

RECEIVED

FEB 12 2014

OPINION COMMITTEE



STATE OF TEXAS
HOUSE OF REPRESENTATIVES
DISTRICT 103

FILE # ML-47519-14

I.D. # 047519

RAFAEL ANCHIA
MEMBER

RQ-1186-GA

February 5, 2014

Office of the Attorney General
Attention: Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

Dear Opinion Committee:

I write to respectfully request an Attorney General opinion regarding Texas dual office holding laws. Specifically, there are two members of the Board of Directors for the Maverick County Hospital District (MCHD) who also serve Maverick County in other official capacities. This has presented a question as to whether these two individuals may serve these dual roles.

As per Sections 402.042 and 402.043 of the Texas Government Code, a committee of the House of the Texas Legislature is authorized to request a formal attorney general opinion. Therefore, as Chairman of the International Trade and Intergovernmental Affairs committee, I submit this request to the Opinion Committee of the Office of the Texas Attorney General.

Please find below a supporting brief and relevant background facts regarding the two Board Members of the Maverick County Hospital District and their dual serving roles:

First Individual serves as a Board Member of the Maverick County Hospital District and on the Board of the Housing Authority to the City of Eagle Pass.

The first individual serves on the Board of the Housing Authority to the City of Eagle Pass, an unpaid position. In November 2012, this individual was elected to the Maverick County Hospital District Board. As a Board Member of the Maverick County Hospital District, this individual does not receive any kind of payment or stipend from the MCHD, other than the reimbursement of expenses.

The MCHD relationship with the Housing Authority to the City of Eagle Pass is as follows: The MCHD conducts The Ryan White Program, an early intervention service and treatment program for people living with HIV/AIDS in South Texas. The Program provides housing assistance for up to one year for those that qualify. The MCHD is authorized to contract with the Housing Authority of Eagle Pass in identifying properties for Program participants and to adjust rental rates that meet the criteria of the Program. The working relationship provides MCHD with the opportunity to locate housing for their clients through the Housing Authority and to transfer Ryan White Program grant funds to the Housing Authority to pay for all or part of a client's rent.

In addition to the Ryan White Program, the MCHD also provides medical services to Housing Authority clients through a Medical Financial Assistance Program. Communication between the two agencies is ongoing. The Housing Authority of Eagle Pass has requested a letter of commitment from the MCHD for in-kind services provided to residences of facilities overseen by the Housing Authority. In the event the Housing Authority receives the grant, MCHD is committed to the amount of \$16,500 over the proposed grant period of three years, beginning in 2013.

Under Article XVI, Section 40 of the Texas Constitution, "No person shall hold or exercise at the same time, more than one civil office of emolument..." Although we do consider service on the Board of the Housing Authority to the City of Eagle Pass and as a Board member of the MCHD as "public offices," as both positions "exercise a sovereign function of governmental largely independent of the control of others for the public benefit," as described by the 2012 Texas Dual Office Holding Laws Made Easy; neither public office is an office of emolument.

As discussed above, Board Members of the Maverick County Hospital District receive no payment or stipend; rather, service is voluntary, with members receiving reimbursement for expenses. As expressed in *Irwin v. State*, 177 S.W.2d 970 (Tex. Crim. App. 1944), the term "emolument" signifies a pecuniary profit, gain, or advantage. We note from previous Attorney General Opinions, that the mere reimbursement of actual government-related expenses is not considered to be an emolument. Attorney General Opinion LO93-070 (1993) at 3. Also, as mentioned earlier, serving as a Board Member for the Housing Authority to the City of Eagle Pass is an unpaid position. Therefore, Article XVI, Section 40 of the Texas Constitution, prohibiting holding more than one civil office of emolument, is not triggered.

However, there is a question as to whether serving as a Board Member of the MCHD and serving as a Board Member of the Housing Authority to the City of Eagle Pass violates the common law doctrine of incompatibility in regards to the conflicting loyalties prohibition. According to Attorney General Opinion GA-15 (2003), it is well established that when two governmental bodies are authorized to contract with each other, a person may not serve simultaneously as a member of both. Thus, given the aforementioned facts relating to the Housing Authority to the City of Eagle Pass contracting with the MCHD through the Ryan White Program and the Medical Financial Assistance Program, we request an opinion as to whether serving as a Board member of the MCHD and serving as a Board member of the Housing Authority to the City of Eagle Pass violates the common law doctrine of incompatibility.

Second Individual serves as a Board Member of the Maverick County Hospital District and Interim Maverick County Treasurer.

The second individual served as a Board member of the MCHD when he was appointed by Maverick County Commissioners Court in March of 2013 to fill the remaining 2 years of a four year term left vacant by the Maverick County Treasurer, a position of emolument. The appointment of the individual to Maverick County Treasurer is temporary and for an interim period, ending November 2014.

February 5, 2014
Office of the Attorney General
Page Three

The MCHD relationship with the County Treasurer is as follows: The position of County Treasurer is a paid position. The County currently rents space from the MCHD for \$1.00 per year; that contract expired December 31, 2013 and will not be renewed. Absent that relationship, there is no exchange of dollars between MCHD and the County Treasurer, as all funding for indigent care and service programs of MCHD is provided through the County Tax Assessor's Office. An internal audit of MCHD's funding dollars in the past five years indicates that no checks from, by or through the County Treasurer have been provided to MCHD other than the one dollar payment.

We believe that the individual serving as Board Member of the MCHD and as Maverick County Treasurer does not violate Article XVI, section 40, of the Texas Constitution for two reasons. First, only the position of the County Treasurer is a position of emolument. As mentioned above, the position as Board Member to the MCHD is an unpaid position. Moreover, according to Attorney General Opinion LO-96-81 at 2, an "officer" as described in Article XVI, Section 40 of the Texas Constitution "has duties that are continuing in nature and not intermittent." As noted in the 2012 Texas Dual Office Holding Laws Made Easy, the court in *De Alejandro v. Hunter*, 951 S.W.2d 102, 107 (Tex. App.—Corpus Christi 1997, no pet.) ruled that "the temporary performance of the mayor's duties by a mayor pro tem during an interim period before a special election to fill the mayor's position did not constitute dual office holding." We believe the same reasoning applies to the Maverick County Treasurer. As the appointment to County Treasurer is temporary in nature, ending with the next election in November 2014, we do not hold the individual as an "officer," and, therefore, do not believe the circumstances constitute dual office holding. However, as the issue remains in question, we request an opinion to resolve the matter.

Also, we request an opinion concerning whether it violates the common law doctrine of incompatibility for this individual to sit as a Board Member of the MCHD and as temporary Maverick County Treasurer. As mentioned above, the extent of the relationship between the position of County Treasurer and the MCHD is not extensive; rather the contract between the county and MCHD covered rental space at \$1.00 per year and that contract expired December 31, 2013 and will not be renewed. As expressed earlier in this brief, we do not view the position of County Treasurer as an "officer" position, as it is temporary in its duration. Thus, since it is not an "office," we do not consider a person who serves as temporary County Treasurer and as a Board Member of the MCHD to hold incompatible offices. However, we request an opinion confirming our conclusion as to whether service in these concurrent positions violates the conflicting loyalties prohibition under the doctrine of common-law incompatibility.

We appreciate the Opinion Committee's attention in these matters and respectfully request an opinion on the aforementioned questions.

Sincerely,



Rafael Anchia