



House Committee On
Urban Affairs
 P.O. BOX 2910 • AUSTIN, TEXAS 78768-2910

BILL CARTER
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OCT 15 2001

OPINION COMMITTEE

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 POLICY DIRECTOR
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 POLICY ANALYST
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FILE # Mh-42231-01
 I.D. # 42231

October 12, 2001

The Honorable John Cornyn
 Attorney General
 P. O. Box 12548
 Austin, Texas 78711-2548

RQ-0452-JC

Re: Request for Opinion

Dear General Cornyn:

I have been asked by the City of Watauga to seek an Attorney General's opinion on the question of whether the common law doctrine of incompatibility prohibits a member of the City Council from appointing himself or another member of the City Council to the Board of Directors of the Watauga Crime Control and Prevention District as established by Local Government Code Chapter 363.

The following facts are presented:

1. On July 23, 2001, the City Council adopted a Resolution establishing appointment procedures under Local Government Code, Section 363.1015 (b), in which each member of the governing body may appoint one member to the Board of Directors, subject to the confirmation by the governing body. The Resolution does not specify whether a member of the governing body may appoint himself or be appointed by another member of the Council and serve on the Board.
2. Two sitting members of the City Council appointed themselves to their corresponding places on the Watauga Crime Control and Prevention District.
3. These appointments were approved by majority vote of the City Council.
4. Enclosed is a copy of City of Watauga Resolution Number 01-07-23-03 passed and approved on July 23, 2001, which adopted the procedures under Section 363.1015(b) of appointing members to the Crime Control and Prevention District.
5. The Watauga Home Rule Charter does not contain provisions that members of the governing body can serve on any board or commission within the city.
6. A previous Attorney General Opinion (JC-0225) has stated, "The common law doctrine of incompatibility prevents an officer with appointing power from appointing himself to another office or position."

MEMBERS:

LON BURNAM, BILL CALLEGARI, AL EDWARDS,
 HARRYETTE EHRHARDT, FRED HILL, ELIZABETH JONES, MANNY NAJERA

7. An expedited response would be greatly appreciated, as the board must meet soon to discuss funding projects approved in the new budget.

Thank you for your consideration of this matter.

Sincerely,



Bill G. Carter
Chairman, House Committee on Urban Affairs

enc: City of Watauga Resolution 01-7-23-3

cc: Hon. Hector Garcia
Mayor, City of Watauga
7101 Whitley Road
Watauga, TX 76148

Hon. Curtis Warner
Council Member
5900 Clovis Court
Watauga, TX 76148-3424

George Ragsdale
Crime Control and Prevention District
7101 Whitley Road
Watauga, TX 76148

CITY OF WATAUGA, TEXAS
RESOLUTION NO. 01-7-23-03

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF WATAUGA, TEXAS ADOPTING AN ALTERNATIVE METHOD OF APPOINTMENT FOR THE BOARD OF DIRECTORS OF THE WATAUGA CRIME CONTROL AND PREVENTION DISTRICT CONSISTENT WITH SECTION 363.1015 OF THE TEXAS LOCAL GOVERNMENT CODE; PROVIDING THAT ALL RESOLUTIONS IN CONFLICT HERewith ARE HEREBY REPEALED TO THE EXTENT THAT THEY ARE IN CONFLICT; PROVIDING A SAVINGS CLAUSE; PROVIDING AN EFFECTIVE DATE

WHEREAS, the Watauga Crime Control and Prevention District (hereinafter "WCCD") was created in 1996 under the authority of V.T.C.S. Article 2370c-4 (now Chapter 363 of the Texas Local Government Code); and

WHEREAS, the WCCD has since been governed by a Board of Directors appointed in the same manner as provided for the selection of temporary directors under Texas Local Government Code Section 363.051(a) which requires that the governing body appoint seven (7) persons that reside in the proposed district to serve as directors; and

WHEREAS, the Texas Legislature, effective September 1, 1999, amended Chapter 363 of the Local Government Code to include Section 363.1015, which specifies that the governing body of a municipality may create the membership of a crime control district by having each member of the governing body appoint one director to the board, subject to the confirmation by the governing body.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Watauga, Texas as follows:

I.

The Board of Directors of the WCCD shall hereafter be appointed pursuant to Section 363.1015(b) of the Texas Local Government Code, which provides that the City Council may create a board by having each member of the City Council appoint one (1) director on the board, subject to the approval of the City Council.

II.

As existing terms of members of the Board of Directors expire, members of the City Council, Places 1 through 7 shall appoint individuals to fill the vacancy in the Place number on the WCCD that corresponds to their place number on the City Council. A

director appointed in this manner shall serve at the pleasure of the City Council and for a term concurrent with the appointing member of the City Council

III.

All Resolutions, or portions thereof, of the City of Watauga in conflict with the provisions of this Resolution to the extent that such are in conflict, are hereby repealed. To the extent that such Resolution or portions thereof are not in conflict herewith, the same shall remain in full force and effect.

IV.

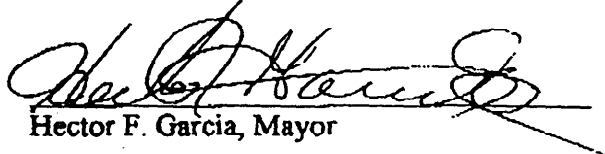
If any section, subsection, sentence, clause or phrase of this Resolution shall for any reason be held to be invalid, such decision shall not affect the validity of the remaining portions of the Resolution, which shall remain in full force and effect.

V.

This Resolution shall become effective and shall be in full force and effect from and after the date of passage and adoption by the City Council of the City of Watauga, Texas, and upon approval thereof by the Mayor of the City of Watauga, Texas and publication hereof as prescribed by law.

PASSED AND ADOPTED by the City Council of the City of Watauga, Texas on this the 23rd day of July, 2001.

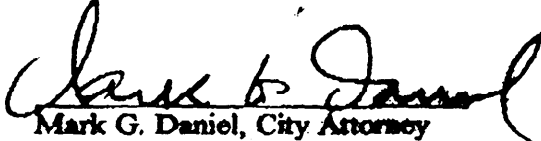
APPROVED:


Hector F. Garcia, Mayor

ATTEST:


Nancy J. Meadows, City Secretary

APPROVED AS TO FORM AND LEGALITY:


Mark G. Daniel, City Attorney