



## Board Members as Employees and Volunteers at the Community College<sup>1</sup>

### Board Members as Employees

**Q: *May a person serve simultaneously as an employee and a board member at the same community college?***

A: No. The common-law doctrine of incompatibility prohibits a person from holding two positions simultaneously when one position might impose its policies on the other or subject it to control in some way.

*Self-employment incompatibility* occurs when one position is “subordinate to the other in some of its important and principal duties, or is subject to supervision by the other.” Tex. Att’y Gen. Op. No. JM-97 (1983).

The board of a community college is responsible for the establishment, management, and control of the college. Tex. Educ. Code § 130.084(a). The board imposes policies upon and has supervision over college employees. Therefore, a board member is barred by the common law doctrine of incompatibility from simultaneously serving as an employee at the same college.

**Q: *May a person serve simultaneously as a public employee and a board member at different colleges?***

A: Regardless of location, the determining factor in *self-employment incompatibility* is whether one position is subject to the control or supervision of the other. A public officer may not hold public employment if the officer or governing body of which he or she is a member has supervisory responsibility over that employment. Tex. Att’y Gen. LO 98-036 (1998).

In Texas Attorney General Opinion GA-0876, the attorney general stated that self-employment incompatibility would not prohibit a board member of a utility district from simultaneously serving as a board member at a college because neither of the boards appoint or employ the other. The attorney general concluded however that conflicting-loyalties incompatibility was likely, due to overlapping service areas.

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<sup>1</sup> An electronic version of this document is available on TASB College eLaw at [tasb.org/Services/Community-College-Services/Resources/TASB-College-eLaw/documents/board-members-as-employees-and-volunteers.pdf](http://tasb.org/Services/Community-College-Services/Resources/TASB-College-eLaw/documents/board-members-as-employees-and-volunteers.pdf).

*Conflicting-loyalties incompatibility* precludes a person from simultaneously holding two offices that would prevent the person from exercising independent disinterested judgement in either or both offices. Tex. Att’y Gen. Op. No. GA-876 (2010).

A community college board member would not be barred by self-employment or conflicting loyalties incompatibility by serving as a public employee at a different college. A community college board member has no supervision or control over a different college in a different service area.

**Q: *May a board member be employed by a college after completing their service on the college’s board?***

A: Yes. But not until one year has passed. The Texas Education Code states that, “a college may not employ or contract with an individual who was a member of the board of the college before the first anniversary of the date the individual ceased to be a member of the board.” Tex. Educ. Code § 130.089.

### **Board Members as Volunteers**

**Q *May a board member volunteer to teach at their own college?***

A: No. The *self-employment incompatibility* test examines whether one position is subordinate to the other, or is subject to supervision by the other. According to Texas Attorney General Opinion JC-371, teachers—even volunteer, part-time teachers—are subordinate to school officials. The attorney general added that because members of a college board serve without compensation, whether a board member receives compensation is irrelevant to the determination of incompatibility. As a result, a community college board member is barred from serving as a professor at their own college by the common-law doctrine of incompatibility. Tex. Att’y Gen. Op. No. JC-371 (2001); Tex. Educ. Code § 130.082(d). *But see* Op. Tex. Att’y Gen. LO-98-036 (1998) (concluding that a regent of Texas Southern University did not violate the common-law incompatibility doctrine by performing unpaid volunteer coaching services for a section of the football team because the regent did not receive payment or reimbursement for expenses, was not subject to a contract, and did not appear to hold a position with the university nor to have been assigned duties by the board of regents).

**Q: *May a board member ever serve as a volunteer at their own college?***

A: Maybe. In Texas Attorney General Opinion JC-371, the attorney general distinguished volunteer teaching (prohibited) from volunteer coaching, which was permitted in Attorney General Letter Opinion 98-036. The attorney general in Opinion JC-371 described the regent’s coaching duties as “informal” and noted that there was no

evidence that the duties were ordinarily performed by a compensated employee in a regular position. Nor did they involve regular hours on specific days or a specific period of time agreed upon in advance. Tex. Att'y Gen. Op. No. JC-371 (2001).

Based on the above, a community college board member may be able to volunteer for some irregular, informal duties at their college without violating the law. Any volunteer duties must be informal, must not involve regular hours on specific days or a specific period of time agreed upon in advance, and must not be ordinarily performed by a compensated employee in a regular position.

**Q: *What TASB Policies apply to board member employment?***

A: See TASB Policy DC(LEGAL).

**Q: *Where can I get more information on board member employment?***

A: As always, if you have questions about these or other legal issues, college representatives may contact TASB Community College Services at 800.580.1488 or [colleges@tasb.org](mailto:colleges@tasb.org).

For more information on community college law topics,  
visit TASB Community College eLaw online at [colleges.tasb.org/elaw](http://colleges.tasb.org/elaw).

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