

HOUSE OF REPRESENTATIVES



CAPITOL ADDRESS:  
P.O. BOX 2910, E1.306  
AUSTIN, TEXAS 78768-2910  
TELEPHONE: (512) 463-0714  
FACSIMILE (512) 463-1448

DISTRICT ADDRESS:  
111A SW MILITARY DRIVE, SUITE 103  
SAN ANTONIO, TEXAS 78221  
TELEPHONE: (210) 932-2568  
FACSIMILE (210) 932-2572

CARLOS I. URESTI  
DISTRICT 118

February 10, 2005

RECEIVED  
APR 05 2005  
OPINION COMMITTEE

Nancy S. Fuller, Chair  
Opinion Committee  
Office of the Texas Attorney General  
P.O. Box 12548  
Austin, TX 78711

FILE # NL-44177-05  
I.D. # 044177

RQ-0335-GA

RE: Request for Opinion Relating to Pleasanton Municipal Judge Serving as Atascosa County Justice of the Peace

Dear Ms. Fuller:

My office respectfully requests that the Texas Attorney General consider issuing an opinion determining whether, if applied, a dual office holding prohibition in the City of Pleasanton city charter would be in conflict with or inconsistent with Article 16, Section 40 of the Texas Constitution.

I understand that, as a rule, the Texas Attorney General does not interpret home rule city charters in deference to the construction authority of the governing city council. However, as you are aware, the 1913 legislation that implemented the 1912 home rule amendment allows cities over 5,000 in population to adopt or amend a city charter that is not "inconsistent" with state law or the Texas Constitution. That is to say, any city charter provisions cannot be inconsistent with the Texas Constitution. There may be a preemption issue in this particular case and your assistance in this regard is requested.

Pleasanton, Texas is a home rule city with a population of less than 10,000. Late last year the Atascosa County Commissioner's Court appointed the Pleasanton Associate Municipal Judge to fill an unexpired term as Justice of the Peace.

Article IV, Section 2A of the Pleasanton City charter provides that *officers and employees shall not hold any other public elective office of emolument*. The position of Atascosa County Justice of the Peace is a public elective office of emolument.

It has been suggested that this charter provision bars the Pleasanton Associate Municipal Judge from serving as the Atascosa County Justice of the Peace.

Strictly construed, Article IV, Section 2A prevents the City of Pleasanton's municipal judge from holding the position of justice of the peace. However, Article III, Section 1 of the Pleasanton city charter dictates the City charter will not be inconsistent with the Constitution and laws of Texas.

Nancy S. Fuller, Chair of the Opinion Committee  
February 10, 2005  
Page 2

Article 16, Section 40 of the Texas Constitution excepts justices of the peace from the constitutional prohibition against dual office holding. To the contrary, Article 16, Section 40 specifically excludes justices of the peace from the dual office holding prohibition. The Texas Attorney General's Office has ruled that a municipal judge may also serve as a justice of the peace, there being no incompatibility between the two positions.

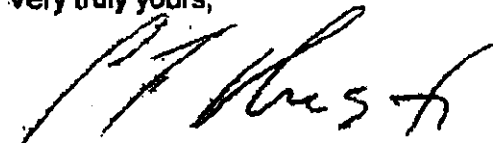
Neither the Texas Constitution or statutes contain a prohibition against a justice of the peace serving as a municipal judge. It is understood that the Pleasanton City charter may be more restrictive than the Texas Constitution or laws relating to the issue of dual office holding. However, by its own terms, the Pleasanton City charter states that it shall not be inconsistent with the Texas Constitution and laws of Texas.

Article IV, Section 2A of the Pleasanton City charter, if applied in this case, may be inconsistent with Section 1 of the City charter that provides:

... The City of Pleasanton shall have the powers to ordain and establish acts, laws, rules, regulations, resolutions, and ordinances, not inconsistent with the Constitution and laws of Texas and with this Charter, as shall be required for the government, interests, health, welfare and good order of the City and its inhabitants. (Emphasis added).

Your assistance in clarifying this matter would be greatly appreciated. Please do not hesitate to contact me at your convenience if you have any questions or need additional information.

Very truly yours,



CARLOS I. URESTI