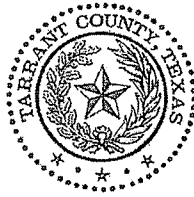


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OPINION COMMITTEE



SHAREN WILSON  
Criminal District Attorney  
Tarrant County  
July 7, 2016

FILE # ML-48042-16  
I.D. # 48042

RQ-0115-KP

The Honorable Ken Paxton  
Office of the Attorney General  
Attn: Opinion Committee  
P.O. Box 12548  
Austin, Texas 78711-2548

RE: The doctrines of incompatibility and dual office holding as applied to a city council member and member of the board of directors of a public library district created pursuant to Chapter 326 of the Texas Local Government Code.

Dear Attorney General Paxton and Opinion Committee:

I respectfully request your opinion on request of the city council of the city of Forest Hill regarding the doctrines of incompatibility and dual office holding as they pertain to a person who has been elected both as a city council member and as a member of the board of trustees of the Forest Hill public library. If necessary, I also request, on request of the city council, that you provide guidance regarding the status of the holder of the dual offices.

Background:

At the May 2016 election one person was elected to both the city council ("council") of the city of Forest Hill ("city") and the board of trustees ("board") of the Forest Hill public library ("library"). The person elected to both offices at the same election was first sworn in as a city council member and then sworn in as a member of the library board. There is no prohibition in the city charter regarding this type of dual office holding. Neither position is one of emolument.

The city is a home-rule municipality governed by a city council of seven members elected at-large. The council is authorized to conduct all matters of business as they pertain to the city.

The library is a library district established pursuant to an election as required by Chapter 326 of the Texas Local Government Code. The library is governed by a board of five trustees who are elected at-large. The board is authorized to conduct all matters of business as they pertain to the library:

(a) A district has all of the powers, authority, rights and duties that will permit the accomplishment of the purposes for which the district was created, including the power to borrow money, purchase, construct, acquire, own, operate, maintain, or improve any land, works, materials, supplies, improvements, facilities...as necessary for the district.<sup>1</sup>

The library is located within the territorial limits of the city. There has been at least one instance of the two entities entering into a contract in which the city agreed to provide certain election services for the library at the general election.

Doctrine of Incompatibility – Conflicting Loyalties:

The common-law doctrine of incompatibility has three aspects: self-appointment, self-employment, and conflicting loyalties.<sup>2</sup> The issue at hand involves the doctrine of conflicting loyalties. Incompatibility due to conflicting loyalties was recognized by a Texas court in 1927. That court stated:

In our opinion the offices of school trustee and alderman are incompatible; for under our system there are in the city council or board of aldermen various directory or supervisory powers exercisable in respect to school property located within the city or town and in respect to the duties of school trustee performable within its limits, e.g., there might well arise a conflict of discretion or duty in respect to health, quarantine, sanitary, and fire prevention regulations. If the same person could be a school trustee and a member of the city council...at the same time, school policies, in many important aspects, would be subject to direction of the same council or alderman instead of to that of the trustees.<sup>3</sup>

The office of the Attorney General has opined that:

Conflicting loyalties prevent a person from simultaneously holding two offices when the interests of the two public entities may conflict and when voting

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<sup>1</sup> Section 326.061, Texas Local Govt. Code

<sup>2</sup> Tex. Att’y Gen. Op. No. GA-0032 (2003) at 4

<sup>3</sup> *Thomas v. Abernathy County Line Ind. School District*, 290 S.W. 152 (Tex. Comm’n App 1927, judgment adopted)

on behalf of one public entity would possibly compromise the interests of the other public entity...If the city council exercises its authority over school district property within the city, the council member must be free to vote on what is in the best interest of the city, which may not coincide with the best interest of the school district.<sup>4</sup>

Resignation from First Office:

Should the office of the Attorney General determine the two offices are incompatible, what would be the consequence to the office holder?

The office of the Attorney General has noted that:

Qualification and acceptance of a second incompatible office generally operates as an automatic resignation from the first office...It should be noted that that automatic resignation operates as a matter of law only when either: 1) a public officer accepts a second public office that is paid...; or 2) a person accepts a second public office that would present a conflicting loyalties problem under common-law incompatibility...<sup>5</sup>

The Texas courts have addressed this issue:

Having elected to accept and qualify for the second office, ipso facto and as a matter of law, he vacates the first office. This is true, where both offices are places of emolument, regardless of whether they are incompatible, *and if they are incompatible there is a vacation of the first office regardless of whether both offices are offices of emolument...*In such circumstances the constitutional provision that all officers shall continue to perform the duties of their offices until a successor has been qualified does not apply.<sup>6</sup> [Emphasis added].

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<sup>4</sup> "2010 Texas Dual Office Holding Laws Made Easy", para. 32, Office of the Attorney General of Texas

<sup>5</sup> "2012 Dual Office Holding Laws Made Easy..." para. 43, Office of the Attorney General of Texas

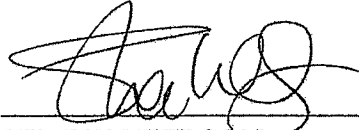
<sup>6</sup> *Pruitt v. Glen Rose Ind. School Dist.*, 84 S.W.2d 1004, 1007 (Tex. 1928)

Summary:

It seems possible in the current situation that the duties of the two offices could address overlapping issues. For example: water and sanitary sewer service to the library; acquisition of land for the library; regulation by the city of land owned by the library; and, as previously stated, contracting for election services. Are the two positions incompatible?

If the two positions are determined to be incompatible by the office of the Attorney General, would the dual office holder be deemed to have forfeited the first office for which that person took the oath of office? Or, if the offices are incompatible, would some other factor determine which office is held and which one is forfeited?

Respectfully submitted,



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**SHAREN WILSON**  
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TARRANT COUNTY, TEXAS

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