

TEXAS HOUSE OF REPRESENTATIVES



Terry Canales
District 40

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January 9, 2023

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

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

Re: Whether a member of the Board of Trustees of the La Joya Independent School District may simultaneously serve as a member of the Board of Directors of the Hidalgo County Irrigation District No. 6

Dear Attorney General Paxton:

Please accept this letter on behalf of the Hidalgo County Irrigation District No. 6 for your opinion on the issue of whether, under the common-law doctrine of incompatibility, a board member of an irrigation district originally created in 1927 as a water control and improvement district, pursuant to Article XVI, Section 59 of the Texas Constitution, and subsequently converted to an irrigation district in 1980 pursuant to Chapter 58 of the Texas Water Code, may serve simultaneously as a board trustee of a school district with overlapping jurisdiction. If a board member may not serve simultaneously, what is the consequence of the board member being elected to and accepting the second office of trustee of the school district?

The Hidalgo County Irrigation District No. 6 ("HCID #6") was originally created as Hidalgo County Water Control and Improvement District No. 6 in 1927 pursuant to Article XVI, Section 59 of the Texas Constitution. However, in 1980, pursuant to Chapter 58 of the Texas Water Code, Hidalgo County Water Control and Improvement District No. 6 was converted to an irrigation district and renamed HCID #6. The purpose of an irrigation district created pursuant to Chapter 58 of the Texas Water Code is to primarily deliver untreated water for irrigation and to provide for the drainage of lands and such other functions as are incidental to the accomplishment of such limited purposes. TEX. WATER CODE § 58.121. The board of an irrigation district "shall estimate the expenses of maintaining and operating the district's water delivery system," and "shall allocate a portion of the estimated maintenance and operating expenses that shall be paid by assessment against all land in the district to which the district can furnish irrigation water... [t]his assessment shall be levied against all irrigable land in the district on a per acre basis..." TEX. WATER CODE §§ 58.304-305. The district "shall collect all assessments imposed under Section 58.305(a) for maintenance and operating expenses." TEX. WATER CODE § 58.308. As such, HCID #6 has the power to collect assessments over land within its jurisdiction,



which includes certain tracts of land within the La Joya Independent School District's geographical jurisdiction.

Pursuant to Section 11.152 of the Texas Education Code, the La Joya Independent School District ("La Joya ISD") has the power of taxation: "The trustees of an independent school district may levy and collect taxes..." TEX. EDUC. CODE § 11.152. La Joya ISD's jurisdiction overlaps with HCID #6's geographical jurisdiction.

In November of 2022, a current HCID #6 board member was elected to and subsequently accepted the office of trustee on the La Joya ISD board.

In Attorney General Opinion GA-0224, the Attorney General affirmed "[i]f two districts with overlapping geographical jurisdictions each have the power of taxation, ...the potential for conflict is insurmountable...Furthermore, where the object of each district is to maximize its own revenues, a single individual would have great difficulty in exercising his duties to two separate and competing matters." Tex. Att'y Gen. Op. No. GA-0224 (2004). In Opinion GA-0224, the Attorney General found that the trustee of a school board was barred by the common-law doctrine of incompatibility from simultaneously serving as a member of a water improvement district created under Chapter 49 of the Water Code as they have overlapping geographical boundaries, and both have the power of taxation. Likewise, in Opinion GA-0032, the Attorney General found that an individual may not simultaneously serve both as trustee of a junior college district and municipal utility district created under Chapter 49 of the Water Code stating that the college district and utility district have overlapping geographical boundaries, and indicating they both have the power of taxation. Tex. Att'y Gen. Op. No. GA-0032 (2003).

Although it seems clear that an individual may not serve dual offices of two districts with two overlapping geographical districts that have the power of taxation, it is not clear whether an individual may serve dual offices of two districts that have overlapping geographical districts, where one district that has the power of taxation, and the other district has the power to levy assessments. It is true that HCID #6 has the authority to impose assessments under Subchapter G, Chapter 58, Water Code. However, irrigation districts, which are governed by Chapters 49 and 58, Water Code, appear to also have the authority to impose taxes. Subchapter J, Chapter 58, Water Code, authorizes an irrigation district to issue bonds and impose a tax to pay the bonds. Subchapter K, Chapter 58, governs the adoption of a tax plan. Subchapter L, Chapter 58, governs taxation on the ad valorem basis, and Subchapter M, Chapter 58, governs taxation on the benefit basis. Section 49.107, Water Code, authorizes a district to impose taxes for maintenance and operations, and Section 49.108 of that code authorizes a district to impose taxes to make payments under a contract. Although HCID #6 is not currently imposing taxes, the applicable Water Code provisions seem to give it that authority. Therefore, our office respectfully requests an opinion on whether the common-law doctrine of incompatibility bars serving as a member of the board of two districts, one of which imposes taxes and one of which imposes assessments but not taxes.

Additionally, if an individual is barred from concurrently serving on both the board of the independent school district and the irrigation district by the common-law doctrine of incompatibility, what is the consequence of the current HCID #6 board member's subsequent election to and acceptance of the office of trustee of the La Joya ISD board?

In Opinion JC-0363, the Attorney General stated, "It is well established that qualification for and acceptance of a second office operates as an automatic resignation from the first." Tex. Att'y Gen. Op. No. JC-0363 (2001), *citing Pruitt v. Glen Rose Indep. Sch. Dist.*, 84 S.W.2d 1004, 1006 (Tex. 1935) and *Thomas v. Abernathy County Line Indep. Sch. Dist.*, 290 S.W.152, 153 (Tex. Comm'n App. 1927, judgm't adopted). In Opinion JC-0363, the president of the Board of Directors of the Wilson County Memorial Hospital automatically terminated his term once he was elected to and assumed the office of Mayor. Our office respectfully requests an opinion as to whether an HCID #6 board member's election to and acceptance of the office of trustee of the La Joya ISD board operates as an automatic resignation as a member of HCID #6's board, and whether the individual may continue to serve in a "holdover" capacity until the appointment of a successor to the HCID #6 board.

Thank you in advance for your assistance and consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Terry Canales', with a large, sweeping flourish above the name.

Terry Canales
State Representative, District 40
Chairman of the House Committee on Transportation