



Dual Office Holding Issues for Community College Board Trustees¹

Questions often arise as to whether community college board candidates or trustees may run for or hold another public office while running for or serving on the college board. The answer is rarely a simple yes or no. In some cases, the Texas Constitution, a statute, the attorney general, or a court specifically addresses whether one person may run for or hold the two public offices in question. In other cases, the answer requires analysis of several legal authorities. Drawing from these sources, this FAQ answers some of the questions regarding community college board trustees trying to hold more than one public office or position simultaneously.

Q: *Must a candidate resign from an office held to run for another office?*

A: In many cases, yes. The first issue a potential candidate must address is whether the Texas Constitution requires resignation from a current public office to be a candidate for another one. The *resign to run* provision states that specified county or district officers who have over a year and 30 days left in their current term of office automatically resign from that office if they become a candidate for any “office of profit or trust.” Tex. Const. art. XVI, § 65. The provision applies to the offices listed below:

- Constables and Sheriffs
- County and District Attorneys
- County and District Clerks
- County Commissioners
- County Judges and Judges of County Courts at Law, County Criminal Courts, County Probate Courts and County Domestic Relations Courts
- County Surveyors
- County Treasurers
- Justices of the Peace
- Public Weighers
- Tax Assessors and Collectors

¹ An electronic version of this document is available on [TASB College eLaw](http://tasb.org/services/community-college-services/resources/tasb-college-elaw/documents/cc-dual-office-holding-issues.pdf) at tasb.org/services/community-college-services/resources/tasb-college-elaw/documents/cc-dual-office-holding-issues.pdf

The resign to run provision also applies to certain city officers under Texas Constitution article 11, section 11(a) if the city has provided for a term of office longer than two years. *See* Tex. Att’y Gen. Op. No. JC-403 (2001) (concluding that city commissioner with more than a year left on a term in excess of two years automatically resigned upon announcing candidacy for school board trustee). In addition, a home-rule city charter may provide that a city officer automatically resigns from office upon becoming a candidate for another office. Tex. Att’y Gen. Op. No. GA-217 (2004). A person who resigns under the resign to run provision holds over in the office under the constitutional holdover doctrine until a successor qualifies for office. Tex. Att’y Gen. Op. Nos. JC-403 (2001), JC-318 (2000), DM-377 (1996); Tex. Const. art. XVI, § 17.

Q: Does the resign to run provision apply to community college board trustees?

A: No, the office of college board trustee is not subject to the resign to run provision. Thus, under the Texas Constitution, a college board trustee is not required to resign to run for another public office. However, Texas Constitution article 16, section 17 provides that a person holding a specified office with more than a year and 30 days remaining in the person’s term automatically resigns from that office upon becoming a candidate for any office of trust. Tex. Const. art. XVI, § 17.

Although no controlling authority has held that an office of college board trustee is an office of trust under Texas law, the attorney general has generally stated that an individual who holds an office of trust “is invested with some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public.” Tex. Att’y Gen. Op. No. JC-318 (2000). Additionally, the office of school district board trustee has been held to be an office of trust, as well as the office of city council and certain other local offices. E.g., *Ramirez v. Flores*, 505 S.W.2d 406 (Tex. App.—San Antonio 1973, writ ref’d n.r.e.) (holding a school district board trustee office is an office of trust); Tex. Att’y Gen. Op. No. JM-395 (1985) (opining that a city council office is an office of trust).

In addition to the Texas Constitution, state law may affect whether a college board trustee may run for a specific office while continuing to serve on the college board. For example, Texas Education Code section 7.103(a) provides that a person is not eligible for election to or service on the State Board of Education (SBOE) if the person holds another public office. Although no controlling authority has held that a college board trustee is not eligible for election to the SBOE, the attorney general has stated that a school board member must resign from the school board prior to the date of the general election for a place on the SBOE. Tex. Att’y Gen. Op. No. WW-165 (1957).

Q: If the resign to run provision or other statute does not require an officeholder to resign, may the officeholder run for another public office?

A: If the resign to run provision or another statute does not require an officeholder to resign, a person may run for a second public office while continuing to hold the first. See Tex. Att’y Gen. Op. No. KP-14 (2015) (stating the incompatibility of two offices does not preclude running for a second office). If elected, however, the question arises as to whether the person may legally accept the second office without resigning from the first.

Q: When may a candidate legally accept a second office?

A: Two tests must be satisfied before a person may legally hold more than one public office. The first test arises from the Texas Constitution and the second test is known as the common-law doctrine of incompatibility.

Texas Constitution: Texas Constitution article XVI, section 40(a), states, “No person shall hold or exercise at the same time, more than one civil office of emolument.”

- **College Board Trustees:** A *civil office of emolument* is a position in which the public official receives “a pecuniary profit, gain, or advantage” for the official’s service. *Irwin v. State*, 177 S.W.2d 970 (Tex. Crim. App. 1944). An emolument includes any amount received in excess of actual expenses. Tex. Att’y Gen. Op. Nos. GA-32 (2003), JC-490 (2002). Because Texas Education Code section 130.082(d) mandates that college board trustees serve without remuneration or emolument of office, the constitutional prohibition does not bar a trustee from holding another elected office.
- **College Employees:** The Texas Constitution also gives guidance to college employees seeking public office with another governmental body, such as a city council, that may be compensated:

State employees or other individuals who receive all or part of their compensation either directly or indirectly from funds of the State of Texas and who are not State officers, shall not be barred from serving as members of the governing bodies of school districts, cities, towns, or other local governmental districts. Such State employees or other individuals may not receive a salary for serving as members of such governing bodies, except that . . . a faculty member or retired faculty member of a public institution of higher education may receive compensation for serving as a member of a governing body of a water district

Tex. Const. art. XVI, § 40(b)(2).

In the attorney general's opinion, a faculty member employed as an instructor, including a part-time instructor, may be compensated for simultaneous service as a member of the board of directors of a water district. Tex. Att'y Gen. Op. No GA-428 (2006). If a college employee does not qualify as a faculty member or retired faculty member, the person may not receive compensation for serving in public office. See Tex. Att'y Gen. Op. No. GA-530 (2007) (stating that employees of public institutions of higher education are subject to Tex. Const. art XVI, § 40).

Common-Law Incompatibility: The common-law doctrine of incompatibility bars a person from holding more than one public office if the offices conflict with each other. *Thomas v. Abernathy County Line Indep. Sch. Dist.*, 290 S.W.152 (Tex. Comm'n App. 1927); Tex. Att'y Gen. Op. No. KP-119 (2016) (stating that the doctrine applies to a public office of a college). This doctrine "is premised upon the desire to protect the integrity of state and local governments by promoting impartial service by local officials." Tex. Att'y Gen. LO-95-29 (1995). The doctrine comprises three aspects:

- **Self-Appointment:** This aspect is implicated when a public official is both a member of a governmental body making an appointment and that body's appointee. Tex. Att'y Gen. LO-95-29 (1995). According to the Texas Supreme Court, "all officers who have the appointing power are disqualified for appointment to the offices to which they may appoint." *Ehlinger v. Clark*, 8 S.W.2d 666, 674 (Tex. 1928). See also Tex. Att'y Gen. Op. Nos. KP-119 (2016) (concluding offices of county commissioner and college board trustees may be incompatible where the commissioners court has authority to appoint some of the trustees), JM-934 (1988) (confirming that officers may not appoint themselves to another office). In other words, one cannot hold two separate positions in which one is subordinate and accountable to the other. Tex. Att'y Gen. LO-95-29 (citing *Turner v. Trinity Indep. Sch. Dist.*, 700 S.W.2d 1 (Tex. App.—Houston [14th Dist.] 1983, no writ); Tex. Att'y Gen. Op. Nos. JM-934 (1988), WC-452 (1965); Tex. Att'y Gen. LA-114 (1975).
- **Self-Employment:** An office and an employment may be incompatible if the office has the power to appoint or supervise the employee or if the duties of the positions and the relationship between them create a significant risk that one will impose its policies on the other. Tex. Att'y Gen. LO-95-29 (1995). The key aspect of self-employment incompatibility is supervision. Tex. Att'y Gen. Op. No. GA-536 (2007). The best example of this in a college may be a person serving as both a faculty member and a college board trustee in the same district. See Tex. Att'y Gen. Op. Nos. KP-119 (2016) (stating self-employment incompatibility does not appear to be an issue for college board trustee serving as county commissioner if the county does not have supervisory authority over the trustee), GA-273 (2004) (stating self-employment incompatibility does not apply to district attorney and college instructor because neither supervises the other), JC-371 (2001) (concluding that school district trustee is barred by self-employment incompatibility from serving as teacher in the same district, even if unpaid). *But*

see Tex. Att'y Gen. Op. No. DM-55 (1991) (concluding that school district teacher may teach in one school district and serve on the board of another if the teacher is otherwise qualified to serve on the board).

- **Conflicting Loyalties:** This aspect of incompatibility exists if the duties of two offices are or may be inconsistent or in conflict; however, conflicting loyalties do not exist if the duties are completely unrelated, in no manner inconsistent, and never in conflict. Tex. Att'y Gen. LO-95-29 (1995). "The crucial question is whether the occupancy of both offices by the same person is detrimental to the public interest or whether the performance of the duties of one interferes with the performance of those of the other." Tex. Att'y Gen. Op. No. KP-54, at 2 (2015) (quoting *State ex rel. Hill v. Pirtle*, 887 S.W.2d 921, 930 (Tex. Crim. App. 1994)). In other words, this doctrine "prohibits an individual from simultaneously holding two positions that would prevent [the individual] . . . from exercising independent and disinterested judgment in either or both positions." Tex. Att'y Gen. Op. No. KP-119, at 2 (2016) (quoting Tex. Att'y Gen. Op. No. GA-169 (2004)).

In addressing whether an individual could simultaneously serve as a college board trustee and a county commissioner in the same taxing jurisdiction, the attorney general stated that "offices of two governing bodies are incompatible whenever one entity may exert authority contrary to the interests of the other." Tex. Att'y Gen. Op. No. JM-129 (1984) (citing *Thomas v. Abernathy Cty. Line Indep. Sch. Dist.*, 290 S.W. 152 (Tex. Comm'n App. 1927)). The attorney general opined that a court would likely conclude that the conflicting loyalties incompatibility doctrine precludes an individual from simultaneously serving as a county commissioner and college board trustee where the boundaries of the governing bodies overlap because the interests of the college and the county were likely to conflict and that an individual serving on both boards could not exercise disinterested judgment.

Conflicting loyalties incompatibility applies only in situations involving two offices and does not apply to a situation involving only an office and an employment. Tex. Att'y Gen. Op. Nos. KP-32 (2015) (concluding that incompatibility did not bar school district police chief from serving as constable in the precinct where the school district was located), GA-688 (2009) (concluding that incompatibility did not bar school district police chief from serving on city council for city in the district), GA-273 (2004) (concluding that incompatibility did not apply to position as college instructor because it is not an office of emolument).

Q: What does the attorney general say regarding dual office holding?

A: The attorney general has addressed numerous instances of dual office holding. Several opinions, as well as relevant statutes, are set forth in the chart below. While the reasoning in previous opinions can help evaluate and predict whether a specific dual office holding situation is permissible, it is important to review relevant opinions to ensure that the facts and circumstances are sufficiently similar. Although many of

the attorney general opinions concerned school board trustees or other offices, the relevant legal reasoning from the underlying the opinions is generally applicable to community college trustees. Any person facing an issue of dual office holding should consult counsel regarding their specific facts when considering these issues.

Some general rules can be gleaned from the attorney general's opinions:

- Two offices are likely incompatible if the jurisdictional boundaries of the governing bodies overlap, especially if both bodies have taxing authority because the object of each entity is to maximize revenue, and one individual would have difficulty fully exercising the duties to each governmental body. See Tex. Att'y Gen. Op. Nos. KP-125 (2017) (addressing offices of public library trustee and city council member), KP-119 (regarding offices of college board trustee and county commissioner), GA-224 (2004) (addressing offices of school board trustee and water improvement district board member); Tex. Att'y Gen. LO-92-4 (1992) (considering offices of tax assessor-collector and school board trustee).
- Two offices are likely incompatible if a contract exists between the two governing bodies. See Tex. Att'y Gen. LO-92-4 (1992) (concluding that a person may not simultaneously hold the positions of county tax assessor-collector and school board trustee if the school district contracts with the county to assess and collect its taxes).
- Two offices are likely incompatible if one entity can exert authority contrary to the interests of the other. See Tex. Att'y Gen. Op. No. KP-119 (2016) (concluding that appointed college board trustee and county commissioner are likely incompatible).
- Two offices are likely incompatible when one governmental body has the authority to impose its will on the other. See Tex. Att'y Gen. LO-98-94 (1998) (concluding that district judge could not serve as trustee for school district within the jurisdiction of the judge's court).

If two offices are incompatible, a person automatically resigns from the first office upon qualifying for and accepting the second. Tex. Elec. Code § 201.025; *Pruitt v. Glen Rose Indep. Sch. Dist. No. 1*, 84 S.W.2d 1004 (Tex. Comm'n App. 1935, judgm't adopted); *Thomas v. Abernathy County Line Indep. Sch. Dist.*, 290 S.W.152 (Tex. Comm'n App. 1927, judgm't adopted); Tex. Att'y Gen. Op. No. JM-634 (1987); Tex. Att'y Gen. LO-92-4 (1992). The person does not hold over in the first office under the holdover doctrine at Texas Constitution article XVI, section 17. Tex. Att'y Gen. Op. No. KP-125 (2017) (citing Tex. Att'y Gen. Op. No. GA-15 (2003)).

When faced with a dual office holding question, a board member should consult his or her personal attorney or TASB Community College Services at 800.580.1488.

Authorities on Holding the Office of Community College Board Trustee and Another Position

College Board Trustee and . . .	The Authority Says . . .
Appraisal District Board of Directors	Both offices may be held pursuant to Texas Tax Code. ²
Appraisal District Review Board	Both offices may NOT be held pursuant to Texas Tax Code. ³
Appraisal District Employee	Both positions may NOT be held pursuant to Texas Tax Code. ⁴
Assistant District Attorney	Both positions may be held. ⁵
City Alderman or Council Member	Both offices may be incompatible, depending on geographical location of any college campus and the city. ⁶
City Manager	Both positions may be held when city manager is not an officer. ⁷
City Planning and Zoning Commission	Both offices may NOT be held; they are incompatible. ⁸

² Tex. Tax Code § 6.03(a).

³ Tex. Tax Code § 6.412(c).

⁴ Tex. Tax Code § 6.054 (providing that officer of participating taxing unit may not be employed by appraisal district); see Tex. Att’y Gen. Op. No. KP-329 (2020) (concluding that school board trustee is an officer because of board’s authority to govern and manage school district).

⁵ See Tex. Att’y Gen. LO-89-82 (1989) (concluding that position of assistant district attorney is not incompatible with office of school board trustee).

⁶ See *Thomas v. Abernathy County Line Indep. Sch. Dist.*, 290 S.W.152 (Tex. Comm’n App. 1927) (holding that offices of school board trustee and alderman of town within district boundaries are incompatible); Tex. Att’y Gen. Op. JM-634 (1987) (opining that offices of school board trustee and alderman or councilman for town located within district boundaries are incompatible); Tex. Att’y Gen. LO-93-22 (1993) (concluding that school board trustee may not serve simultaneously as member of city council where boundaries geographically overlap), LO-92-5 (1992) (opining that offices of city council and college board trustee are incompatible when college campus lies within city boundaries), LO-90-52 (1990) (stating that offices of trustee for county-wide college and board of a city within college district are incompatible regardless of college campus location). *But see* Tex. Att’y Gen. LA-149 (1977) (finding that office of college board trustee is not incompatible with position on city council of city in the college district where no college property or activities were within the territorial jurisdiction of the city and there was no relationship between the city and the college).

⁷ See Tex. Att’y Gen. Op. No. GA-766 (2010) (concluding that office of school board trustee and position of city manager subject to authority of general-law city council are not incompatible).

⁸ See Tex. Att’y Gen. Op. No. KP-114 (2016) (concluding that offices of school board trustee and member of a city planning and zoning commission are incompatible because foreseeable and potential real property interactions between the school district and the commission could cause a member holding both offices to have divided loyalties).

College Board Trustee and . . .	The Authority Says . . .
College Board Trustee	The self-appointment aspect of the doctrine of incompatibility voids the appointment of a sitting trustee to fill a vacancy created by the resignation of another trustee. ⁹
Constable	Both offices may be held, but the resign to run provision will apply if the constable announces candidacy for college board trustee when the unexpired term as constable exceeds a year and 30 days; the person will automatically resign the office of constable. ¹⁰
County Attorney	Both offices may NOT be held; they are incompatible. ¹¹
County Clerk	Both offices may be held, but the resign to run provision will apply if the county clerk announces candidacy for college board trustee when the unexpired term as county clerk exceeds a year and 30 days; the person will automatically resign the office of county clerk. ¹²
County Commissioner	Both offices may NOT be held; they are incompatible. ¹³
County Court at Law Judge	Both offices may NOT be held; they are incompatible. ¹⁴
County Hospital District Board	Both offices may NOT be held if the entities have taxing authority in overlapping geographical jurisdictions. ¹⁵

⁹ See Tex. Att’y Gen. Op. No. GA-377 (2005) (concluding that school board may not vote to appoint a sitting trustee to fill board vacancy created by resignation of another trustee).

¹⁰ See Tex. Att’y Gen. Op. No. JM-519 (1986) (opining that offices of school board trustee and county constable are not incompatible).

¹¹ See Tex. Att’y Gen. LO-95-29 (1995) (concluding that because the county attorney has authority to investigate and institute proceedings regarding possible criminal conduct of school district officers, a person is precluded from serving as both county attorney and school board trustee).

¹² See Tex. Att’y Gen. Op. No. GA-468 (2006) (stating that offices of county clerk and school board trustee are not incompatible).

¹³ Tex. Att’y Gen. Op. No. JM-129 (1984) (confirming that college board trustee may not serve as county commissioner because the offices could have conflicting interests).

¹⁴ See Tex. Att’y Gen. Op. No. JM-213 (1984) (concluding that offices of county court at law judge and school board trustee are incompatible under the Texas Code of Judicial Conduct); *see also* Tex. Att’y Gen. LO-98-94 (1998) (discussing reasoning of JM-213).

¹⁵ See Tex. Att’y Gen. Op. No. KP-23 (2015) (stating that offices of hospital district board member and school board trustee are incompatible due to overlapping geographical jurisdiction and power of taxation).

College Board Trustee and . . .	The Authority Says . . .
County Improvement District Board	Both offices may NOT be held; they are incompatible. ¹⁶
County Judge	Both offices may NOT be held; they are incompatible. ¹⁷
County or Precinct Chair of Political Party	Both offices may be held pursuant to Texas Election Code. ¹⁸
County Treasurer	Both offices may be held, but the resign to run provision will apply if the county treasurer announces candidacy for college board trustee when the unexpired term as county treasurer exceeds a year and 30 days; the person will automatically resign the office of county treasurer. ¹⁹
District Attorney's Investigator	Both positions may be held. ²⁰
District Judge	Both offices may NOT be held; they are incompatible. ²¹
Groundwater Conservation District Board	Both offices may NOT be held; they are incompatible. ²²
Justice of the Peace	Both offices may be held, but the resign to run provision will apply if the justice of the peace announces candidacy for college board trustee when the unexpired term as justice of the peace exceeds a year and 30 days; the person will automatically resign the office of justice of the peace. ²³

¹⁶ See Tex. Att'y Gen. Op. No. GA-307 (2005) (concluding that offices of director of a county improvement district board and school board trustee are incompatible due to overlapping geographical jurisdiction and power of taxation).

¹⁷ See Tex. Att'y Gen. Op. No. KP-228 (2019) (concluding that offices of county judge and school board trustee are incompatible due to overlapping geographical jurisdiction and power of taxation).

¹⁸ Tex. Elec. Code § 161.005; *see also* Tex. Att'y Gen. Op. No. JC-537 (2002) (holding that school board trustee does not hold an "office of the state government" and, therefore, is not prohibited from being candidate for or serving as county or precinct party chair).

¹⁹ See Tex. Att'y Gen. Op. No. JC-490 (2002) (stating that office of county treasurer is not incompatible with office of school board trustee).

²⁰ See Tex. Att'y Gen. LO-94-45 (1994) (finding that investigator for district attorney may serve as school board trustee provided no compensation is received).

²¹ See *generally* Tex. Att'y Gen. LO-98-94 (1998) (adopting reasoning of Tex. Att'y Gen. LO-95-29 (1995) and concluding that offices of district judge and school board trustee are incompatible).

²² Tex. Water Code § 36.051(b); *see also* Tex. Att'y Gen. Op. No. JC-557 (2002) (concluding that offices of groundwater conservation district board director and school board trustee are incompatible due to overlapping geographical jurisdiction and power of taxation).

²³ See *Turner v. Trinity Indep. Sch. Dist. Bd. of Trs.*, 700 S.W.2d 1 (Tex. App.—Houston [14th Dist.] 1983, no writ) (holding that justice of the peace may simultaneously serve as a school board trustee).

College Board Trustee and . . .	The Authority Says . . .
Juvenile Probation Officer	Both positions may be held. ²⁴
Mayor of Type A General-Law Municipality	Both offices may NOT be held; they are incompatible. ²⁵
Municipal Judge	Both offices may be held. ²⁶
Municipal Utility District Board	Both offices may NOT be held if the entities have taxing authority in overlapping geographical jurisdictions. ²⁷
Parks & Wildlife Commissioner	Both offices may be held. ²⁸
Police Chief	Both positions may be held. ²⁹
Principal of DAEP Cooperative	A principal of a DAEP cooperative MAY serve as a trustee of a member district. ³⁰
Private, Nonprofit Corporation	A trustee may serve on the board of a private, nonprofit corporation under Texas Local Government Code when the trustee receives no compensation or other remuneration from the corporation. Dual office principles do not apply to a private organization. ³¹

²⁴ See Tex. Att’y Gen. Op. No. GA-1083 (2014) (finding that simultaneous employment as a juvenile probation officer and service as a school board trustee are not incompatible and likely do not constitute a statutory conflict of interest).

²⁵ See generally Tex. Att’y Gen. Op. No. GA-808 (2010) (applying reasoning of *Thomas v. Abernathy County Line Indep. Sch. Dist.*, 290 S.W. 152 (Tex. Comm’n App. 1927) and concluding that mayor of type A general-law municipality may not serve as trustee of school board district in which the municipality is wholly located).

²⁶ Tex. Att’y Gen. Op. No. JC-216 (2000) (determining that college board trustee may simultaneously serve as municipal judge).

²⁷ Tex. Att’y Gen. Op. No. GA-32 (2003) (opining that offices of utility district director and college board trustee are incompatible due to overlapping geographical jurisdiction and power of taxation).

²⁸ See Tex. Att’y Gen. Op. No. CM-1146 (1972) (holding that commissioner of Texas Parks and Wildlife Commission may simultaneously serve as school board trustee).

²⁹ See Tex. Att’y Gen. Op. No. GA-393 (2006) (finding municipal chief of police is not prohibited from simultaneously serving as school board trustee).

³⁰ See Tex. Att’y Gen. Op. No. GA-738 (2009) (stating that principal of disciplinary alternative education program campus may simultaneously serve as trustee of school board that does not employ or supervise the principal).

³¹ Tex. Loc. Gov’t Code § 171.009. See also Tex. Att’y Gen. Op. No. GA-597 (2008) (finding that mayor and city council member may serve simultaneously on private, nonprofit water supply corporation only if they receive no compensation or other remuneration from water supply corporation).

College Board Trustee and . . .	The Authority Says . . .
Professor	A professor may NOT serve as a board member for the college by which the professor is employed; however, the professor MAY serve on the board of another college if the professor is otherwise qualified to hold that office. ³²
Sheriff	It depends on the circumstances. ³³
Special Utility District	It depends on the circumstances. ³⁴
State Employee	Both positions may be held. ³⁵
Staff Member of State Representative	Both positions may be held. ³⁶
State Agency Governing Body	Both offices may be held pursuant to Texas Government Code. ³⁷
State Board of Education	Both offices may NOT be held. ³⁸
Student	Both positions may be held as long as the student meets the eligibility requirements. ³⁹
Tax Assessor-Collector	It depends on the circumstances. ⁴⁰

³² See Tex. Att’y Gen. LA-114 (1975) (concluding that employment as teacher for school district and service as trustee of same district are incompatible); Tex. Att’y Gen. Op. No. DM-55 (1991) (concluding that simultaneous employment as teacher for school district and service as trustee of different school district is permissible).

³³ Compare Tex. Att’y Gen. Op. No. GA-328 (2005) (concluding that sheriff may not simultaneously serve as trustee of district located within an unincorporated area of the county in which the sheriff serves as primary enforcement official) with Tex. Att’y Gen. Op. No. KP-54 (2015) (concluding, under facts distinguishable from GA-328, that doctrine of incompatibility does not preclude simultaneous service as sheriff and school board trustee where the local police department and school resource officer perform the law enforcement duties with respect to the school district and potential for conflicting interests is remote).

³⁴ Tex. Att’y Gen. Op. No. 786 (2010) (concluding that offices of director of special utility district board and college board trustee are likely incompatible because of regulatory authority but unable to conclude they are incompatible as matter of law due to location of college facilities).

³⁵ Tex. Const. art. XVI, § 40(b).

³⁶ See Tex. Att’y Gen. Op. No. DM-55 (1991) (concluding that school board trustee may serve as part-time staff member of state representative).

³⁷ Tex. Gov’t Code § 574.005(b).

³⁸ Tex. Educ. Code § 7.103(a); Tex. Att’y Gen. Op. No. JM-203 (1984) (stating that office of college trustee is incompatible with office of State Board of Education member).

³⁹ See Tex. Att’y Gen. Op. Nos. JH-301 (1974) (affirming reasoning in JH-84 that student may legally qualify and serve as school board trustee of district in which the student attends as a student), JH-84 (1973) (concluding that qualified voter who is 18 years of age or older is not ineligible because of age to be elected school board trustee).

⁴⁰ See generally Tex. Att’y Gen. LO-92-4 (1992) (concluding that one person may not simultaneously hold the position of county tax assessor-collector and school board trustee if the school district contracts with the county to assess and collect its taxes). *But see State v. Martin*, 51 S.W.2d 815 (Tex. App.—San Antonio 1932, no writ) (holding that office of city tax assessor was not incompatible with school board trustee).

College Board Trustee and . . .	The Authority Says . . .
Texas Higher Education Coordinating Board	Both offices may NOT be held; they are incompatible. ⁴¹
Texas Legislature	A college board trustee can run for the Texas Legislature. ⁴² If elected, however, the trustee automatically resigns upon qualification for the legislative office. ⁴³
Umpire at College Game	Both positions may be held. ⁴⁴
U.S. Congressman	Both offices may NOT be held pursuant to the Texas Constitution. ⁴⁵
Volunteer Professor	It depends on the circumstances. ⁴⁶
Water Improvement District Board	Both offices may NOT be held if the entities have taxing authority in overlapping geographical jurisdictions. ⁴⁷

⁴¹ Tex. Att’y Gen. Op. No. JM-97 (1983) (concluding that offices of college board trustee and member of Texas Higher Education Coordinating Board are incompatible because a college board trustee is subordinate to the Coordinating Board); *see also* Tex. Educ. Code § 61.0222(b) (providing person who participates in management of an organization regulated by the Coordinating Board is not eligible for appointment as member of the board).

⁴² *See In re Carlisle*, 209 S.W.3d 93 (Tex. 2006) (holding that school board trustee who received reimbursement for reasonable expenses was not a lucrative office for purposes of Tex. Const. art. III, § 19, which makes persons holding a lucrative office ineligible to run for the legislature).

⁴³ Tex. Const. art. XVI, § 40(d). *See also* Tex. Att’y Gen. Op. Nos. GA-421 (observing that city council member would automatically resign his council seat upon qualifying for the legislature), JC-464 (2002) (finding that the term *office* in article XVI, § 40(d) applies to any office, paid or unpaid, and construing subsection (d) to “prohibit a legislator from holding any other state or federal office, even if the office is not paid.”). School district employees also may not serve in the legislature. *See* Tex. Att’y Gen. Op. Nos. GA-386 (2005) (article XVI, § 40 prohibits member of the legislature from holding a “position of profit under the State”; a “position of profit” is salaried, nontemporary employment; an employee of a political subdivision holds a “position of profit under the State”), KP-227 (2019) (confirming and clarifying Tex. Att’y Gen. Op. No. GA-386). *But see* LO-93-31 (1993) (article XVI, § 40 does not extend to independent contractor for school district).

⁴⁴ *See* Tex. Att’y Gen. Op. No. GA-127 (2003) (finding that school board had no power to appoint or supervise the umpire and the position is not an office for purposes of the conflicting loyalties doctrine; thus, the positions are not incompatible).

⁴⁵ Tex. Const. art. XVI, § 12 (prohibiting member of congress from holding or exercising any office of trust under this state).

⁴⁶ *See generally* Tex. Att’y Gen. Op. No. JC-371 (2001) (concluding that school board trustee is barred by the common-law doctrine of incompatibility from serving as part-time volunteer teacher in a regular academic classroom for a single semester). *But see* Tex. Att’y Gen. LO-98-36 (1998) (concluding that state university regent did not violate common-law incompatibility by serving as unpaid volunteer coach for section of the football team).

⁴⁷ *See* Tex. Att’y Gen. Op. No. GA-224 (2004) (opining that offices of water improvement district board member and school district trustee are incompatible due to overlapping geographical jurisdiction and power of taxation).

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