

# TEXAS DUAL OFFICE HOLDING & INCOMPATIBILITY LAWS MADE EASY



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## **Dual Office Holding & Incompatibility Law Made Easy**

Texas law generally prohibits a public servant from holding two or more public offices at the same time, a practice known as “dual office holding.” It is important that local officials understand the basics of dual office holding and incompatibility because the acceptance of a second public office can result in an automatic resignation from a person’s current public office. The following questions and answers provide a lay person’s explanation of the dual office holding and incompatibility that apply to city officials in Texas. Although TML is available to answer general questions about this publication from city officials, city officials should consult with their legal counsel regarding the application of the law to the facts of each particular situation. The chart attached to the end of this article is an overview of attorney general opinions and cases that have ruled on specific questions of whether two offices may be held simultaneously. It does not address each example entirely, as facts may be slightly different, nor does it address other dual office holding or incompatibility situations.

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## Dual Office Holding

### 1. What is dual office holding?

Dual office holding refers to an aspect of Texas law that prevents a person from holding two or more public offices at the same time. The restrictions on dual office holding are primarily derived from two sources:

Texas constitutional restriction on holding two civil offices of emolument (see question # 2 below); and

Attorney general opinions and court cases that have found the dual holding of certain offices to be incompatible and therefore invalid.

As noted above, it is important to be aware of these issues because the acceptance of a second public office can result in an automatic resignation from a person's current public office.

### 2. What does it mean to hold “more than one civil office of emolument”?

In basic terms, to hold “more than one civil office of emolument” means to hold two paid public offices. The prohibition against holding two civil offices of emolument is found in Article XVI, section 40 of the Texas Constitution, which provides in part:

“No person shall hold or exercise at the same time, more than one civil office of emolument....”

### 3. What is considered an “office” for purposes of dual office holding?

To understand the prohibition against holding two civil offices of emolument, one must first understand what positions are considered “public offices.” A public officer, unlike a public employee, exercises a sovereign function of government largely independent of the control of others for the public benefit.

This distinction recognizes the essential elements of public office: (1) the officeholder's authority to exercise governmental power for the benefit of the public; and (2) the officeholder's independence from the control of other governmental entities or officials. A mere employee does not hold a public office. Also, a person who holds a position with a private nonprofit association (e.g., a board member of a nonprofit association) is not considered a public officer for purposes of dual office holding.<sup>1</sup>

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<sup>1</sup> Op. Tex. Att'y Gen. DM-303 at 1 (1994).

#### **4. How can one decide whether a person is considered a public “employee” or a public “officer”?**

Because only public offices raise constitutional dual office holding concerns, it is important to distinguish between positions that are considered a public office and positions that are simply public employment. The factor that differentiates an officer from an employee is whether the person is empowered to exercise a “sovereign” function of government that is largely independent of the control of others.<sup>2</sup> For example, city council members and county commissioners are clearly officers since they exercise sovereign functions of government (e.g., they adopt policies and rules regarding public policy) that are largely independent of the control of others. However, an assistant district attorney<sup>3</sup>, a jailer<sup>4</sup>, a chief deputy of a county tax assessor-collector<sup>5</sup>, and a volunteer fireman<sup>6</sup> have all been found not to hold a public office because their duties are not exercised largely independent of the control of others. Similarly, the attorney general has determined that city attorneys are not “officers” for purposes of dual office holding.<sup>7</sup>

A person does not have to be elected to a position to be considered an officer. For example, state law and most home rule charters provide that the city manager, city secretary, and certain other city department heads are considered officers.<sup>8</sup> However, a city should consult with its legal counsel to figure out whether such positions would be considered offices for purposes of the constitutional limitation on dual office holding.

#### **5. What is an “emolument” for purposes of holding a civil office of emolument?**

The constitutional provision about dual office holding generally prevents a person from holding two civil offices of emolument. In basic terms, an “emolument” is either pay or some other benefit, compensation or thing of value received in exchange for the person’s service as an officer. For example, an emolument could involve the provision of free or reduced utility service charges, a set per diem for each meeting that is attended, complimentary health insurance, or some other type of compensation or benefit for serving in a public office. However, the mere reimbursement of an officer for actual city-related expenses (e.g., the cost of meals or actual mileage) is not considered to be an emolument if the reimbursement is limited to the amount contained in actual

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<sup>2</sup> *Aldine Indep. Sch. Dist. v. Standley*, 280 S.W.2d 578 (Tex. 1955); Op. Tex. Att’y Gen No. GA-365 (2005).

<sup>3</sup> *State ex rel., Hill v. Pirtle*, 887 S.W.2d 921, 931 (Tex. Crim. App. 1994); Tex. Att’y Gen. LO- 96-148.

<sup>4</sup> Op. Tex. Att’y Gen. No. JM-1047 (1989).

<sup>5</sup> Op. Tex. Att’y Gen. No. JM-1083 (1989).

<sup>6</sup> Op. Tex. Att’y Gen. No. JC-385 (2001).

<sup>7</sup> Op. Tex. Att’y Gen. No. JC-54 (1999).

<sup>8</sup> See e.g., Tex. Loc. Gov’t Code §§ 22.071; 23.051; 24.051.



receipts or other proof of expenditures. If a person is paid a set amount and that amount is not limited to actual expenditures, it might well be an emolument for dual office holding purposes.<sup>9</sup>

**6. May a person refuse the “emolument” (the pay or benefits of an office) to avoid holding two civil offices of emolument?**

No, if a state statute or a city ordinance fixes a salary or other form of compensation for an office, the compensation attaches to and is inseparable from the office.<sup>10</sup> Generally, an officer cannot return the pay or benefits of the second office, or simply refuse to accept them, to avoid being considered to hold two civil offices of emolument. Likewise, a city cannot simply eliminate the pay or benefit to a public officer to avoid a dual office holding issue.<sup>11</sup>

**7. If a public officer takes on additional duties, does this create a second office in violation of dual office holding limitations?**

No, simply taking on additional duties does not necessarily create a second office in violation of dual office holding limitations.<sup>12</sup>

**8. Is a person considered an “officer” if he or she serves for only a temporary period as an officer?**

If a person takes a position that is merely temporary, it is usually not considered to be a second office for dual office holding purposes.<sup>13</sup> In order for a position to be considered an office, it must have duties that are continuing in nature rather than temporary or intermittent. For example, a court 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 was not dual office holding.<sup>14</sup>

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<sup>9</sup> Op. Tex. Att’y Gen. No. JM-594 (1986); Op. Tex. Att’y Gen. No. JM-704 (1987); Tex. Att’y Gen. LO-93-33; *Willis v. Potts*, 377 S.W.2d 622 (Tex. 1964).

<sup>10</sup> *Markwell v. Galveston County*, 186 S.W.2d 273 (Tex. Civ. App.—Galveston 1945, no writ); Op. Tex. Att’y Gen. JM-704 (1987). *But see* Op. Tex. Att’y Gen. No. GA-250 (2006) (Texas Government Code section 574.005(b) allows local officer to serve on state agency governing body without compensation and thus detaches compensation from office.).

<sup>11</sup> *Broom v. Tyler County Comm’rs Court*, 560 S.W.2d 435 (Tex. Civ. App.—Beaumont 1977, no writ); Op. Tex. Att’y Gen. No. JM-333 (1985).

<sup>12</sup> Op. Tex. Att’y Gen. No. DM-55 (1991).

<sup>13</sup> Tex. Att’y Gen. LO- 96-81; Op. Tex. Att’y Gen. No. JM-847 (1988).

<sup>14</sup> *De Alejandro v. Hunter*, 951 S.W.2d 102, 107 (Tex. App.—Corpus Christi 1997, no pet.).

**9. Is a person considered an “officer” if he or she serves on a purely advisory board that has no final power?**

A person who serves in a merely advisory capacity or on a purely advisory board is not considered an officer for purposes of the dual office holding limitations.<sup>15</sup> However, it is important to note that if the board has any rule making or quasi-judicial powers, or the board’s recommendations are generally approved in whole by another governmental entity, the board may well be found to be more than purely advisory.

**10. Are certain public officers exempt from the dual office holding limitations?**

The Texas Constitution provides that certain public officers are exempt from the constitutional dual office holding limitations.<sup>16</sup> Such officers include, but are not limited to:

- Justices of the peace;
- County commissioners;
- Directors of certain soil and water conservation districts;<sup>17</sup> and
- Notaries public.

The officers listed above are not subject to the constitutional limitation against holding two civil offices of emolument.<sup>18</sup> However, the constitution is not the only source of limitation on dual office holding. Another limitation, called the “common law doctrine of incompatibility,” might still prevent an officer from holding a second office if the second public office would be considered incompatible with the first office.<sup>19</sup> The standards for deciding whether two public offices are incompatible under common law are discussed further in Questions 18-23 of this publication.

**11. Is a law enforcement officer considered an “officer” for purposes of dual office holding?**

Under most circumstances, a law enforcement officer is not considered an officer for purposes of constitutional dual office holding limitations.<sup>20</sup> Therefore, it is possible that a city police officer could hold another public office if the two offices are not considered

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<sup>15</sup> Tex. Att’y Gen. LO-94-21.

<sup>16</sup> Tex. Const. art. XVI, § 40.

<sup>17</sup> This is a very limited exception and only applies to districts covered by Chapter 201 of the Agriculture Code. Neither a river authority, nor a drainage district, nor a water conservation and reclamation district are covered by this exception. Op. Tex. Att’y Gen. No. JM-172 (1984); Tex. Att’y Gen. LA-150 (1978).

<sup>18</sup> For example, a justice of the peace could serve as a municipal court judge at the same time. Op. Tex. Att’y Gen. No. JM-819 (1987).

<sup>19</sup> Tex. Att’y Gen. LO-96-004.

<sup>20</sup> Op. Tex. Att’y Gen. No. DM-212 (1993); Tex. Att’y Gen. LO-95-48; LO-93-27.

incompatible. For example, a city police officer is not prevented from serving as an elected city council member for a different city within the same county.<sup>21</sup> A police officer employed by a city also is not prohibited from serving as a municipal judge in a different city, either within the same county or in another county.<sup>22</sup> However, the State Commission on Judicial Conduct (“Commission”) issued the following public statement stating that though it might be legal for a judge to also be a police officer or law enforcement officer, ethically it is not permitted:<sup>23</sup>

In issuing this Public Statement, the Commission recognizes the existence of Attorney General Letter Opinion No. 92-35 (1992), which discusses the legality of serving in both roles. However, the Commission notes that an act that is legal is not necessarily an act that is ethical. Judges are members of the judicial branch of our government. Law enforcement officers are part of the executive branch. Each branch is separate from, but co-equal with, the other. Therefore, the Commission concludes that any judge who attempts to serve both branches cannot accomplish the task without impairing the effectiveness of one or both positions.<sup>24</sup>

A law enforcement officer, therefore, should consult legal counsel for any situation that might raise such concerns.

## **12. Is a city attorney an “officer” for purposes of dual office holding?**

Under most circumstances, a city attorney is not considered an officer for purposes of constitutional dual office holding limitations.<sup>25</sup> Therefore, it is possible for a city attorney to hold another public office if the two offices are not considered incompatible. For example, a lawyer may serve as the city attorney for several Texas cities at the same time without violating dual office holding provisions.

## **13. Is a municipal court judge an “officer” for purposes of dual office holding?**

A municipal court judge is considered an “officer” for purposes of dual office holding.<sup>26</sup> However, appointed municipal court judges may hold more than one such appointment, provided the holding of the second office is “of benefit to the State.”<sup>27</sup> In 1997, the Legislature specifically provided that a person may hold an appointed office of municipal judge for more than one city at the same time.<sup>28</sup> To hold multiple municipal court

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<sup>21</sup> Tex. Att’y Gen. LO-95-48; LO-93-27.

<sup>22</sup> Tex. Att’y Gen. LO-93-59.

<sup>23</sup> State Commission on Judicial Conduct PS-2000-1.

<sup>24</sup> *Id.*

<sup>25</sup> Op. Tex. Att’y Gen. No. JC-54 (1999).

<sup>26</sup> Op. Tex. Att’y Gen. Nos. JM-333 (1985); DM-428 (1996).

<sup>27</sup> Op. Tex. Att’y Gen, No. DM-428 (1996).

judgeships, each office must be one that is filled by appointment. The Legislature found that the holding of multiple municipal court judgeships was of benefit to the State.<sup>29</sup>

#### **14. May a school district employee (such as a school teacher) also serve as a member of city council?**

Dual office holding limitations do not prevent a school district employee from serving as a member of a local governing body, including city council.<sup>30</sup> However, the Texas Constitution limits the ability of some school district employees to accept a salary for serving as a city council member. Article XVI, section 40 of the Texas Constitution provides that if the compensation of a public employee is directly or indirectly funded in whole or in part from state funds, the public employee may not receive a salary for his or her service as a member of the governing body of a city, school district or other local government district. However, school teachers, retired school teachers and retired school administrators are allowed to receive compensation for serving as a member of a governing body of a school district, city, local governmental district and certain water districts.<sup>31</sup> The term “school teacher” does not include a state university professor or instructor.<sup>32</sup> As for other school district employees, because their pay is received in part from state funds, such employees would be prohibited from accepting a salary for serving as a member of council (other than reimbursement for actual expenses).<sup>33</sup> However, a person who receives only state retirement benefits is not required to renounce his or her salary for service on a board.<sup>34</sup>

#### **15. May a state employee also serve as a member of city council?**

Dual office holding limitations do not prevent state employees from serving as members of a local governing body, including city council. However, the Texas Constitution limits the ability of a state employee to accept a salary for serving as a board member. Article XVI, section 40 of the Texas Constitution provides that if the compensation of a public employee is directly or indirectly funded in whole or in part from state funds, the public employee cannot receive a salary for his or her service as a member of the governing body of a city, school district or other local government district.<sup>35</sup> Since the pay of a state employee is received from state funds, such an employee would be prohibited from accepting a salary for serving as a member of city council (other than

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<sup>28</sup> Tex. Gov’t Code § 574.001(b).

<sup>29</sup> *Id.*

<sup>30</sup> See Op. Tex. Att’y Gen. Nos. DM-55 (1991); JC-74 (1999) (school teacher or school administrator is not an office). *Ruiz v. State*, 540 S.W.2d 809, 811 (Tex. Civ. App.—Corpus Christi 1976, no writ).

<sup>31</sup> Tex. Const. art. XVI, § 40 (b)(1).

<sup>32</sup> Op. Tex. Att’y Gen. No. JC-577 (2002). See Tex. Const. art. XVI, § 40(b)(2) (allows active and retired faculty members of public institutions of higher education to receive compensation while serving on the governing body of certain water districts.)

<sup>33</sup> Tex. Att’y Gen. LO-95-001; LO-93-033; Op. Tex. Att’y Gen. No. JC-74 (1999).

<sup>34</sup> Tex. Att’y Gen. LO 93-041.

reimbursement for actual expenses).<sup>36</sup> Nonetheless, a person who receives only state retirement benefits is not required to renounce his or her salary for service on a local board.<sup>37</sup> Whether receiving a set dollar amount per meeting constitutes a “salary” is an open question that no court has addressed.<sup>38</sup>

**16. May an elected member of the Texas Legislature be hired to work for a city?**

The final sentence in article XVI, section 40 of the Texas Constitution states:

No member of the Legislature of this State may hold any other office or position of profit under this State, or the United States, except as a notary public if qualified by law.

The above limitation prevents a member of the Texas Legislature from holding an office or “position of profit” with the state or with the United States. A position of profit is defined as a “salaried non-temporary employment.”<sup>39</sup> Accordingly, a member of the Texas Legislature may not serve as a member of city council or be hired as a city employee. Neither could he or she simply take a leave of absence from city council or city employment during the legislative session to get around the prohibition.<sup>40</sup> However, this constitutional provision would not necessarily prevent a city from contracting with a Texas legislator to serve as an independent contractor because the term “position of profit” has been held to encompass employment but not independent contractor status.<sup>41</sup>

**17. May an elected member of Congress or other federal “officer” serve as a city councilmember or city employee?**

Article XVI, section 12 of the Texas Constitution states:

No member of Congress, nor person holding or exercising any office of profit or trust under the United States . . . shall . . . hold or exercise any office of profit or trust under this State.

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<sup>35</sup> See *County of Maverick v. Ruiz*, 897 S.W.2d 843 (Tex. App.—San Antonio 1995, no writ) (an elected member of the commissioners court is not covered by this constitutional provision and could therefore receive both compensation from the state and a salary for serving on the commissioners court.)

<sup>36</sup> Tex. Att’y Gen. LO-95-001; LO-93-033.

<sup>37</sup> Tex. Att’y Gen. LO 93-041.

<sup>38</sup> Tex. Att’y Gen. Op. No. KP-414 (2022) (finding that whether a home rule charter provision providing for \$400 per meeting for councilmembers is a “salary” or “reimbursement” is left to the discretion of the appropriate city officials in the first instance, subject to judicial review).

<sup>39</sup> Op. Tex. Att’y Gen. Nos. JC-430 (2001); H-1304 (1978).

<sup>40</sup> Tex. Att’y Gen. LO-90-55.

<sup>41</sup> Op. Tex. Att’y Gen. No. H-1304 (1978); Tex. Att’y Gen. LO-95-22; LO-93-31.

The above limitation prevents a member of Congress or other federal “officer” from holding an office of profit or trust in this state. An office of profit or trust would include local offices. Accordingly, a member of Congress or a federal officer could not serve as a member of city council.

# Incompatibility

## **18. What is common-law incompatibility?**

Common-law incompatibility refers to the prohibition against a person holding certain public offices at the same time because of the practical conflicts of interest that might arise. For example, the doctrine of incompatibility prevents a person from holding two public offices if a person could use the power in one office to impose policies that impact the other office. Common-law incompatibility also may be implicated if there is the potential that a person's actions in one office could control the other office. The concept of common-law incompatibility is derived from a series of court cases and attorney general opinions that have prohibited the holding of multiple public positions in particular situations. Whether the holding of two public offices would violate common-law incompatibility requires a factual consideration of the duties of each position and must be considered on a case-by-case basis.

## **19. How is incompatibility different from constitutional dual office holding limitations?**

Common-law incompatibility is a restriction on dual office holding, just like the particular restrictions contained in the Texas Constitution. The difference between the two is their source – one is from “common law,” which is a series of court cases and attorney general opinions, while the other is from the Texas Constitution, a single document describing the function and structure of state government. The simultaneous holding of two public offices may be prohibited under either the constitutional restriction against holding two civil offices of emolument or under common-law incompatibility standards that apply to holding two incompatible positions.

## **20. How is incompatibility different from conflict of interest limitations?**

Common-law incompatibility occurs when there are inherent conflicts in one person holding two particular public positions at the same time or a public officer appointing himself to an office or employment over which he holds appointive power. Conflict of interest limitations, on the other hand, do not involve the holding of two positions at the same time. Rather, conflict of interest limitations under state law simply involve one's authority to deliberate or vote on an issue when that person has a financial interest in a particular item.<sup>42</sup>

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<sup>42</sup> See e.g. Tex. Local Gov't Code Ch. 171

**21. Does common-law incompatibility apply only if both of the positions are public offices or public employment?**

Yes, common-law self-appointment incompatibility and conflicting loyalties incompatibility apply only if both of the involved positions are considered public offices, while common-law self-employment incompatibility applies if one of the positions is a public office and the other is a public employee.<sup>43</sup>

**22. Does common-law incompatibility prohibit a local public officer from also holding private employment?**

No, common-law incompatibility does not prohibit a local public officer from simultaneously holding private employment.<sup>44</sup> Additionally, the fact that a person is employed by a private entity that does business with a city does not prevent the person from holding an office with the city. Nonetheless, such an officer would generally need to comply with Local Government Code chapter 171 conflict of interest requirements if the officer has a substantial interest in the entity prior to any deliberation or vote on certain items that have a special economic effect on that entity and with Local Government Code chapter 176 conflict of interest requirements by filling out proper disclosure forms.<sup>45</sup> Officers will want to consult their own counsel for further advice.

**23. What are the three types of common-law incompatibility?**

The three types of common-law incompatibility are:

- 1) **self-appointment prohibition**: Prevents a governing body from appointing one of its own members to a public office;
- 2) **self-employment prohibition**: Prevents a governing body from employing one of its own members as a public employee; and
- 3) **conflicting loyalties prohibition**: Prevents a person from holding two public offices when the interests of the two entities may conflict and when voting on behalf of one public entity would possibly compromise the interests of the other public entity. In other words, the official would have to choose between the conflicting interests of the two public entities.

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<sup>43</sup> Op. Tex. Att’y Gen. Nos. DM-303 (1994); DM-194 (1992).

<sup>44</sup> Tex. Att’y Gen. LO-96-109; Op. Tex. Att’y Gen. No. JM-93 (1983).

<sup>45</sup> Tex. Loc. Gov’t Code §§ 171.001–.010; 176.001–.013.



## ***Self-Appointment Incompatibility***

### **24. May a city council appoint one of its own members to a public office or position?**

The prohibition against self-appointment prevents city council from appointing one of its own members to a public office or position.<sup>46</sup> The attorney general has interpreted this principle to prohibit a city council from appointing or approving the appointment of one of its own members as a police reserve officer.<sup>47</sup> However, city councils are allowed to appoint one of its members to be mayor in case of vacancy, provided the member does not vote on the appointment.<sup>48</sup>

### **25. May a city council appoint one of its own members to a public office or position if the appointment is authorized by the city charter or by a state or federal statute?**

The prohibition against self-appointment may be overcome by a city charter provision (for a city position, not an office in another entity) or a state or federal law that allows a city to appoint one its own members to a particular public office. For example, the Development Corporation Act allows a city council to appoint up to four city officers to serve as directors of a Type B economic development corporation.<sup>49</sup> Therefore, the city council could appoint its own members to these positions without creating a self-appointment problem. Additionally, under chapter 311 of the Tax Code, members of the governing body may be appointed to the board of directors of a tax increment financing corporation by that same body.<sup>50</sup>

### **26. May a city council appoint one of its own members to a public office or position if the appointment is authorized by an ordinance or local policy?**

A city council may not rely on an ordinance or its own adopted policy to overcome the prohibition against self-appointment. The entity must be able to point to a state or federal law or a city charter provision, in the case of home rule cities, that allows the council to appoint its own members to a public office.<sup>51</sup>

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<sup>46</sup> *Ehlinger v. Clark*, 8 S.W.2d 666 (Tex. 1928).

<sup>47</sup> Op. Tex. Att'y Gen. No. JM-386 (1985) (Although the reserve officer is initially appointed by the police chief, the city council must ultimately approve his or her appointment. Because of the city council's power to appoint the reserve members, a member of the city council may not serve on the city's police reserve.); Op. Tex. Att'y Gen. No. KP-418 (2022) (finding that the common-law doctrine of incompatibility bars a councilmember of a home rule city from simultaneously serving as a member of the City's police reserve force).

<sup>48</sup> Tex. Loc. Gov't Code §§ 22.010(a-1); 23.002(b); 24.026(a); 26.047.

<sup>49</sup> Tex. Loc. Gov't Code § 505.052(c).

<sup>50</sup> Tex. Tax Code § 311.009(g)(1); Op. Tex. Att'y Gen. No. GA-169 (2004).

**27. Does the self-appointment prohibition apply to a city council appointing one of its own members to a position that is not a “public office”?**

The prohibition against self-appointment does not apply when a city council appoints its own member to a position that is not a public office. For example, a city council could appoint its own members to serve on a purely advisory committee.<sup>52</sup> However, the prohibition against self-employment would prevent city council from appointing its own members to a position that amounted to employment by the city. For more detail on this doctrine, see Questions 29 through 31 below.

**28. May a city council appoint one of its members to a public office of another political subdivision if the appointment is authorized by an ordinance or local policy?**

No, an ordinance or local policy may not authorize city council to appoint one of its members to a public office of another political subdivision.<sup>53</sup> Although a home-rule city may overcome the common-law doctrine of incompatibility for a city office through a city charter provision, it cannot overcome the common-law principle when one of the offices is that of another political subdivision.<sup>54</sup> Only the legislature may exempt a city’s appointment to the board of another governmental unit from the common-law doctrine of incompatibility.<sup>55</sup>

***Self-Employment Incompatibility***

**29. May a member of city council also serve as an employee of the city?**

A member of city council may not simultaneously serve as an employee of the city unless specifically permitted by state law or the city charter.<sup>56</sup> For example, a city council member would not be able to serve as both fire chief and city council member.<sup>57</sup> Additionally, a city council member of a general law city may not also serve as a member of the city’s police reserve nor may a councilmember of a home rule city when the charter exercises employment authority over the reserve officers.<sup>58</sup> However, pursuant to state law, a volunteer firefighter may generally serve on the city council.<sup>59</sup>

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<sup>51</sup> See Op. Tex. Att’y Gen. No. JM-1087 (1989) (holding a city charter provision which was not contrary to a specific state law was sufficient to overcome the doctrine of incompatibility).

<sup>52</sup> Tex. Att’y Gen. LO-94-21.

<sup>53</sup> Op. Tex. Att’y Gen. No. JC-225 (2000).

<sup>54</sup> *Id.*; Tex. Att’y Gen. LO-94-20.

<sup>55</sup> Op. Tex. Att’y Gen. No. JC-225 (2000).

<sup>56</sup> Tex. Att’y Gen. LO-97-34.

<sup>57</sup> Op. Tex. Att’y Gen. No. MW-432 (1982).

<sup>58</sup> Op. Tex. Att’y Gen. No. JM-386 (1985); Op. Tex. Atty’ Gen. No. KP-418 (2022).

**30. May a city officer hold two positions if one position reports to the other?**

The self-employment prohibition would prevent a city officer from holding two positions if one position reports to the other. For example, the attorney general found that a city manager who, pursuant to the city charter, was considered an “officer” and had supervisory authority over the police chief could not also serve as the city’s police chief.<sup>60</sup> However, the self-employment provision does not prohibit a city officer from taking on certain duties that a subordinate staff member would normally perform. For example, in certain cities, the municipal court judge also handles administrative functions that would generally be handled by a municipal court clerk. If the judge only has one title and is compensated for only one position, this scenario would likely not violate the prohibition against self-employment.

A city councilmember likely would not be able to serve as a paid independent contractor for the city due to self-employment incompatibility.<sup>61</sup> Supervision is the key to self-employment incompatibility.<sup>62</sup>

**31. May a city officer hold two positions if one position does not report to the other?**

Self-employment incompatibility does not prohibit a city officer from holding two positions that do not report to each other, provided the person is compensated for only one position. For example, in certain smaller cities, a person sometimes serves as both the city secretary and the city treasurer. Similarly, it is permissible for a city secretary to also serve as the city tax assessor/collector. Because the offices do not report to each other, there is no self-employment problem. However, if both of those positions are considered public offices of emolument, dual office holding may apply (see questions 1-17 for discussion on dual office holding).

***Conflicting Loyalties Incompatibility***

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<sup>59</sup> Tex. Loc. Gov’t Code § 21.003 (a member of the governing body of a municipality may serve as a volunteer for an organization that protects the health, safety, or welfare of the municipality regardless of whether the organization is funded or supported in whole or part by the municipality if the governing body adopts a resolution allowing members of the governing body to perform service of that nature . . . .) (adopted in response to Op. Tex. Att’y Gen. No. JC-199 (2000); Tex. Att’y Gen. LO-94-70; LO-93-54. *But see* JC-199 (2000) (member of volunteer fire department may not simultaneously serve on city council because charter made fire fighter an employee).

<sup>60</sup> Op. Tex. Att’y Gen. No. KP-265 (2019); *see also* Tex. Att’y Gen. LO-89-2.

<sup>61</sup> Op. Tex. Att’y Gen. No. GA-127 (2003) (finding self-employment incompatibility did not apply to a school district trustee who was also an umpire that referees district games because the umpire was hired and supervised by a private organization, not the school district).

<sup>62</sup> Op. Tex. Att’y Gen. No. JC-371 (2001) (finding a school trustee was not permitted “to serve as a volunteer, unpaid, part-time history teacher [in his district] for one period a day . . . for a single semester”).

### **32. What circumstances could cause a conflicting loyalties problem?**

Conflicting loyalties prevent a person from simultaneously holding two public offices when the interests of the two public entities may conflict and when voting on behalf of one public entity would possibly compromise the interests of the other public entity. In other words, the public officer would have to choose between the conflicting interests of the two entities and, thus, would have conflicting loyalties. For example, a person may not serve on the city council at the same time that he or she serves as a school board trustee because both the city council and the school board may be adopting policies on some of the same issues.<sup>63</sup> 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. Accordingly, the courts and the attorney general have generally ruled that a person may not hold two public offices where the inherent policy objectives between the two offices are likely to conflict in certain areas. This incompatibility doctrine “protects the integrity of government institutions by promoting impartial service by public officials.”<sup>64</sup>

### **33. Must both positions be considered “public offices” for there to be a conflicting loyalties issue?**

Yes, for there to be a conflicting loyalties issue, both positions must be “public offices.”<sup>65</sup> Therefore, the fact that a public officer holds a particular outside employment would not present a conflicting loyalties issue. Similarly, the fact that a person may work as an employee for a different public entity would not present a conflicting loyalties issue that would prevent the person from holding a public office.

### **34. May a public officer simultaneously serve on the governing bodies of two governmental entities if the entities are authorized to contract with each other?**

Generally, if the governing bodies of two governmental entities are authorized to contract with each other, a public officer may not serve as a member of both governing bodies.<sup>66</sup> It was partly on this basis that the attorney general ruled that a county commissioner may not serve as a city council member<sup>67</sup> and that a county auditor may not serve as a city council member.<sup>68</sup>

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<sup>63</sup> *Thomas v. Abernathy County Line Indep. Sch. Dist.*, 290 S.W. 152 (Tex. Comm’n App.1927, judgm’t adopted).

<sup>64</sup> Op. Tex. Att’y Gen. No. JM-203 (1984).

<sup>65</sup> Op. Tex. Att’y Gen. No. JM-1266 (1990); Tex. Att’y Gen. LO-96-148; LO-95-52; LO-95-29; LO-93-27.

<sup>66</sup> Op. Tex. Att’y Gen. Nos. GA-15 (2003); JM-1266 (1990); JM-133 (1984); Tex. Att’y Gen. LO-95-52; LO-92-4; LO-90-18; LO-88-49.

<sup>67</sup> Op. Tex. Att’y Gen. No. GA-15 (2003); Tex. Att’y Gen. LO-88-49.

<sup>68</sup> Op. Tex. Att’y Gen. No. JM-133 (1984).

**35. May a public officer simultaneously serve on the governing bodies of two governmental entity whose geographical boundaries overlap?**

Generally, a public officer may not simultaneously serve on the governing bodies of two governmental entities if the geographic boundaries of the two entities overlap.<sup>69</sup> The fact that the boundaries of the two entities overlap raises the potential for conflicting loyalties. If both entities have the power of taxation, the attorney general has held that the potential for conflict is insurmountable.<sup>70</sup> Whether any particular conflict would prohibit the holding of both offices is a fact issue that must be considered on a case-by-case basis. For example, a justice of the peace is not barred from serving as a municipal court judge for a city merely because the city is located in the same precinct.<sup>71</sup> A city official should seek advice from the city attorney regarding whether the overlapping boundaries and other relevant facts regarding the duties of the two offices are likely to lead to conflicting loyalties.

**36. May a public officer simultaneously serve on two governing bodies if one governmental body has some authority to impose its will on the other governmental body?**

Generally, a public officer may not simultaneously serve on two governing bodies if one governmental body has some authority to impose its will on the other governmental body.<sup>72</sup> Whether one public entity could impose its will on the other public entity is a fact issue that must be determined on a case-by-case basis. In such situations, a city official should seek advice from his or her legal counsel or the city attorney regarding whether the potential for one body to impose its will on the other is likely to lead to conflicting loyalties.

**37. May an individual serve on a county commissioners court and a city council at the same time?**

A county commissioner may not also serve as a city council member because of the incompatibility of holding the two positions at the same time.<sup>73</sup>

**38. May an individual serve as a school district trustee or a junior college district trustee and a member of city council at the same time?**

A school district trustee may not serve as a city council member at the same time if the two entities share any overlapping geographical jurisdiction. In such cases, the attorney

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<sup>69</sup> Op. Tex. Att'y Gen. Nos. GA-307 (2005); GA-224 (2004); GA-32 (2003); JC-557 (2002); JM-1266 (1990); JM-129 (1984).

<sup>70</sup> Op. Tex. Att'y Gen. No. JC-557 (2002).

<sup>71</sup> Op. Tex. Att'y Gen. No. JM-819 (1987).

<sup>72</sup> *Thomas*, 290 S.W. at 153; Op. Tex. Att'y Gen. No. JM-129 (1984).

<sup>73</sup> Op. Tex. Att'y Gen. No. GA-15 (2003); Tex. Att'y Gen. LO-88-49.

general has concluded that the doctrine of incompatibility prevents one person from holding both positions.<sup>74</sup> Similarly, a trustee of a junior college district generally cannot serve on the governing body of a city in which the junior college is located or in which property is owned or operated by the junior college.<sup>75</sup>

**39. May an individual serve as a member of a special district and a member of a city council at the same time?**

Whether holding both offices likely presents a conflict that prohibits the holding of both offices is a fact issue that must be determined on a case-by-case basis. In most situations, it is incompatible for a board member of a special district to serve as a member of a city council at the same time. A city official should work with his or her legal counsel or the city attorney to decide whether a conflict may exist due to the existence of overlapping boundaries, the authority to contract with each other, or the potential for one body to impose its will on the other.

**40. Is an individual who holds a public office but is not a member of a governing body subject to a conflicting loyalties prohibition?**

There may be a conflicting loyalties prohibition if a person holds a public office even if the person is not a member of a governing body. For example, the attorney general ruled that a county attorney (even though the individual is not on the governing body of the county commissioners' court) could not also serve on the school board as a trustee. This conclusion was based in part on the likelihood of conflicting loyalties that would be present because the county attorney is authorized to investigate matters involving school board trustees.<sup>76</sup> Similarly, a county auditor may not serve on the city council of a city within the county because the auditor's duties regarding real property and the transfer of funds may present a conflicting loyalties problem.<sup>77</sup> Conversely, a county treasurer may serve as a school board trustee despite some potential areas of conflict, in part because the treasurer does not have exclusive authority to sue the school district for debts.<sup>78</sup> Similarly, a police chief of a general law city may also serve on the board of trustees of the school board whose boundaries contain the police chief's city without a conflicting loyalties issue.<sup>79</sup>

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<sup>74</sup> Op. Tex. Att'y Gen. Nos. JM-634 (1987); GA-808 (2010) (applying analysis to mayor of Type A general law city who only votes in case of a tie).

<sup>75</sup> Tex. Att'y Gen. LO-92-5.

<sup>76</sup> *Id.*

<sup>77</sup> Op. Tex. Att'y Gen. No. JM-133 (1984).

<sup>78</sup> Op. Tex. Att'y Gen. No. JC-490 (2002).

<sup>79</sup> Op. Tex. Att'y Gen. No. GA-393 (2006).

**41. May a state statute or city charter provision allow what would otherwise be considered incompatible offices under common law? May it forbid otherwise permissible arrangements?**

The common-law doctrine of incompatibility may be overcome by a state statute or a city charter provision that allows the person to hold two otherwise incompatible public offices. For example, a city charter provision could provide that the mayor may also serve as the city manager.<sup>80</sup> On the other hand, a city charter may forbid a municipal judge from serving as a justice of the peace, even though this arrangement is normally compatible with state law.<sup>81</sup>

## **Consequences of Seeking/Accepting a Second Public Office**

**42. Does acceptance of a second incompatible public office operate as an automatic resignation from the first office?**

Qualification and acceptance of a second incompatible public office generally operates as an automatic resignation from the first office.<sup>82</sup> In other words, if a person accepts and is sworn into a second public office that would conflict with the first public office, the person is deemed as a matter of law to have resigned from the first public office. It should be noted that automatic resignation operates as a matter of law only when either:

- a public officer accepts a second public office that is a paid position (in contravention of the constitutional prohibition against holding two public offices of emolument); or
- a person accepts a second public office that would present a conflicting loyalties problem under common-law incompatibility.

There is no automatic resignation from the first office when an incompatibility problem is due to self-appointment. In that case, the acceptance of a second position that amounts to self-appointment would be considered void as a matter of law, but it would not affect one's ability to remain in the original public office.<sup>83</sup> Similarly, if the person accepts a second position that is a mere employment, resignation is not automatic but the appointment is void.<sup>84</sup>

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<sup>80</sup> Op. Tex. Att'y Gen. No. JM-1087 (1989).

<sup>81</sup> Op. Tex. Att'y Gen. No. GA-362 (2005). *Also see id.* n.2 (Other legal considerations may affect such charter provisions).

<sup>82</sup> *Pruitt v. Glen Rose Indep. Sch. Dist*, 84 S.W.2d 1004 (Tex. 1935).

<sup>83</sup> *Ehlinger v. Clark*, 8 S.W.2d 666 (Tex. 1928).

<sup>84</sup> Tex. Att'y Gen. LO-89-57.

#### **43. May a member of council retain his or her office if the member announces a candidacy for another public office?**

It depends. The Texas Constitution provides that in cities with terms of more than two years, a member of council who still has more than a year and 30 days left in his or her term, and who announces a candidacy for another public office automatically resigns as a member of council. <sup>85</sup> However, the official who resigned still holds over in office until a successor is appointed.<sup>86</sup> A home rule city, though, may provide in its charter that a member of council who becomes a candidate for another office automatically resigns his or her current office, even if the term of office is two years.<sup>87</sup>

#### **44. What constitutes an announcement of an official's candidacy?**

A person announces his or her candidacy for office by making a written or oral statement from which a reasonable person may conclude that the individual intends, without qualification, to run for the office in question.<sup>88</sup> Additionally, the statement must be made in a public setting or be otherwise available to the public.<sup>89</sup> Thus, a statement while certain as to the person's intention to run for an office, but made in a private conversation, does not constitute an announcement of candidacy for purposes of the Texas Constitution.<sup>90</sup> Similarly, a person who merely states that he or she would "seriously consider running" for an office if the incumbent resigns, has not announced candidacy.<sup>91</sup> The mere act of seeking a party's executive committee's nomination has been held not to constitute an announcement.<sup>92</sup> Neither does the filing of a campaign treasurer appointment constitute candidacy or an announcement of candidacy.<sup>93</sup>

#### **45. May a city official run for the Texas Legislature if that office term overlaps with the upcoming legislative term?**

Article III, section 19 of the Texas Constitution provides:

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<sup>85</sup> Tex. Const. art. XI, § 11; art. XVI, § 65; Op. Tex. Att'y Gen. Nos. JM-553 (1986); JC-293 (2000); JC-318 (2000); JC-403 (2001).

<sup>86</sup> Tex. Const. art. XVI, § 17; Op. Tex. Att'y Gen. Nos. DM-377 (1996); JC-293 (2000); JC-318 (2000); JC-403 (2001).

<sup>87</sup> Op. Tex. Att'y Gen. No. GA-0217 (2004).

<sup>88</sup> Op. Tex. Att'y Gen. Nos. GA-210 (2004) at 2; JC-249 (2000) at 2; Tex. Att'y Gen. LO-95-71 at 2.

<sup>89</sup> Op. Tex. Att'y Gen. No. GA-210 (2004) at 2 (citing Op. Tex. Att'y Gen. Nos. DM-377 (1996), WW-1253 (1962)).

<sup>90</sup> *Id.* (concluding that at justice of the peace's private conversation with a reporter that "did not result in any publication of information about the justice of peace's plans" within the requisite time period did not trigger automatic resignation provisions).

<sup>91</sup> Tex. Att'y Gen. LO-95-71 at 2.

<sup>92</sup> Op. Tex. Att'y Gen. No. JC-249 (2000) at 4 ("Activity indicating interest in an office that falls short of announcing a candidacy or becoming a candidate in an election does not trigger the resign-to-run provision.").

<sup>93</sup> Op. Tex. Att'y Gen. No. GA-643 (2008).



No judge of any court, Secretary of State, Attorney General, clerk of any court of record, or any person holding a lucrative office under the United States, or this State, or any foreign government shall during the term for which he is elected or appointed, be eligible to the Legislature.

This Constitutional provision applies to any holder of a “lucrative office” who wants to run for the Texas Legislature. According to the Texas Supreme Court, an office is “lucrative” for purposes of article III, section 19 “if the office holder receives any compensation, no matter how small,” although reimbursement for expenses alone does not render an office “lucrative.”<sup>94</sup> City officials considering running for the Legislature should consult with their counsel about the implications of the provision on their relevant facts and circumstances, as the answers are not crystal clear in the case law.

**46. Are there criminal penalties for holding two conflicting public offices or other types of prohibited dual office holding?**

State law does not provide criminal penalties for holding two conflicting public offices or for other types of prohibited dual office holding. Such a violation would have to be challenged through a civil action in a district court.

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<sup>94</sup> *Dawkins v. Meyer*, 825 S.W.2d 444, 447 (Tex. 1992); see *In re Carlisle*, 209 S.W.3d 93 (Tex. 2006) (per curiam) (holding that reimbursement for meals does not render an office lucrative); *Whitehead v. Julian*, 476 S.W.2d 844,845 (Tex. 1972) (holding that a \$50 expense allowance does not render an office lucrative if expenses exceed the allowance).

## Dual Office Holding/Incompatibility Chart

*May a Particular Dual Office Be Held by an Individual?*

Position 1	Position 2	Ok?	Reason	Authority
<b>Alternate Election Judge</b>	Appraisal Review Board Member	Yes, in specific situations	Not incompatible in an election of municipality when the election-judge appointment is limited to a single election.	LO-96-081
<b>Appraisal District, Employee</b>	Officer of City that participates in the Appraisal District	No	Not allowed under state law.	Tex. Tax Code § 6.054
	Employee of City that participates in the Appraisal District	No	Not allowed under state law.	Tex. Tax Code § 6.054
	Member of Appraisal Review Board for preceding two years	No	Not allowed under state law.	Tex. Tax Code § 6.054
<b>Assistant Chief of Police</b>	City Administrator	No, in specific situations	Incompatible when the City Administrator has ultimate supervisory authority over the Assistant Chief of Police	GA-0536
<b>Assistant District Attorney</b>	Municipal Utility District, elected director	Yes	May serve if does not receive any compensation for Municipal Utility District position	LO-8819
	School District Board of Trustees, same county	Yes	Not incompatible, but the Assistant DA should not be assigned any cases involving the school district	LO-89-082
<b>Board Member, County Hospital District</b>	County position (such as County treasurer)	Yes	Not incompatible	GA-1075
<b>Board of Trustees, ISD</b>	City Council (and other boards within the same geographic boundaries)	No	Incompatible	LO-92-005; see also <i>Thomas v. Abernathy Cy. Line Indep. Sch. Dist.</i> ; 290 S.W. 152; JM-129; LO-90-52

Position 1	Position 2	Ok?	Reason	Authority
<b>Board of Trustees, ISD</b>	County Judge, overlapping tax jurisdiction	No	Incompatible	KP-228
<b>Board of Directors, Utility District</b>	Board of Trustees, College District	Unclear	Incompatible, depending on the location and authority of the respective boards	GA-0786
<b>Building Inspector</b>	Fire chief (same city)	Yes	Allowed under Art. XVI § 40 of Tex. Con.	<i>State ex rel. Beicker v. Mycue</i> , 481 S.W. 2d 476
<b>Candidate, County Judge</b>	Mayor	Depends	Under Art. XI § 11 of Tex. Con., depends on the length of the term of office of the mayor and the amount of time before the mayor's term expires	JM-553
<b>Chief Appraiser, multiple counties</b>	Tax Assessor/Collector, multiple counties	No	Not allowed under state law.	Tex. Tax Code § 6.054
<b>Chief Deputy, County Tax Assessor-Collector</b>	Court Reporter, county court	Yes	Allowed under Art. XVI § 40 of Tex. Con.	JM-1083
<b>Chief of Police, Municipal</b>	Constable, elected, precinct within the same city	Yes	Not incompatible	KP-122
<b>Chief of Police, ISD</b>	City Council Member, city located within geographical limits of the school district	Yes	Not incompatible	GA-0688
<b>City Administrator</b>	Assistant Police Chief	No, in specific situations	Incompatible when the City Administrator has ultimate supervisory authority over the Chief of Police	GA-536
<b>City Attorney</b>	Assistant County Attorney of neighboring county	Yes	Not incompatible	LO-89-58

Position 1	Position 2	Ok?	Reason	Authority
<b>City Council Member/Commissioner</b>	Member, School District Board of Trustees	No	Incompatible	LO-93-22
	Board of Trustees, Public Library District	No	Incompatible	KP-0125
	Member of the fire department	No	Incompatible when the city council has ultimate supervisory authority over the members of the Fire Department	LO-97-034
	Police officer (different city)	Yes	Not incompatible	LO-93-27
	Teacher at state college	Yes	Allowed under Art. XVI § 40 of Tex. Con. if council member salary is renounced	LO-93-37
	Chairman, Board of Directors of University Research Foundation (non-profit corporation) (same city)	Yes	Allowed under Art. XVI § 40 of Tex. Con.	JM-1065
	School District Chief of Police if compensated from state funds	Yes	Not incompatible, allowed under Art. XVI § 40 of Tex. Con. if council member salary is renounced	GA-688GA-0874
	County Commissioner	No	Incompatible	GA-015LO-88-49
	School Trustee, State College	No	Incompatible	LO-93-22; <i>Thomas v. Abernathy County Line Independent School District</i> , 290 S.W. 152
	Junior College Trustee (city located within junior college district)	Unclear	Possibly incompatible	LO-90-52 LA-149

**City Council**

Position 1	Position 2	Ok?	Reason	Authority
<b>Member/Commissioner</b>	Volunteer fire department (same city)	Depends	Not incompatible when the governing body has adopted a resolution allowing members of the council to serve for a volunteer organization that protects the health, safety, or welfare of the city	Tex. Loc. Gov't Code § 21.003 (adopted in response to JC-199) LO-94-70 JC-199
	School Board Trustee (same city)	No	Incompatible	JM-634
	School Board Trustee (same city) (powers suspended)	Yes	Not incompatible, allowed because powers have been suspended so can run and serve on council even with overlapping boundaries because the trustee will vacate office if elected to council	KP-014
	Director of County Water District	No	Incompatible	LO-92-68
	Board of a County Water District (with which the city will be contracting)	No	Incompatible	LO-90-18
	County Special District employee	Yes	Not incompatible	JM-1266
	School District Employee	Yes	Not incompatible, allowed under Art. XVI § 40 of Tex. Con. if council member salary is renounced	JM-118 MW-230 JM-1266
	Reserve Police Officer	No	Incompatible	JM-386; KP-418
	County Auditor (overlapping jurisdictions)	No	Incompatible	JM-133
	Fire Chief (same city)	No	Incompatible	MW-432
	Local Selective Service Board Member	Yes	Allowed as long as selective service system is on standby (no draft)	GA-057
	Deputy sheriff	Yes	Not incompatible	KP-352
	Retiree (receiving benefits from TRS)	Yes	May receive benefits and compensation simultaneously	LO-93-41

**City Council**

Position 1	Position 2	Ok?	Reason	Authority
<b>Member/Commissioner</b>	Water Supply Corporation Board of Directors	Yes	Not incompatible, but only if they receive no compensation or other remuneration from water supply corporation under Local Government Code § 171.009.	GA-0597
<b>City Finance Director</b>	Temporary Municipal Judge	Yes	Not incompatible	GA-199
<b>City Manager</b>	Chief of Police (same city)	No, in specific situations	Incompatible to the extent a home rule charter provides that the city manager supervises the chief of police	KP-265
	Member governing board of a Metropolitan Transit Authority (which includes city in question)	Yes	Not incompatible	GA-0538
	School Board Trustee (school district within the City Manager's municipality)	Yes	Not incompatible	GA-0766
<b>City Official</b>	Political Party Precinct Chair	Yes	Not incompatible	JC-562
<b>County Tax Assessor</b>	School Board Member/Trustee	No	Incompatible, contract between two entities not only likely, it already existed	LO-92-004
<b>College Board Trustee</b>	County Commissioner	No, most likely	Incompatible	KP-0119
<b>Constable</b>	Bailiff	Yes	Not incompatible, may be simultaneously compensated for both positions	LO-92-73 LO-97-060
	Commissioner of an Emergency Services District	No	Art. XVI § 40 of Tex. Con.	GA-1036
	Jailer	Yes	Not incompatible	JM-485
	ISD Police Chief/Chief of Police, ISD	Yes	Not incompatible	KP-0032
	School board	Yes	Not incompatible	JM-519
	Deputy sheriff	Yes	Not incompatible	GA-402

Position 1	Position 2	Ok?	Reason	Authority
<b>Constable</b>	Groundwater district board	No	Art. XVI § 40 of Tex. Con.	GA-0540
	Municipal firefighter	Yes	Not incompatible	JC-270
	Sheriff's deputy, weight-enforcement officer	Yes	Not incompatible	KP-0189
	Public school teacher	Yes	Not incompatible	LO-94-077
<b>County Attorney</b>	Board of directors, county hospital	No	Art. XVI § 40 of Tex. Con.	LO-97-100
	City attorney, same county	Yes	So long as not subject to Prof. Prosec. Act (see Tex. Gov. Code § 46.002 for a list of prosecutors subject to the act)	JC-0054
	Assistant county attorney of neighboring county	Yes	Not incompatible, although it may lead to issues under the Texas Disciplinary Rules of Professional Conduct	GA-350
	School district board of trustees, same county	No	Incompatible	LO-95-029
<b>County Attorney, elected</b>	Special prosecutor, another county	Yes	Not incompatible, no salary for special prosecutor position	JM-763
	Assistant district attorney in the same county and two neighboring counties	Yes	Not incompatible	LO-96-148
	Professor, part time, state university	Yes	Not incompatible	LO-90-039
<b>County Attorney's Office Employee</b>	Member of board of a water control and improvement district, same county	No	Incompatible when county attorney also provides legal services to the water district	KP-110
<b>County Auditor</b>	Emergency Services District employee (auditor)	Yes	Not incompatible	GA-360
<b>County Budget Officer, appointed by County Commissioners Court</b>	Employee of County Judge	Yes	Not incompatible	KP-172

Position 1	Position 2	Ok?	Reason	Authority	
<b>Assistant County Budget Officer, appointed by County Commissioners Court</b>	Employee of county commissioners court	Yes	Not Incompatible	KP-172	
<b>County Clerk</b>	Director of river authority	Yes	Gov't Code § 574.005	GA-250	
<b>County Commissioner</b>	Reserve deputy sheriff	Yes	Not incompatible	LO-97-081	
	Board of trustees, community college (same county)	No	Incompatible	JM-129	
	Compensated county employee	No	Loc. Gov't Code § 81.002(a)	GA-0645	
	Municipal judge	Maybe	Not incompatible, but may not be able to hold both positions under state judicial canons	GA-348	
	School board trustee	No	Incompatible	DM-311 LO-96-004	
	Teacher	Yes	Not incompatible, may receive salary for both positions	<i>County of Maverick v. Ruiz</i> 897 S.W. 2d 843 (Tex. App.-- San Antonio 1995)	
	General manager of a water authority	Yes	General manager of a water authority is not a "public office" for the purposes of incompatibility	KP-407	
	<b>County Court at Law Judge</b>	ISD Trustee	No	Judge prohibited from holding second position under Code of Judicial Conduct Canon 4(H)	JM-213
	<b>County Elections Administrator</b>	9-1-1 addressing agent	Yes	Not incompatible	GA-0939
<b>County EMS employee</b>	Municipal judge/justice of the peace	Yes	Not incompatible, but there could issues with Code of Judicial Conduct	GA-0569	
	Sheriff's dispatcher	Yes	Not incompatible	GA-0569	
<b>County Judge</b>	Administrator, county EMS, same county	No	Incompatible	LO-94-46	
	Director, river authority	No	Art. XVI § 40 of Tex. Con.	JM-594	



Position 1	Position 2	Ok?	Reason	Authority
<b>County Judge</b>	Attorney in private practice, same county	Unclear	Govt. Code §82.064 and Code of Prof. Resp. Rule 1.06	JC-0033
	Records management officer, same county	Yes	Not incompatible, may receive compensation for both positions	LO-90-062
	Texas Board of criminal justice	No	Incompatible	LO-95-052
	School board trustee	No	Incompatible	KP-0228
<b>County Sheriff</b>	Municipal Fire Marshal	Yes	Not incompatible	KP-369
<b>County tax-assessor-collector</b>	Trustee, independent school district	No	Incompatible, automatic resignation	LO-92-004
<b>Deputy Constable</b>	Assistant city fire chief	Yes	Not incompatible	DM-156
	Sheriff's deputy, weight-enforcement officer	Yes	Not incompatible	KP-0189
<b>Deputy District Clerk</b>	Deputy county clerk	Yes	Not incompatible	MW-415
<b>Deputy Sheriff</b>	Security officer for a school district (part-time)	Yes	Allowed under Art. XVI § 40 of Tex. Con.	DM-212
<b>Director of a Municipal Utility District</b>	Member of a planning and zoning commission	No	Incompatible	JC-339
<b>Director of a River Authority</b>	Professor, state university	Yes	Allowed under Art. XVI § 40 of Tex. Con. if no salary is received	LO-95-001
<b>District Attorney</b>	Teaching position, state university	Yes	Not incompatible	LO-93-96
<b>District Clerk</b>	Reserve deputy sheriff	Yes	Not incompatible	LO-98-35
<b>District Judge</b>	School district board of trustees, within the judge's jurisdiction	No	Incompatible	LO-98-094
<b>Election Clerk</b>	School district employee	Yes	Not incompatible, may receive compensation for both positions, but may not serve as a clerk in a contested election for school board trustee (Tex. Elec. Code §	JM-862

Position 1	Position 2	Ok?	Reason	Authority
<b>Former District Judge, sitting by assignment (and available for assignment)</b>			32.054)	
	Teaching position, state university	Yes	Not incompatible	LO-98-109
<b>General Manager, Water District</b>	City Manager	Yes	Not incompatible	GA-0849
<b>Justice of the Peace</b>	County EMS employee	Yes	Not incompatible	GA-0569
	Jailer	No	Incompatible	JM-1047
	Juvenile law master, same county	Yes	Not incompatible	LO-96-078
	School board trustee	Yes	Not incompatible	O-3522; <i>Turner v. Trinity Indep. Sch. Dist. Bd. of Trustees</i> , 700 S.W.2d 1 (Tex. App.—Houston [14th Dist.] 1983, no writ).
<b>Justice of the Peace, appointed</b>	Municipal judge, part time, city within JP's precinct	Yes	Not incompatible	JM-819
<b>Local Public Official, elected</b>	Employee of state legislator	Yes	Not incompatible, salary allowed for officials who are not part of a governing body or who are members of a county governing body	LO-98-039
<b>Mayor</b>	Hospital district director	No	Incompatible	JC-363
	Water supply corporation board of directors.	Yes	Compatible, under Loc. Gov't Code §171.009; they do receive compensation or other remuneration from water supply corporation	GA-0597
<b>Municipal Employee</b>	Member, city commission, elected	No	Incompatible, but need not resign to run for commission position	LO-97-034
<b>Municipal Judge</b>	Director, Gulf Coast Waste Disposal Authority	No	Art. XVI § 40 of Tex. Con.	JC-0095
<b>Municipal Judge</b>	County attorney	No	Art. XVI § 40 of Tex. Con.	LO-98-044

Position 1	Position 2	Ok?	Reason	Authority
	Junior College Trustee, (elected, Chart #2)	Yes	Not incompatible	JC-0216
	Board of Directors, river authority	No	Art. XIV § 40 of Tex. Con.	LO-97-027
	Municipal Judge, other district	Yes, unless elected	Allowed under Art. XIV § 40 of Tex. Con.	Gov't Code § 574.001(b); DM-428
<b>Municipal Court Judge, part-time, compensated</b>	Member, Board of Commissioners, drainage district	No	Art. XVI § 40 of Tex. Con.	GA-0841
<b>Municipal Management District Employee</b>	Texas State Legislator	No	Art. XVI § 40(d) of Tex. Con.	KP-227
<b>Municipal Police Chief</b>	Constable	Yes	Not incompatible	KP-0122
	School trustee	Yes	Not incompatible	GA-393
<b>Municipal police officer</b>	City council, different city (uncompensated)	Yes	Not incompatible	LO-95-048
<b>Police Officer/ Peace Officer</b>	City commissioner, another jurisdiction, paid	Yes	Not incompatible	LO-93-27
	Municipal judge (different city)	Legally yes, but no	Not incompatible by law, but may not be able to hold both positions under state judicial canons	LO-93-59, <i>but see</i> State Commission on Judicial Conduct PS-2000-1
	Part-time security officers	Yes	Allowed under Art. XIV § 40 of Tex. Con.	DM-212
	County road and bridge department employee	Yes	Not incompatible, can receive compensation for both positions	JM-862
	Security officer for a school district	Yes	Not incompatible	DM-212
	Commission from more than one agency	Yes	Not incompatible, but could be subject to restrictions from first employer	GA-0214
<b>Polygraph Examiner for District Attorney's Office</b>	Justice of the Peace	Unclear but likely no	Code of Judicial Conduct	GA-551
<b>Public Junior College District Teacher</b>	House Member	No	Art. XIV § 40 of Tex. Con.	LA-4
<b>School Board Trustee</b>	County or precinct chair of political party	Yes	Election Code § 161.005	JC-537

Position 1	Position 2	Ok?	Reason	Authority
	County hospital board trustee	No	Incompatible when both bodies have taxing authority	KP-0023
	City planning and zoning commission	No	Incompatible	KP-0114
	Groundwater conservation district (overlapping geographic boundaries)	No	Incompatible	JC-557
	County treasurer	Yes	Not incompatible	JC-490
	Teacher	No	Incompatible	LA-114
	Volunteer teacher	No	Incompatible	JC-371
	Municipal judge	Yes	Not incompatible	JC-0216
	State board of education	No	Ineligible	Tex. Educ. Code, § 7.103(a)
	Director of a private, non-profit corporation which does business with the school district	Yes	Allowed under Art. XIV § 40 of Tex. Con., provided no compensation or other remuneration for doing so is received	DM-256; Local Government Code § 171.009
	Principal of a disciplinary alternative education program campus that contracts with the district	Maybe	Depends on whether the participating school districts had supervisory authority over the disciplinary alternative education program campus.	GA-0738
	Student	Yes	Even if in same district a student would be eligible as long as they are a qualified voter. Tex. Educ. Code § 11.061	JH-301
	Water improvement district board (overlapping geographic boundaries)	No	Incompatible	GA-224
	County improvement district board	No	Incompatible	GA-307

Position 1	Position 2	Ok?	Reason	Authority
<b>School Board Trustee</b>	Sheriff	Maybe	Depends on the level of interaction between the schools and the sheriff's office	GA-328 KP-054
	County clerk	Yes	Not incompatible, but could create a resign-to-run issue under Art. XVI, § 65 if the person ran for school board while serving as county clerk	GA-468
<b>School Board Trustee, whose powers have been suspended by TEC</b>	Candidate for City Council	Yes	Not incompatible to run for council seat, automatic resignation occurs if elected to city council	KP-0014
<b>School Trustee, College District</b>	Municipal utility director	No	Incompatible	GA-032
<b>School Trustee, State College</b>	City council	No	Incompatible	LO-93-22, <i>Thomas v. Abernathy ISD</i> , 290 S.W. 152
<b>Secretary, District Attorney's Office</b>	Court reporter, same county	Yes	Allowed under Art. XVI § 40 of Tex. Con.	JM-163
<b>Sheriff</b>	Volunteer firefighter	Yes	Not incompatible	LO-93-54
	School trustee	No	Incompatible	GA-328
<b>State Employee</b>	Candidate for elected county office	Yes	Allowed under Art. XVI § 40 of Tex. Con., but only if the salary of the employee is not completely paid for by federal funds due to the Hatch Act. 5 U.S.C. § 1502(a)(3).	GA-1026
	Elected county office	Yes	Allowed under Art. XVI § 40 of Tex. Con.	GA-1026
<b>State Board of Education</b>	Teacher	Yes	Not incompatible	JM-203
<b>State Junior College Trustee</b>	Texas college and university system coordinating board	No	Incompatible	JM-97
	City Council with the junior college district, when the Jr. College district owned no property & carried out no activities within the jurisdiction of the city	Unclear	Unclear	LA-149 LO-90-52

Position 1	Position 2	Ok?	Reason	Authority
<b>State Legislator</b>	Independent contractor for county government	Yes	Allowed under Art. XVI § 40 of Tex. Con.	LO-95-022
	President of Municipal Management District	No	Art. XVI § 40 of Tex. Con.	GA-386
	Independent Contractor for Municipal Management District	Yes	Allowed under Art. XVI § 40 of Tex. Con.	GA-386 KP-0227
<b>State Representative</b>	Assistant county attorney	No	Art. XVI § 40 of Tex. Con.	JC-0430
<b>State Supreme Court Justice</b>	Board of directors, State Justice Institute (a federal office)	No	Art. XVI § 12 of Tex. Con.	DM-49
<b>Visiting statutory county court judge</b>	Director of Judicial Support Services for Bexar County	Yes	Not incompatible, but left to the discretion of The Texas Commission on Judicial Conduct	GA-0840