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AUG 23 2010

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FILE # ML-46565-10
P.D. # 46565

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Natural Resources Committee

August 17, 2010

RQ-D911-GA

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

Re: Request for an Expedited Attorney General's Opinion Regarding Provisions on Holding More Than One Office arising under Article XVI, Section 40, Texas Constitution.

Dear General Abbott:

I respectfully request an Attorney General Opinion on behalf the Jefferson County Drainage District No. 7 (the "District") concerning an interpretation of the meaning of the provisions regarding persons holding more than one office as set forth in Article VXI, Section 40, Texas Constitution.

The District was created in 1946 with approval of the voters. Today, the District covers the needs for drainage and hurricane protection for 107.5 square miles of South Jefferson County. The District's office is located in Port Arthur, Texas. The District's mission is to develop and manage a system which will meet the present and long-term requirements for the elimination of clean outfall and storm water drainage of municipal, agricultural and industrial consumers within the District's boundaries, enhancing economic development throughout the District's area of jurisdiction.¹

On May 8, 2010, an appointed, part-time Municipal Court Judge (the "Judge") was elected as Commissioner to the Board of Commissioners (the "Board") of the District. This position is not only an elected position, but is also a position of remuneration. Each of the Commissioners receive a monthly salary of \$200.00 per month, and in addition, they also receive an automobile allowance for their service. The Judge also serves in the Municipal Court for the City of Nederland. While this is a position of remuneration, it is also a part-time position. The Judge has held this position for many years.

¹ <http://www.dd7.org>

The District faced a similar situation related to the service of one of its Commissioners, which occurred approximately 32 years ago. At that time, an individual who was already serving as public school principal had been appointed as a Commissioner to the Board. An issue was raised as to his ability to serve in both positions. The Attorney General's Office issued an opinion that his service was authorized; the Attorney General also advised, however, that he could not receive the then \$100.00 per month compensation payable to the other Commissioners.²

No case law or attorney general opinions have been found that address the specific question of whether an appointed, part-time Municipal Court Judge may also serve as an elected Commissioner of a drainage district. Nonetheless, it is my understanding that there are other persons similarly situated throughout the State who serve as both a Municipal Court Judge, which are generally part-time appointed positions, and also serve as a Commissioner and/or Board Member of other various local or quasi- governmental entities.

So as not to jeopardize any actions taken by the District, the Judge has continued to abstain from voting at any of the meetings of the Board. Thus, a quick analysis of this issue is requested.

Questions presented

Accordingly, the Board requests your interpretation and guidance concerning the meaning and applicability of Article XVI, Section 40, Texas Constitution, in this context. Specifically, the Board seeks your guidance on whether the Judge is authorized to also serve, and concurrently receive compensation for his service, as a Commissioner of the District. In this regard, we seek guidance from you on the following questions:

- 1) Whether Article XVI, Section 40, Texas Constitution, prohibits an appointed, part-time Municipal Court Judge from also serving as an elected Commissioner to the Board of Commissioners of a drainage district? If not, whether the Judge may also receive compensation for his service as a Commissioner to the drainage district?
- 2) Whether the exceptions contained in Article XVI, Section 40, Texas Constitution, that reference in part "water conservation districts" also include drainage districts, such as Jefferson County Drainage District No. 7? Further, if a drainage district is not included in the definition of a "water conservation district" under the applicable law, what type of districts are covered by the exception provided for a "water conservation district"?

² Op. Tex. Att'y Gen. LA-150 (1978).

Honorable Greg Abbott

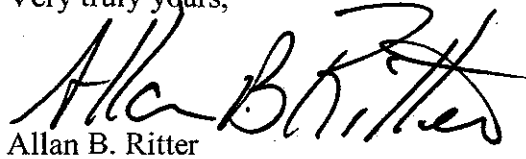
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- 3) Whether the common law doctrine of incompatibility has any impact upon the subject matter?

Thank you for your expeditious attention to this matter. Please let me know if I can be of further assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read "Allan B. Ritter". The signature is fluid and cursive, with the first name "Allan" being the most prominent.

Allan B. Ritter

cc: Mr. Phil Kelley, General Manager, Jefferson County Drainage District No. 7
The Honorable Joan Huffman, Texas Senate
The Honorable Tommy Williams, Texas Senate
The Honorable Joe Deshotel, Texas House of Representatives
The Honorable Ronald L. Walker, Jefferson County Judge