fire Department. *See* Tex. Att'y Gen. LO-94-070. In that instance, the city owned the land on which the fire station was located and leased it to the volunteer fire department for \$1.00 per year; and the city contributed \$7000 per

³ Attached as Exhibit 5 are the Attorney General's Opinions that were relied upon in this brief.

year to the maintenance of the department. *See Id.* The opinion concluded that the doctrine of incompatibility did not bar the dual service because “[t]he city does not control the HVFD or determine the duties of volunteer firefighters.” *Id.* at 2.

Second, in Attorney General Opinion JC-0199, , the Texas Attorney General’s Office found that a member of the Gilmer Volunteer Fire Department was prohibited by common law incompatibility from simultaneously serving as a member of the Gilmer City Council. However, contrary to the facts presented herein, the city council of Gilmer had significantly more control over the administration and selection of members of the Gilmer Volunteer Fire Department. Specifically, the fire chief, elected by the members of the department, required approval of the city council; the fire chief was the chief administrative officer of the department and was fully responsible to the council for its administration and for enforcing the resolutions and ordinances of the city council; and the fire chief, with the approval of the city manager, appointed and removed the employees of the department.

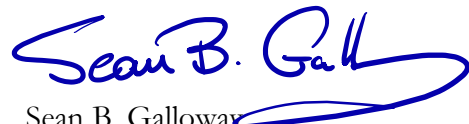
Finally, in Attorney General Opinion JC-0385, your office dealt with whether a county commissioner may generally serve as a volunteer firefighter. In that case, the Texas Attorney General’s Office found that, unlike the City of Gilmer, McCulloch County did not exercise enough control over the volunteer fire department to preclude service as both a county commissioner and a volunteer firefighter. In that case, the only control McCulloch County exercised with respect to the volunteer fire departments was a donation of \$400 per year to six volunteer fire departments in its jurisdiction.

It would appear the facts of the AVFD are closer to those of JC-0199 than JC-0385 or LO 94-070. While Andrews County does not exert express control over members of the AVFD. Andrews County does not approve membership, nor does it require the AVFD to obtain commissioners’ court

approval of the fire chief. Similarly, Andrews County does not furnish the real property the AVFD uses. Andrews County does, nevertheless, substantially adjust the budget provided to AVFD based on its given needs each year. Moreover, Andrews County provides hundreds of thousands of dollars in funding each year for benefits like liability insurance for AVFD equipment, pension contributions, call-out pay, and training expenses. Likewise, because Andrews County maintains the titles to all AVFD equipment, it provides hundreds of thousands of dollars in equipment to the AVFD, similar to the land in JC-0199. Additionally, at this time, Andrews County generally manages the trust account of the AVFD and disburses funds on request of the AVFD. For this reason, this office is of the belief that an Andrews County Commissioner would be precluded from also being the fire chief of the Andrews Volunteer Fire Department.

Thank you for your time and attention to this matter. Please let me know if you need any additional information.

Respectfully,


Sean B. Galloway
Andrews County Attorney

Enclosures: As stated.