

State of Texas  
House of Representatives



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Allan B. Ritter

District 21

August 27, 2004

RQ-0269-GA

RECEIVED

SEP 07 2004

OPINION COMMITTEE

The Honorable Gregg Abbott  
Attorney General  
State of Texas  
Post Office Box 12548  
Austin, Texas 78711-2548

FILE # MC-43918-04

I.D. # 043918

Re: Formal Request for an Attorney General's Opinion on questions (attached) raised by the New Caney Independent School District.

Dear Attorney General Abbott:

Please find attached correspondence from The New Caney Independent School District to their State Representative, The Honorable Dan Ellis, requesting clarification on whether a person may serve, at the same time, as a Trustee of the New Caney Independent School District and as a Director of the East Montgomery County Improvement District. The question raised is one of common law compatibility.

As Chairman of the House Committee on Pensions and Investments I respectfully request that your office issue a formal opinion to resolve the matter in question. Your assistance in this matter is greatly appreciated. If you have questions or need additional information please do not hesitate to call me.

Sincerely,

A handwritten signature in black ink, appearing to read "Allan B. Ritter".

Allan B. Ritter  
Chairman  
House Pensions and Investments Committee

cc: The Honorable Dan Ellis  
Texas House of Representatives

JUL -13' 04 (TUE) 09:43

6- 3-04: 2:30PM New Caney ISD

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**NEW CANEY INDEPENDENT SCHOOL DISTRICT**

21580 Loop 494

New Caney, Texas 77357

Tel: (281) 354-1166 Fax: (281) 354-2639

Richard Cowan  
Superintendent of Schools

June 4, 2004

*Sent Via Facsimile 936-927-5050*

The Honorable Dan Ellis  
Texas House of Representatives

Dear Mr. Ellis:

I am writing to follow up our telephone conversation concerning a request for an opinion from the Texas Attorney General. The matter in question concerns dual office holding.

The specific question is whether a person may hold, at the same time, the following two offices: (1) Trustee of the New Caney Independent School District, and (2) Director of the East Montgomery County Improvement District. It is our understanding that this question involves the concept of common law incompatibility. The issue of common law incompatibility turns on various factors, but the two most important seem to be overlapping geographical boundaries and power of taxation. Opinion No. GA-0169 and Opinion No. JC-0557.

The legal status of a Texas public school district board of trustees is set forth in various provisions of the Texas Education Code, including Chapter 45, which provides the authority to levy, assess and collect ad valorem taxes on property. The East Montgomery County Improvement District was created by the Texas Legislature in Senate Bill 921, signed by the Governor on June 20, 1997. Section 21 of Senate Bill 921 provides that the East Montgomery County Improvement District may impose a sales and use tax for the benefit of the district if authorized by a majority of the qualified voters of the district voting at an election for that purpose.

The New Caney ISD and the East Montgomery County Improvement District have overlapping geographical boundaries, and both have the power to tax. Ordinarily overlapping geographical boundaries and the power of taxation would indicate the likelihood of incompatibility. The complication in the present question, however, lies in the fact that these two entities tax in an entirely different manner. The Trustees of the New Caney ISD have the power to levy, assess, and collect ad valorem property taxes, while the Directors of the East Montgomery County Improvement District, on the other hand, may impose only a sales and use tax and only after voter approval. Given this difference, the public policy issue concerning both entities having the power to tax appears to apply less or even not at all.

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6- 3-04 2:38PM:NEW CANEY ISD

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Thus, the New Caney ISD appreciates your kind assistance in requesting an opinion from the Attorney General in this matter. Please let me know if you have any questions or need anything further in connection with the request to the Attorney General.

Sincerely,



Richard Cowan  
Superintendent of Schools

RC/je