

RECEIVED

By Opinion Committee at 8:37 am, Nov 14, 2022



RQ-0486-KP

FILE# ML-49197-22

I.D.# 49197

Fort Stockton Office
Pecos County Judicial Building
400 S. Nelson
Fort Stockton, Texas 79735
(432) 336-6294
Fax (432) 336-3839

LAURIE K. ENGLISH*

District Attorney
112th Judicial District
CROCKETT - PECOS - REAGAN - SUTTON - UPTON COUNTIES

Ozona Office
P.O. Box 1187
Crockett County Courthouse
Ozona, Texas 76943
(325) 392-2025
Fax (325) 392-8415

November 14, 2022

Via email at opinion.committee@oag.texas.gov

The Honorable Ken Paxton
Texas Attorney General
Attn: Opinion Committee
PO Box 12548
Austin, Texas 78711-2548

RE: May the Fire Chief or Lieutenant of the Iraan Volunteer Fire and Rescue Department (the "VFD") simultaneously serve on the Iraan City Council and, if so, may they vote on City Council agenda items that impact the VFD?

Dear General Paxton:

Iraan, Texas (the "City") is a Type A General Law City located in Pecos County, Texas. The City has a population of approximately 1,240 souls and is governed by a city council consisting of five city council members and a mayor. In November of 2020 two individuals that are actively serving as the Fire Chief and Lieutenant of the Volunteer Fire Department ("VFD") were elected to the Iraan City Council (the "City Council"). The City Council now seeks guidance from you on whether the individuals in question may simultaneously serve in the dual role as Fire Chief or Lieutenant, as the case may be, and as a member of the City Council. Additionally, if dual service is permitted, would the individuals serving in the dual role be allowed to vote on City Council Agenda items that impact the VFD? The City Council has *not* adopted the resolution provided under §21.003 Texas Local Government Code which expressly permits such dual service, nor has the City Council passed any other ordinance or resolution that directly addresses such dual service.

The following background facts are provided to illustrate the close relationship between the VFD and the City of Iraan and may assist with your analysis:

1. The VFD has four officer positions, namely: Fire Chief, Assistant Fire Chief, Captain, and Lieutenant. These officers are elected by the VFD members and serve two-year terms. The City Council does not approve VFD officers and is not otherwise involved with the officer nominations or elections. The officers may serve consecutive terms without term limits.
2. Including its officers, the VFD has nine members, five probationary members, and one junior member.
3. The current Fire Chief (who is simultaneously serving on the City Council) originally joined the VFD in August 2012. This individual previously served as Fire Chief from April 2014 until his resignation from the VFD in October 2014. He rejoined the VFD in May 2015, was elected Fire Chief in September 2017, and continues to serve in that capacity.
4. The current Lieutenant (who is simultaneously serving on the City Council) joined the VFD in November 2016 and has served as Lieutenant since May 2018.
5. Although the VFD members are considered volunteers, they are paid stipends for each VFD meeting they attend and for each time they participate in a response by the VFD. These stipends are paid out of funds provided by Pecos County¹ pursuant to an agreement whereby the VFD responds to fires and other emergencies located within the unincorporated area of Pecos County.
6. The VFD members are allowed to participate in the Texas Emergency Services Retirement System (“TESRS”) as approved by the City Council. Monthly contributions are made to TESRS for each VFD member in the amount of \$36.00: the City contributes \$16.00 for each member and the balance of \$20.00 (for each member) is paid with funds received from Pecos County. Currently, the Fire Chief and Lieutenant (who serve on the City Council) are voluntarily electing not to participate in TESRS.
7. The City Council approves the VFD’s monthly operating expenditures which are made from funds contributed by Pecos County.
8. The VFD is housed on property owned by the City which is adjacent to the City’s offices in Iraan. The VFD houses its equipment and conducts its meetings at this location.
9. All VFD vehicles are owned by the City and insurance coverage on the vehicles is paid by the City; said expenditures are then reimbursed from funds received from Pecos County.

¹ Iraan is located entirely within the geographical boundaries of Pecos County, Texas and the VFD routinely responds to emergencies that are outside the corporate city limits of Iraan but within Pecos County.

The City Council has been made aware of the provisions of §21.003 Texas Local Government Code by their City Attorney; however, to date, the City Council has elected *not* to adopt the resolution provided for therein.

Even though the City Council has never adopted the §21.003 resolution, historically, one or more persons have previously served on the VFD while simultaneously being elected to the City Council. That historical practice has potentially established a precedent of permitting such dual service despite the passage of a resolution under §21.003.

The Iraan City Council and City Attorney seek answers to the above-stated questions to ensure that their service to the community complies with the law in all respects.

I thank you in advance for your attention to this matter.

Sincerely,



Laurie K. English