



THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS

June 29, 2023

The Honorable Terry Canales  
Chair, House Committee on Transportation  
Texas House of Representatives  
Post Office Box 2910  
Austin, Texas 78768-2910

**Opinion No. JS-0006**

Re: Whether a member of the Board of Trustees of the La Joya Independent School District may simultaneously serve as a member of the Board of Directors of the Hidalgo County Irrigation District No. 6 (RQ-0495-KP)

Dear Representative Canales:

You ask whether the common-law doctrine of incompatibility prohibits a person from simultaneously serving as a trustee of the La Joya Independent School District and as a board member of the Hidalgo County Irrigation District No. 6.<sup>1</sup> You also ask about the consequences if the dual service is prohibited. *See* Request Letter at 1–3. You explain that in November of 2022, a member of the Hidalgo County Irrigation District No. 6 (“Irrigation District”) board of directors “was elected to and subsequently accepted the office of trustee” on the La Joya Independent School District (“School District”) board. *Id.* at 2.

**Conflicting-loyalties incompatibility prohibits a person from holding two offices that impose inconsistent or conflicting duties.**

The common-law doctrine of incompatibility recognizes and prohibits three kinds of conflicts that may arise from dual service: self-employment, self-appointment, and conflicting loyalties. *See* Tex. Att’y Gen. Op. No. KP-0125 (2017) at 1; *see also Ehlinger v. Clark*, 8 S.W.2d 666, 674 (Tex. 1928) (recognizing self-appointment incompatibility). Because neither a school district board of trustees nor an irrigation district board of directors employs or appoints the other, the self-employment and self-appointment aspects are not at issue here. *See* Tex. Att’y Gen. Op. No. GA-0786 (2010) at 2 (“Considering that neither the College District board nor the Utility District board appoints or employs the other, the self-appointment and the self-employment aspects of common-law incompatibility are not applicable . . .”).

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<sup>1</sup>*See* Letter from Honorable Terry Canales, Chair, House Comm. on Transp., to Honorable Ken Paxton, Tex. Att’y Gen. at 1–2 (Jan. 9, 2023), <https://texasattorneygeneral.gov/sites/default/files/requestfiles/request/2023/RQ0495KP.pdf> (“Request Letter”).

That leaves for our consideration the conflicting-loyalties aspect of common-law incompatibility, which prohibits a person “from simultaneously holding two offices that would prevent the person from exercising independent and disinterested judgment in either or both offices.” *Id.*; *see also Thomas v. Abernathy Cnty. Line Indep. Sch. Dist.*, 290 S.W. 152 (Tex. Comm’n App. 1927, judgment adopted) (recognizing conflicting-loyalties incompatibility). The critical question in determining whether two offices are incompatible 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.” *State ex. rel. Hill v. Pirtle*, 887 S.W.2d 921, 930 (Tex. Crim. App. 1994).

As a threshold matter, in order for the conflicting-loyalties prong of the common-law doctrine of incompatibility to apply, each position must constitute an “office.” Tex. Att’y Gen. Op. No. GA-0840 (2011) at 2. A public officer is one to whom “any sovereign function of the government is conferred . . . 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) (quoting *Dunbar v. Brazoria Cnty.*, 224 S.W.2d 738, 740–41 (Tex. Civ. App.—Galveston 1949, writ ref’d)), *disapproved on other grounds, Nat’l Sur. Corp. v. Friendswood Indep. Sch. Dist.*, 433 S.W.2d 690, 693–94 (Tex. 1968). This office has previously determined that the position of a school district trustee is a public office under *Aldine*. *See* Tex. Att’y Gen. Op. No. KP-0329 (2020) at 3 (“[T]his office consistently determines that a school board trustee holds an office under *Aldine*.”). Thus, we need to determine whether the position of board member of an irrigation district is an office.

You tell us the Irrigation District was created as a water control and improvement district in 1927 under the authority of Texas Constitution, article XVI, section 59. Request Letter at 1. You also tell us that in 1980 the Irrigation District was converted to an irrigation district pursuant to chapter 58 of the Water Code. *Id.*; *see also* TEX. WATER CODE § 58.041(3) (“A district that converts into a district operating under this chapter shall . . . have and may exercise all the powers, authority, functions, and privileges provided in this chapter in the same manner and to the same extent as if the district had been created under this chapter.”).

An irrigation district such as you describe is subject to Water Code chapters 49 and 58. *See* TEX. WATER CODE §§ 49.001(a)(1) (defining a “[d]istrict” to include “any district . . . created by [the] authority of . . . Section 59, Article XVI, Texas Constitution”), 49.002(a) (applying chapter 49 to all general and special law districts with certain exceptions not relevant here), 58.041(2) (providing that a district converted under chapter 58 “shall . . . be a conservation and reclamation district under the provisions of Article XVI, Section 59, of the Texas Constitution”); *see also* Request Letter at 1 (discussing origin and conversion of the Irrigation District). An irrigation district’s primary purpose is to “deliver untreated water for irrigation and to provide for the drainage of lands . . . .” TEX. WATER CODE § 58.121(a). Irrigation districts are governed by an elected board of directors. *See id.* § 58.071 (providing that an irrigation district is governed by a board of directors); *see, e.g., id.* §§ 58.026(a), .032(a) (demonstrating that irrigation district board members are elected). A district’s board is responsible for “the management of all the affairs of the district.” *Id.* § 49.057(a). An irrigation district may levy and collect a tax for operation and maintenance purposes, and it may issue bonds, notes, or other obligations to borrow money for its purposes. *Id.* § 49.107(a), .152. Its purpose and these powers are sovereign powers exercised for

the public by the board. *Cf.* Tex. Att’y Gen. Op. No. KP-0125 (2017) at 2 (examining similar purpose and powers of a library district board). And as irrigation district board members are elected, they are “largely independent of the control of others.” *Aldine*, 280 S.W.2d at 583; *see also* Tex. Att’y Gen. Op. No. KP-0228 (2019) at 2 (noting that an elected position is an office). Accordingly, a board member of an irrigation district holds an office for purposes of the conflicting-loyalties incompatibility analysis.

Where the geographic boundaries of the two entities at issue overlap, “the potential for conflicting loyalties increases because the duties of the two offices are more likely to conflict.” Tex. Att’y Gen. Op. No. KP-0125 (2017) at 2 (quoting Tex. Att’y Gen. Op. No. KP-0023 (2015) at 2). When “two districts with overlapping geographical jurisdictions each have the power of taxation, . . . the potential for conflict is insurmountable.” *Id.* (quoting Tex. Att’y Gen. Op. No. GA-0032 (2003) at 5); *see also* Tex. Att’y Gen. Op. No. GA-0786 (2010) at 3–4. Here you tell us the geographic boundary of the School District overlaps with the geographic boundary of the Irrigation District. Request Letter at 1–2. You also tell us the Irrigation District imposes assessments under chapter 58 but does not currently impose taxes though it has authority to do so. *See id.* at 2; *see also* TEX. WATER CODE §§ 58.301(b) (authorizing the imposition of a water charge assessment), 58.305(a) (authorizing the imposition of an assessment for operation and maintenance expenses). Notwithstanding that the Irrigation District does not currently impose taxes, both its board and the School District’s board have taxing authority within their respective jurisdiction, including where those jurisdictions overlap. *See* TEX. EDUC. CODE § 11.1511(b)(8) (authorizing a school district board to adopt a tax rate each fiscal year); TEX. WATER CODE §§ 49.107(a) (authorizing a district to levy an operation and maintenance tax), 58.437 (authorizing the levy of a tax for an irrigation district to pay principal and interest on preliminary bonds). Because each entity about which you ask has taxing authority in geographically overlapping territory, conflicting-loyalties incompatibility prohibits simultaneous service on the governing body of both entities. The fact that the Irrigation District does not currently levy taxes does not change the analysis: its power to levy taxes is sufficient to implicate the conflicting duties with respect to two competing masters.<sup>2</sup> *See* Tex. Att’y Gen. Op. No. KP-0125 (2017) at 2 (discussing potential for conflict when entities in overlapping territory each have the “power of taxation”). Indeed, the policy decision to not impose a tax is still an exercise of the power of taxation and one that could be manipulated in favor of one entity over the other. *Cf. Hobbs v. Gattis*, No. 01-19-00025-CV, 2020 WL 6065439, at \*4 (Tex. App.—Houston [1st Dist.] Oct. 15, 2020, no pet.) (mem. op.) (recognizing the budget process, including that of taxation, is a political process). Accordingly, a court would likely conclude that a person may not simultaneously serve as a board member of the School District and as a board member of the Irrigation District.

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<sup>2</sup>Moreover, there is authority for the proposition that the power to levy assessments is an exercise of taxation even if the assessment is not a tax. *See generally City of Wichita Falls v. Williams*, 26 S.W.2d 910, 911 (Tex. 1930); *Henry v. Kaufman Cnty. Dev. Dist. No. 1*, 150 S.W.3d 498, 505 (Tex. App.—Austin 2004, pet. dism’d by agr.) (acknowledging that “the authority for making assessments . . . is derivable from and in exercise of the taxing power” (quoting *Williams*, 26 S.W.2d at 913)).

**Acceptance and qualification for a second incompatible office, operates as a resignation of the first office.**

Given this conclusion, we next address your question about the consequences of the person accepting the second office. *See* Request Letter at 1–3. “If a person holding an office is elected or appointed to another (where the two offices cannot be legally held by the same person) and he accepts and qualifies as to the second, such acceptance and qualification operate, ipso facto, as a resignation of the former office.” *Pruitt v. Glen Rose Indep. Sch. Dist. No. 1*, 84 S.W.2d 1004, 1006 (Tex. 1935). Under this case law, opinions of this office consistently conclude that an officeholder who accepts and qualifies for a second incompatible office automatically resigns from the first office as a matter of law. *See, e.g.,* Tex. Att’y Gen. Op. No. GA-0015 (2003) at 5. Accordingly, assuming the individual qualified for the second office, a court would likely conclude that he or she resigned from the board of the Irrigation District upon acceptance and qualification of the office of trustee for the School District. *See* Request Letter at 2 (informing us the individual “accepted the office of trustee”).

**The Constitutional holdover provision does not apply to a vacancy created when an individual automatically resigns an office pursuant to common-law incompatibility.**

Lastly, you ask whether the individual continues to serve in a holdover capacity until the appointment of a successor Irrigation District board member. *See id.* at 3. Known as the “holdover provision,” Texas Constitution article XVI, subsection 17(a), states: “[A]ll officers of this State shall continue to perform the duties of their offices until their successors shall be duly qualified.” TEX. CONST. art. XVI, § 17(a). Despite the mandatory nature of this provision, “Texas courts have consistently determined that the holdover provision does not apply in some circumstances to force an officer’s continued service.” Tex. Att’y Gen. Op. No. KP-0014 (2015) at 2. In *State ex rel. Peden v. Valentine*, the Fort Worth Court of Appeals considered the constitutional prohibition of a person holding incompatible civil offices of emolument and determined that “when the Constitution forbids the holding of both offices, it must be held that [the holdover provision] is without application.” 198 S.W. 1006, 1007 (Tex. Civ. App.—Fort Worth 1917, writ ref’d). The Texas Supreme Court subsequently reached the same conclusion in its consideration of incompatible offices under the same two constitutional provisions. *See Pruitt*, 84 S.W.2d at 1007; *but see Bianchi v. State*, 444 S.W.3d 231, 248 (Tex. App.—Corpus Christi-Edinburg 2014, no pet.) (concluding that the holdover provision applies to a vacancy created by an automatic resignation in the context where two offices were not incompatible but continued service in the current office was prohibited by the resign-to-run provision in Texas Constitution article XVI, section 65).

Following the reasoning of *Peden* and *Pruitt* about the nature of the offices as incompatible such that one person is not capable of holding both and thus cannot holdover in the first office, this office has consistently concluded that offices made incompatible under the common law similarly do not invoke article XVI, section 17. *See* Tex. Att’y Gen. Op. Nos. KP-0014 (2015) at 3 (relying on *Peden* and *Pruitt* to conclude that “[i]mmediate vacation of office without holding over also occurs when the incompatibility of office derives not from the constitution but from the common law”), GA-0015 (2015) at 6 (relying on *Pruitt* to conclude that “an officer who vacates his or her office by accepting and qualifying for a second incompatible officer does not hold over”); *see also* Tex. Att’y Gen. Op. Nos. JM-589 (1986) at 2 (relying on *Peden* and *Pruitt* to conclude that an

“officer . . . may divest himself of an office before his successor has qualified by himself qualifying for and entering upon the duties of another office which he cannot lawfully hold at the same time”), M-627 (1970) at 4 (same). Thus, “[a]n officer who vacates his or her office by accepting and qualifying for a second incompatible office does not holdover under article XVI, section 17 of the Texas Constitution.” Tex. Att’y Gen. Op. No. KP-0125 (2017) at 3 (quoting Tex. Att’y Gen. Op. No. GA-0015 (2003) at 6); *see* Tex. Att’y Gen. Op. No. KP-0014 (2015) at 3. Under the facts you provide, a court would likely conclude that in qualifying for the second incompatible office of trustee for the School District thereby effectively resigning from the board of the Irrigation District, the individual does not holdover under article XVI, subsection 17(a).

**S U M M A R Y**

The common-law doctrine of conflicting-loyalties incompatibility prohibits one person from simultaneously holding two offices that would prevent the person from exercising independent and disinterested judgment. Because the La Joya Independent School District and the Hidalgo County Irrigation District No. 6 have taxation authority in overlapping territory, one individual may not simultaneously serve as a school board trustee and irrigation district board member. A court would likely conclude that in qualifying for the second incompatible office of trustee for the School District, the individual does not holdover under article XVI, subsection 17(a).

Very truly yours,

A handwritten signature in black ink, appearing to read 'John Scott', with a large, stylized initial 'J'.

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