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OFFICE OF THE ATTORNEY GENERAL
EXECUTIVE ADMINISTRATION

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

FILE # ML-42555-02
I.D. # 42555

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Dear Attorney General Cornyn:

Please accept this letter as a request for opinion regarding potential dual office holding issues related to the election of board members to a groundwater conservation district organized and operating under Chapter 36, Texas Water Code, as specifically set forth herein.

Currently, Section 36.051(b), Texas Water Code, states that "A member of a governing body of another political subdivision is ineligible for appointment or election as a director. A director is disqualified and vacates the office of director if the director is appointed or elected as a member of the governing body of another political subdivision. *This subsection does not apply to any district with a population less than 50,000.*" (Emphasis added).

Additionally, Attorney General Opinion JC-0455 states that, although a district has a population of less than 50,000, one must still "consider the applicability of Article XVI, Section 40, of the Texas Constitution, and the common-law doctrine of incompatibility."

At issue in this request for opinion is whether an elected board member of a school district who serves as a member of the board of directors of a groundwater conservation district with a population of less than 50,000 would violate the common-law doctrine of incompatibility or other law, where:

1. a portion of the school district's boundaries overlap a portion of the groundwater district's boundaries;
2. both the school district and the groundwater district are taxing entities;
3. service on the school board is an uncompensated position;
4. the school district does not presently engage in any activity regulated by the groundwater district, nor does it intend to engage in any such activity in the future; and
5. the school district does not own property within the groundwater district's boundaries.

District 88: Carson, Childress, Collingsworth, Daliam, Donley, Gray, Hall, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Ochiltree, Roberts, Sherman, Wheeler

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The school district may be subject to the groundwater district's regulations should the school district ever wish to purchase property within that portion of its boundaries that overlaps the groundwater district's boundaries and drill a groundwater well on the property. It should be noted, however, that it is very remote that the school district would ever have such a need for a water well, as all school district facilities are located on property outside of the boundaries of the groundwater district and receive water service from sources located outside of the boundaries of the groundwater district.

Finally, the school district board member also serves as the school district's appointee to the board of a county tax appraisal district that serves both the county in which the groundwater district is located and the portions of the school district located outside of the boundaries of the groundwater conservation district. As noted in Attorney General Opinion DM-47, it appears that Section 6.03(a) of the Tax Code overrides the common-law doctrine of incompatibility as it would apply to service on the appraisal district on the facts set forth herein. Also, because the school district and appraisal district positions are uncompensated, I assume that the constitutional prohibition, set forth in Article XVI, Section 40, Texas Constitution, against holding two civil offices of emolument is not implicated.

It should be noted that the groundwater district's enabling legislation defers to its being organized and operating under Chapter 36, Texas Water Code, for all purposes related to these issues.

Finally, I assume that if any of the above offices are determined to be violative of the common-law doctrine of incompatibility, election or appointment to any of the offices would constitute an ipso facto resignation of any other incompatible office held at the time of such election or appointment.

Thank you in advance for your timely processing of an opinion on the issues set forth herein.

Sincerely,

Warren Chisum

Warren Chisum, Chair
House Committee on Environmental Regulation