



The Senate of
The State of Texas

COMMITTEES:

Chair, Jurisprudence
Intergovernmental Relations
Administration

SENATOR RODNEY ELLIS
District 13

RQ-0281-*jc*

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SEP 11 2000

September 7, 2000

OFFICE OF THE ATTORNEY GENERAL
EXECUTIVE ADMINISTRATION

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OPINION COMMITTEE

FILE # ML-41622-00

I.D. # 41622

The Honorable John Cornyn
Attorney General of Texas
209 West 14th and Colorado
Austin, Texas 78711-2548

Dear General Cornyn:

Please find enclosed a letter from Mr. James H. Ragan, Jr.

Mr. Ragan has requested an opinion from you on whether his position as Director for Harris County Mud. No. 122 and a Planning and Zoning Commissioner for the City of Missouri City presents a conflict of interest. As chairman of the Senate Jurisprudence Committee, please consider this letter a formal request for an Attorney General's opinion.

Thank you for your assistance.

Sincerely,

Rodney Ellis

RE:kb

Enclosure

cc: Mr. James H. Ragan Jr.

16510 Mahogany Dr.
Missouri City, TX 77489

September 5, 2000

Senator Rodney Ellis
c/o: Mr. Kenneth Besserman
P.O. Box 12068
Austin, TX 78711

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Senator Rodney Ellis
Capitol Office, Austin
Signed _____ Rte. _____

Dear Senator Rodney Ellis:

I would first like to thank you for agreeing to sponsor my request for an Attorney General's Opinion. To reiterate the situation that has transpired, I currently serve as a Director for Harris County Mud No. 122 and a Planning and Zoning Commissioner for the City of Missouri City. The Mayor, via the City Attorney, has asked me to resign from one of the positions due to a perceived conflict of the common-law doctrine of incompatibility and conflict of loyalties.

I think the point of this dispute is whether a Utility District Director and a Planning and Zoning Commissioner constitutes dual officeholding. To be more direct, I would like the Attorney General to give an opinion on whether a Planning and Zoning Commissioner is a public "officer". It is my interpretation that if this answer is no, then questions of incompatibility and conflicting loyalties is a mute issue, and I should be allowed to serve my community in both positions.

To resolve this question, I have sought opinions from two sources. The Texas Attorney General's Office representative, Mr. Jeff Moore, did not feel that this particular situation met the test of incompatibility after reviewing several opinions written by Dan Morales and prior Attorney Generals, as well as reviewing the Texas Supreme Court case of *Aldine Independent School District v. Standley*, 280 S.W. 2d 578 (Texas 1955). Although Mr. Moore's interpretation is not an official position of the Attorney General's Office, I passed this information on to the City Attorney of Missouri City, Texas. The second opinion I sought was from the firm of Swartz, Page & Harding, L.L.P., representing MUD #122. It is their opinion there is no apparent conflict.

If the question of dual officeholding is found not to exist, then the issue of incompatibility is a mute point. Under the concept of dual officeholding, no person shall hold or exercise at the same time, more than one civil office of emolument. In my elected position as a Harris County MUD #122 Director, I meet the generally accepted definition of an "officer" as derived from the Texas Supreme Court's opinion in *Aldine Independent School District v. Standley*. This fact is not in dispute, but I contend that my City Council appointment as a Planning and Zoning Commission doesn't meet the definition of a "officer" under the same test. An emolument has been described by a

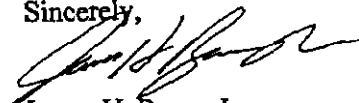
Attorney General's Opinion Request
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court as "a pecuniary profit, gain or advantage". In addition to "salary" and "compensation", a flat payment per meeting, or payment of hospitalization insurance. No profit, gain or advantage as previously defined has been received from the City of Missouri City, and therefore does not meeting the definition.

It is my understanding that it is now generally held that both positions in question must be an "officers" in order for "conflicting loyalties" to be applicable. If both positions were in fact "officers", then the relationship between the two positions create the potential for conflict. I would again argue that the appointed position of Commissioner is not an "officer". Although one could always argue a potential for "conflict of interest", the doctrine of incompatibility is another issue. The doctrine prohibits a person from holding two positions where one position may impose its policies on the other or subject it to control in some other way. Currently, the City of Missouri City has no public water or wastewater operations. All water and wastewater operations are being performed by more than ten independent utility districts. Attorney General's Opinions DM-303 (1994) and DM-194 (1992) state that incompatibility does not apply where one of the positions is not a public office or employment.

Again I would like to thank you for agreeing to sponsor my request for an Attorney General's Opinion and if you should need any further information, please feel free to contact me at 713-831-6332.

Sincerely,



James H. Ragan Jr.

w/ attachments

cc: Mayor Allen Owen
Mayor Pro Temp Jerry Wyatt
Councilmember Eunice Reiter
Councilmember Buddy R. Jimerson
Councilmember Eddie Fair
Councilmember Robert C. Burton
Councilmember Brett Kolaja
City Manager James Thurmond
City Attorney Mary Ann Pruett