



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 13, 2019

The Honorable Russell D. Thomason
Criminal District Attorney
91st Judicial District
100 West Main, Suite 204
Eastland, Texas 76448

Opinion No. KP-0265

Re: Whether the same individual may serve as
city manager and as police chief in a home-rule
municipality (RQ-0275-KP)

Dear Mr. Thomason:

You ask, on behalf of the City of Ranger (“City”), whether a city manager in a home-rule municipality may simultaneously serve as the interim or permanent police chief.¹ As background, the city attorney explains that the City is a home-rule city.² The city charter provides that the city commission may appoint a city manager, “who shall be the administrative head of the municipal government.” CITY OF RANGER, CITY CHARTER art. V, § 20. Separately, the charter also allows the city commission to “create and consolidate such offices” and “divide the administration of the City’s affairs into such offices or departments at their discretion.” *Id.* § 23. With these provisions in mind, we address your question.

The Texas Constitution prohibits a single individual from simultaneously holding “more than one civil office of emolument.” TEX. CONST. art. XVI, § 40(a). The prohibition applies if both positions are civil offices entitled to an emolument, or “a pecuniary profit, gain, or advantage.” *State ex rel. Hill v. Pirtle*, 887 S.W.2d 921, 931 (Tex. Crim. App. 1994). If only one position is compensated, the prohibition will not apply. *See id.* The information provided through your request and the City’s information does not address whether both positions are compensated, but we assume they are and turn to the question of whether both positions are “offices” under article XVI, subsection 40(a).

Whether an individual is a public officer within the meaning of article XVI, section 40, depends on “whether any sovereign function of the government is conferred upon the individual to be exercised by him for the benefit of the public largely independent of the control of others.” *Aldine Indep. Sch. Dist. v. Standley*, 280 S.W.2d 578, 583 (Tex. 1955). Numerous opinions of this office conclude that under usual circumstances a municipal chief of police serves at the pleasure of the governing body and serves as an employee rather than an officer of the municipality. *See*,

¹Letter from Honorable Russell D. Thomason, Crim. Dist. Att’y, 91st Jud. Dist., to Honorable Ken Paxton, Tex. Att’y Gen. at 1 (Feb. 13, 2019), <https://www.2texasattorneygeneral.gov/opinion/requests-for-opinion-rqs> (“Request Letter”).

²Attached to the request letter, you include a letter from the city attorney addressed to our office. *See* Letter from The Knight Law Firm, L.L.P. (Jan. 29, 2019), <https://www.2texasattorneygeneral.gov/opinion/requests-for-opinion-rqs>.

e.g., Tex. Att’y Gen. Op. No. GA-0393 (2006) at 4. The Ranger city charter authorizes the City to “establish and maintain the City Police Department, prescribe the qualifications and duties of policemen and regulate their conduct.” CITY OF RANGER, CITY CHARTER art. II, § 22. Based on this language, it does not appear that the police chief exercises his authority “largely independent of the control of others” and thus does not hold an office within the meaning of article XVI, section 40. *See* Tex. Att’y Gen. Op. No. GA-0393 (2006) at 3 (recognizing the inapplicability of a “public officer” designation if the person’s “actions are subject to control and his employment may be terminated at will by a superior body”). Accordingly, article XVI, section 40 of the Texas Constitution does not prohibit the City’s municipal police chief from simultaneously holding the position of city manager.

In addition to constitutional concerns, the common-law doctrine of incompatibility prohibits dual public service in certain instances. It has three components: (1) self-appointment; (2) self-employment; and (3) conflicting loyalties. Tex. Att’y Gen. Op. No. GA-0307 (2005) at 3. Self-appointment incompatibility prevents one person from holding two offices, one of which appoints the other. *See Ehlinger v. Clark*, 8 S.W.2d 666, 674 (Tex. 1928) (“[C]ourts have with great unanimity throughout the country declared that all officers who have the appointing power are disqualified for appointment to the offices to which they may appoint.”). Similarly, self-employment incompatibility prohibits one person from holding an office and an employment that the office supervises. *See id.*; Tex. Att’y Gen. Op. No. GA-0766 (2010) at 1. Conflicting-loyalties incompatibility “prohibits an individual from simultaneously holding two positions that would prevent him or her from exercising independent and disinterested judgment in either or both positions.” Tex. Att’y Gen. Op. No. GA-0169 (2004) at 2. Self-appointment and conflicting-loyalties incompatibility only apply in instances when both positions are officers. Tex. Att’y Gen. Op. No. GA-0849 (2011) at 1–2. Because a municipal police chief is not an officer, we need address only the self-employment prong of incompatibility.

The city charter provides that the city manager appoints and removes all officers or employees of the City. CITY OF RANGER, CITY CHARTER art. V, § 21. While the city commission advises and consents to the appointments, the charter does not require the same for removals. *Id.* Thus, at a minimum, the charter language suggests that the city manager supervises the chief of police. To the extent that is the case, the common-law doctrine of self-employment incompatibility prohibits an individual from serving as both the city manager and chief of police. Tex. Att’y Gen. Op. No. GA-0077 (2003) at 2 (“A city manager may not serve as police chief if, as city manager, he or she has supervisory authority over the chief.”).

Yet, the city charter authorizes the city commission, composed of the mayor and four other city commissioners, to “create and consolidate such offices and may divide the administration of the City’s affairs into such offices or departments at their discretion.” CITY OF RANGER, CITY CHARTER art. V, §§ 1, 23; *see also id.* § 1 (describing composition of the city commission). The city attorney suggests that the city commission “would be within the powers granted to it by the City’s Charter to combine such offices as they desired.”³ While a city manager would violate the

³Attached to the request letter, you include a memorandum from the city attorney addressed to the mayor, city commissioners, and city manager. *See* Memorandum from The Knight Law Firm, L.L.P. at 4 (Dec. 21, 2018) (on file with the Op. Comm.).

doctrine of incompatibility by employing himself or herself as police chief, the city charter authorizes the city commission to combine those positions into one position. If the city commission decided to do so, once combined, it could employ a single individual in that position without raising issues of self-employment incompatibility.

S U M M A R Y

Article XVI, section 40 of the Texas Constitution, which prohibits dual office holding in certain circumstances, does not prevent the City of Ranger chief of police from simultaneously serving as city manager.

The common-law doctrine of self-employment incompatibility prohibits one person from holding an office and an employment that the office supervises. Language in the Ranger city charter suggests that the city manager may supervise the chief of police. To the extent that is the case, an individual may not serve in the two separate positions of city manager and chief of police.

If the city commission exercised its authority to combine the roles of city manager and chief of police, the city commission could employ a single individual to perform both roles without raising concerns about self-employment incompatibility.

Very truly yours,



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