Dual Office Holding Issues for School Board Trustees

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Questions often arise as to whether school board candidates or trustees may run for or hold another public office while running for or serving on the school board. The answer is rarely a simple yes or no. In some cases, the Texas Constitution, a statute, the attorney general, or a court has specifically considered whether it is permissible for one person to 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 article addresses some of the situations that school board trustees may face when trying to hold more than one public office or position simultaneously.

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

The first issue that a potential candidate must address is whether the Texas Constitution requires resignation from a current public office in order 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
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 longer term of office than two years. See Tex. Att’y Gen. Op. No. JC-0403 (2001) (concluding that a 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-0217 (2004).

The office of school board trustee is not subject to the resign to run provision. Thus, under the Texas Constitution, a school board trustee is not required to resign to run for another public office. Because school board trustee is an office of trust under Texas law, however, a person holding a specified office with more than a year and 30 days remaining in the person’s term automatically resigns that office upon becoming a candidate for school board trustee. Ramirez v. Flores, 505 S.W.2d 406 (Tex. Civ. App.—San Antonio 1973, writ ref’d n.r.e.). 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-0403 (2001), JC-0318 (2000), DM-0377 (1996); Tex. Const. art. XVI, § 17.

In addition to the Texas Constitution, state law may affect whether a current school board trustee may run for a specific office while continuing to serve on the school 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. According to the attorney general, this means 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-0165 (1957).

If the resign to run provision or another statute does not apply, a person may run for a second public office while continuing to hold the first. See Tex. Att’y Gen. Op. No. KP-0014 (2015) (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.

**When may a candidate legally accept a second office?**

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.”

- **School 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-0032 (2003), JC-0490 (2002). Because Texas Education Code section 11.061(d) mandates that school board trustees serve without compensation, the constitutional prohibition does not apply to the office of school board trustee and would not bar a school board trustee from holding another elected office.

- **School District Employees:** The Texas Constitution also gives guidance to school employees seeking public office with another governmental body, such as 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 schoolteacher, retired schoolteacher, or retired school administrator may receive compensation for serving as a member of a governing body of a school district, city, town, or local governmental district, including a water district . . . .

  Tex. Const. art. XVI, § 40(b).


- **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-95-029 (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

- **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-95-029 (1995). The key aspect of self-employment incompatibility is supervision. Tex. Att’y Gen. Op. No. GA-0536 (2007). The best example of this in a school district would be a person serving as both a teacher and a school board trustee in the same district. *See* Tex. Att’y Gen. Op. No. JC-0371 (2001) (concluding that a school district trustee is barred by self-employment incompatibility from serving as a teacher in the same district, even if unpaid). *But see* Tex. Att’y Gen. Op. No. DM-0055 (1991) (concluding that a teacher may teach in one district and serve on the board of another if the teacher is otherwise qualified to serve on the board).


What does the attorney general say?

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.

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. No. KP-0125 (2017) (offices of public library trustee and city council member); Tex. Att’y Gen. Op. No. GA-0224 (2004) (offices of school board trustee and water improvement district board member); Tex. Att’y Gen. LO-92-004 (1992) (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-92-004 (1992) (concluding that a 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).

- 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-0119 (2016) (concluding that appointed community college 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-98-094 (1998) (concluding that district judge could not serve as trustee for school district within the jurisdiction of the judge’s court).


When faced with a dual office holding question, a prospective candidate or board member should consult his or her personal attorney or TASB Legal Services at 800.580.5345.
## Authorities on Holding the Office of School Board Trustee and Another Position

<table>
<thead>
<tr>
<th>School Board Trustee and . . .</th>
<th>The Authority Says . . .</th>
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<tr>
<td>Appraisal District Board of Directors</td>
<td>Both offices may be held pursuant to Texas Tax Code.¹</td>
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<tr>
<td>Appraisal District Review Board</td>
<td>Both offices may NOT be held pursuant to Texas Tax Code.²</td>
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<tr>
<td>Appraisal District Employee</td>
<td>Both positions may NOT be held pursuant to Texas Tax Code.³</td>
</tr>
<tr>
<td>Assistant District Attorney</td>
<td>Both positions may be held.⁴</td>
</tr>
<tr>
<td>City Alderman or Council Member</td>
<td>Both offices may NOT be held; they are incompatible.⁵</td>
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<tr>
<td>City Manager</td>
<td>Both positions may be held when city manager is not an officer.⁶</td>
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<tr>
<td>City Planning and Zoning Commission</td>
<td>Both offices may NOT be held; they are incompatible.⁷</td>
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<tr>
<td>Constable</td>
<td>Both offices may be held, but the resign to run provision will apply if the constable announces candidacy for school board trustee when the unexpired term as constable exceeds a year and 30 days; the person will automatically resign the office of constable.⁸</td>
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¹ Tex. Tax Code § 6.03(a).
² Tex. Tax Code § 6.412
³ Tex. Tax Code § 6.054 (a school district employee also may not be employed by an appraisal district).
⁷ See Tex. Att’y Gen. Op. No. KP-0114 (2016) (concluding that the offices 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).
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<tr>
<td>County Attorney</td>
<td>Both offices may NOT be held; they are incompatible.(^9)</td>
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<tr>
<td>County Clerk</td>
<td>Both offices may be held, but the resign to run provision will apply if the county clerk announces candidacy for school 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.(^10)</td>
</tr>
<tr>
<td>County Commissioner</td>
<td>Both offices may NOT be held; they are incompatible.(^11)</td>
</tr>
<tr>
<td>County Court at Law Judge</td>
<td>Both offices may NOT be held; they are incompatible.(^12)</td>
</tr>
<tr>
<td>County Hospital District Board</td>
<td>Both offices may NOT be held if the entities have taxing authority in overlapping geographical jurisdictions.(^13)</td>
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<tr>
<td>County Improvement District Board</td>
<td>Both offices may NOT be held; they are incompatible.(^14)</td>
</tr>
<tr>
<td>County Judge</td>
<td>Both offices may NOT be held; they are incompatible.(^15)</td>
</tr>
<tr>
<td>County or Precinct Chair of Political Party</td>
<td>Both offices may be held pursuant to Texas Election Code.(^16)</td>
</tr>
<tr>
<td>County Treasurer</td>
<td>Both offices may be held, but the resign to run provision will apply if the county treasurer announces candidacy for school 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.(^17)</td>
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\(^9\) See Tex. Att’y Gen. LO-95-029 (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 a member of the school board).


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<th><strong>School Board Trustee and . . .</strong></th>
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<tr>
<td>District Attorney’s Investigator</td>
<td>Both positions may be held.(^{18})</td>
</tr>
<tr>
<td>District Judge</td>
<td>Both offices may NOT be held; they are incompatible.(^{19})</td>
</tr>
<tr>
<td>Groundwater Conservation District Board</td>
<td>Both offices may NOT be held; they are incompatible.(^{20})</td>
</tr>
<tr>
<td>Justice of the Peace</td>
<td>Both offices may be held, but the resign to run provision will apply if the justice of the peace announces candidacy for school 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.(^{21})</td>
</tr>
<tr>
<td>Juvenile Probation Officer</td>
<td>Both positions may be held.(^{22})</td>
</tr>
<tr>
<td>Mayor of type A general-law municipality</td>
<td>Both offices may NOT be held; they are incompatible.(^{23})</td>
</tr>
<tr>
<td>Municipal Judge</td>
<td>Both offices may be held.(^{24})</td>
</tr>
<tr>
<td>Municipal Utility District Board</td>
<td>Both offices may NOT be held if the entities have taxing authority in overlapping geographical jurisdictions.(^{25})</td>
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<tr>
<td>Parks &amp; Wildlife Commissioner</td>
<td>Both offices may be held.(^{26})</td>
</tr>
<tr>
<td>Police Chief</td>
<td>Both positions may be held.(^{27})</td>
</tr>
<tr>
<td>Principal of DAEP Cooperative</td>
<td>A principal of a DAEP cooperative MAY serve as a trustee at a member district when that member district does not have authority to employ or supervise the principal.(^{28})</td>
</tr>
</tbody>
</table>


\(^{22}\) See Tex. Att’y Gen. Op. No. GA-1083 (2014) (finding that the board had no power to appoint or supervise the juvenile probation officer, and the position is not an office for purposes of the conflicting loyalties doctrine).


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| 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.  
| Regional ESC Board of Directors | Both offices may NOT be held pursuant to Texas Administrative Code.  
| School 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.  
31 Compare Tex. Att’y Gen. Op. No. GA-0328 (2005) (concluding sheriff may not simultaneously serve as trustee of a district located within an unincorporated area of the county in which the sheriff serves as the primary enforcement official) with Tex. Att’y Gen. Op. No. KP-0054 (2015) (concluding, under facts distinguishable from GA-328, that the doctrine of incompatibility does not preclude simultaneous service as a 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 the potential for conflicting interests is remote). |
| Sheriff | It depends on the circumstances.  
32 Tex. Const. art. XVI, § 40(b). |
| State Employee | Both positions may be held.  
| Staff Member of State Representative | Both positions may be held.  
34 Tex. Gov’t Code § 574.005(b). |
| State Agency Governing Body | Both offices may be held pursuant to Texas Government Code.  
| State Board of Education | Both offices may NOT be held pursuant to Texas Education Code.  
| Student | Both positions may be held as long as the student meets the eligibility requirements.  
37 See generally Tex. Att’y Gen. LO-92-004 (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 |
| Tax Assessor-Collector | It depends on the circumstances.  
38 See generally Tex. Att’y Gen. LO-92-004 (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 |
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| Teacher                       | A teacher may NOT serve as a board member in the district in which the teacher is employed; however, the teacher MAY serve on the board of another district if the teacher is otherwise qualified to hold that office.  
  \[^{39}\] |
| Texas Legislature             | A school board trustee can run for the Texas Legislature.  
  \[^{40}\] If elected, however, the trustee automatically resigns upon qualification for the legislative office.  
  \[^{41}\] |
| Umpire at School District game | Both positions may be held.  
  \[^{42}\] |
| U.S. Congressman              | Both offices may NOT be held pursuant to the Texas Constitution.  
  \[^{43}\] |
| Volunteer Teacher             | It depends on the circumstances.  
  \[^{44}\] |
| Water Improvement District Board | Both offices may NOT be held if the entities have taxing authority in overlapping geographical jurisdictions.  
  \[^{45}\] |


\[^{40}\] See In re Carlisle, 209 S.W.3d 93 (Tex. 2006) (holding that a 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).


\[^{42}\] See Tex. Att’y Gen. Op. No. GA-0127 (2003) (finding that the 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).

\[^{43}\] Tex. Const. art. XVI, § 12.


This document is continually updated, and references to online resources are hyperlinked, at tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Governance/documents/dual-office-holding-issues-for-sch-bd-trustees.pdf. For more information on this and other school law topics, visit TASB School Law eSource at schoollawesource.tasb.org.

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