



The State of Texas House of Representatives

EDMUND KUEMPEL DISTRICT 44 • GONZALES, GUADALUPE & WILSON COUNTIES

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OPINION COMMITTEE

March 16, 2009

FILE # ML-46033-09

I.D. # 46033

The Honorable Greg Abbott
Attorney General of Texas
P.O. Box 12548
Austin, TX 78711-2548

RQ-0788-GA

Re: Request for opinion regarding an individual's ability to serve as a principal of a disciplinary alternative education program ("DAEP") campus that serves several school districts as part of a cooperative arrangement while simultaneously serving on the board of trustees of a member district.

Dear General Abbott:

Pursuant to Article XVI, section 40 of the Texas Constitution and Tex. Educ. Code §11.061, I respectfully request your opinion on the questions presented below.

In this particular case, the Principal in question is an employee of the fiscal agent district, Floresville Independent School District, but wishes to run for a place on the Board of Trustees of Nixon-Smilely Consolidated Independent School District where he resides.

I. SIMULTANEOUSLY SERVING AS SCHOOL BOARD MEMBER AND PRINCIPAL UNDER THE PRESENT CIRCUMSTANCES IS PERMISSIBLE UNDER THE TEXAS CONSTITUTION

While article XVI, section 40 of the Texas Constitution prohibits the simultaneous holding of more than one office of emolument, it is not a bar to the holding of these two offices. *See* Tex. Const., art. XVI, § 40. This is because a member of the Board of Trustees of NCISD serves without compensation, and thus, does not hold an office of emolument. *See* Tex. Educ. Code § 11.061(d), Tex. Att'y Gen. Op. No. GA-0224 (2004) at 1. Clearly, then, there is no Constitutional impediment to an individual's simultaneous service as a school board member and campus principal.

II. SIMULTANEOUSLY SERVING AS SCHOOL BOARD MEMBER AND PRINCIPAL UNDER THE PRESENT CIRCUMSTANCES MAY BE PROHIBITED BY THE COMMON LAW DOCTRINE OF INCOMPATIBILITY

Common-law incompatibility has three aspects: self-appointment, self-employment, and conflicting loyalties. *See* Tex. Att'y Gen. Op. No. GA-0224 (2004) at 1

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Conflicting loyalties incompatibility is implicated when an individual holds conflicting public offices, and was first recognized in *Thomas v. Abernathy County Line Independent School District*. See *Thomas v. Abernathy County Line Indep. Sch. Dist.*, 290 S.W. 152, 153 (Tex. Comm'n App. 1927, judgment adopted). Accordingly, conflicting loyalties incompatibility does not apply unless both positions are offices. In this case, a school board trustee clearly holds an office. See *Id.* By contrast, although a campus principal has authority over his campus, he is ultimately subject to the leadership and control of the school district's superintendent and board of trustees. See Texas Education Code 11.151, 11.1511, 11.1512, 11.201, and 11.202. Thus, a campus principal cannot be said to exercise "power largely independent of the control of others", and his position is an employment rather than an office. See Tex. Att'y Gen. Op. No. JM-499 (1986). Consequently, the doctrine of conflicting loyalties incompatibility is inapplicable to the present facts.

Self-appointment incompatibility applies when an individual serves as a member of a governing body, in this case a school board, that has authority to appoint the individual in question to a position governed by that body. See *Ehlinger v. Clark*, 8 S.W.2d 666, 674 (Tex. 1928). Self-employment incompatibility is an outgrowth of the doctrine of self-appointment incompatibility and is just as it sounds, essentially a prohibition on an individual serving in the employ of a governing body of which he is a member. In this case, a principal is clearly an employee of the school district's board of trustees. Thus, common law incompatibility would prevent a principal from serving on the board of trustees of the school district by whom he is employed. See Tex. Att'y Gen. Letter Advisory 114 (1975) (holding that a teacher cannot serve as a trustee of the same school district). In this case, although the principal in question works with each of the school district members of the cooperative, he is an employee of only the fiscal agent district, Floresville ISD. The Attorney General has held that the common-law doctrine of incompatibility does not prevent a school board member from being employed by another school district. See Tex. Att'y Gen. Op. No. DM-55 (1991).

In this case, Nixon-Smilely CISD does not have a contract for employment with the principal of the DAEP campus. That contract is between Floresville ISD and the principal. Nixon-Smilely CISD does have a contract that governs its participation in the cooperative, and the Nixon-Smilely CISD Board of Trustees votes on that contract. Furthermore, although no one from Nixon-Smilely evaluates or supervises the principal of the DAEP campus, Nixon-Smilely CISD employees work directly with the DAEP campus, including its campus principal. As in any school setting, circumstances such as disciplinary appeals or other parent or student complaints could arise to bring the actions or decisions of the DAEP campus principal into question by the Nixon-Smilely CISD Administration or the Board of Trustees. Whether or not this possibility is sufficient to render these two positions incompatible is unclear.

Conclusion:

Nixon-Smilely CISD has enjoyed a successful relationship with its disciplinary cooperative and, for the foreseeable future, intends to continue its participation in the

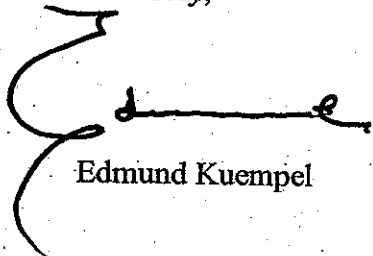
cooperative. NSCISD takes no position as to whether election of the DAEP campus principal, a Floresville ISD employee, to the NCISD Board of Trustees would violate the common-law doctrine of incompatibility, and simply wants to ensure full compliance with all applicable legal standards.

Request:

May an individual serve as a principal of a disciplinary alternative education program ("DAEP") campus that serves several school districts as part of a cooperative arrangement while simultaneously serving on the board of trustees of a member district?

If you have any questions, please do not hesitate to contact me.

Sincerely,



Edmund Kuempel