

Dual Office Holding – Can One Person Wear Two Hats?

We are often asked whether or not a public official may serve in two separate capacities at the same time. For example, can a city council member also serve as a director of a water district or can a water district director also serve as a school board trustee?

The answer depends on the offices in question.

The Texas Constitution, Article XVI, Section 40, prohibits any person from holding two “offices of emolument.” An emolument is defined as a thing of value.

If a person receives anything of value for serving as an officeholder, even if the value is small, the office is considered an “office of emolument.”

For example, if city council members are paid \$10 for each council meeting they attend, the city council member’s office is an office of emolument, and the council member may not serve in any other office of emolument.

An important point to note is that the officeholder may not avoid this constitutional prohibition by simply refusing to accept the salary. The Texas Attorney General has held that an office is an office of emolument if the applicable law provides for a payment to the officeholder – regardless of whether or not the officeholder accepts the payment.

In some cases, the officeholder receives no payment. For example, the office of a school board trustee is not an office of emolument.

Does this mean that a school board trustee can serve in any other public office that he or she wishes? Not necessarily.

The common-law doctrine of incompatibility prevents a person from holding two offices even if he or she does not get paid for either.

More specifically, Texas courts have routinely held that a person may not hold two offices if one office is incompatible with the other. Two offices are incompatible if the officeholder in one position would have decision-making authority over matters directly affecting the other office position.

The office of school board trustee provides some good examples. That office would not be incompatible with the office of water district director. Attorney general opinions have held these positions are not incompatible even if they have jurisdiction over completely separate activities.

However, serving as a school board trustee is incompatible with serving as a member of the county appraisal district’s appraisal review board because the property

values the appraisal review board determine have a direct impact on the tax rate the school board trustee sets.

In conclusion, a person may hold two offices only if 1) at least one of the offices is not an office of emolument and, 2) the duties or responsibilities of the two offices are not incompatible.

Finally, a special word should be included for persons who receive state funds for their salary. The Texas Constitution does not prohibit such persons from serving as members of the governing bodies of school districts, town, cities or other local governmental districts. However, state employees and other individuals who receive all or part of their compensation from funds of the State of Texas are prohibited from receiving a salary for serving in such capacity.