



THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

**JOHN L. HILL
ATTORNEY GENERAL**

April 8, 1975

The Honorable Anna Beth Merten
Waller County Auditor
P. O. Box 966
Hempstead, Texas 77445

Letter Advisory No. 94

Re: Whether the County Road
Administrator may also serve
as County Veteran's Service
Officer and Civil Defense
Director.

Dear Ms. Merten:

You explain that you have received conflicting opinions from your District Attorney and your County Attorney concerning the legality of one person serving at the same time as the County Road Administrator, the Veteran's County Service Officer, and the County Director of Civil Defense.

You advise:

Waller County operates under the Optional Road Law, and since the Commissioners' Court has employed no County Engineer, our unit system has been operating with a County Road Administrator. The County Road Administrator has also been appointed Director of Civil Defense (no salary), and as of January 1, 1975, he was also appointed County Veteran's Service Officer with a monthly salary.

A paid Veterans County Service Officer holds a civil office of emolument within the meaning of article 16, section 40 of the Texas Constitution. Attorney General Letter Advisory No. 61 (1973). That constitutional provision, with certain exceptions not applicable here,

prohibits the simultaneous occupancy by one person of two separate civil offices of emolument. Whether the office of County Road Administrator is also a civil office of emolument within the meaning of that constitutional provision depends upon considerations outlined in Attorney General Letter Advisory No. 63 (1973).

The statutory basis for the latter office is article 6716-1, V. T. C. S., the Optional County Road Law of 1947. It contemplates that a County Road Administrator will be paid for his services. His duties are continuing and essentially governmental in nature. They embrace the exercise of a portion of sovereign power in the performance of which the public is concerned, and they are exercised by him for the benefit of the public. See Attorney General Opinion H-201 (1974).

There is language in Attorney General Opinion M-710 (1970) which might suggest that a County Road Administrator is not an officer at all, but the cases on which it relies, Dunbar v. Brazoria County, 224 S. W. 2d 738 (Tex. Civ. App. --Galveston 1949, writ ref.) and Hill v. Sterrett, 252 S. W. 2d 766 (Tex. Civ. App. --Dallas 1952, writ ref., n. r. e.) involved either a different section of the Constitution or a different statute. We think the result of M-710 was correct (that the nepotism statute did not apply to the fact situation there) but that its language is misleading. It must be limited to its facts.

Consequently, we are of the opinion that a County Road Administrator also occupies a civil office of emolument and that one person may not at the same time serve as Waller County Road Administrator and as Veterans County Service Officer for Waller County. Article 16, section 40, Texas Constitution. Attorney General Letter Advisory No. 63 (1973).

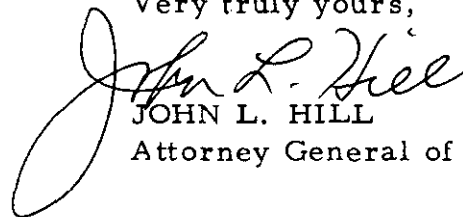
Your notation "(no salary)," in listing the position of Director of Civil Defense indicates, we assume, that no salary attaches to the position as a matter of law. If such is the case, it is not within the proscription of article 16, section 40 of the Constitution because it is not one of emolument, and that constitutional provision would not prevent someone holding either of the above offices from also serving as Defense Director. Attorney General Letter Advisory No. 63 (1973). Compare Attorney General Letters Advisory Nos. 82 (1974) and 83 (1974).

But there are two other limitations on dual office holding: (1) the common law doctrine that one person may not hold two incompatible offices, and (2) the separation of powers commanded by article 2, section 1 of the Texas Constitution. These could prevent such a combination even though article 16, section 40 does not. Attorney General Letter Advisory No. 65 (1973). However, we can give no definite answer here because whether or not these restrictions apply depends upon facts not supplied us. But see Attorney General Letters Advisory Nos. 65 (1973) and 86 (1974).

SUMMARY

One person may not at the same time serve as Waller County Road Administrator and Veterans County Service Officer for Waller County because both positions are civil offices of emolument within the meaning of article 16, section 40 of the Texas Constitution. Whether a person serving in either of those positions might also serve as the unpaid County Director of Defense depends upon facts not supplied.

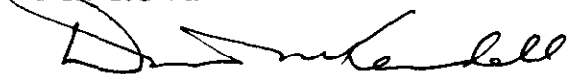
Very truly yours,



JOHN L. HILL

Attorney General of Texas

APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman
Opinion Committee

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