Dual Office Holding Issues for School Board Trustees

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As the candidate filing deadline for an election approaches, questions arise as to whether school board candidates may hold another public office while serving on the school board. Unfortunately, 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 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 state, county, and local 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.”¹ The provision applies to the offices listed below:²

- Assessors and Collectors of Taxes
- 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

¹ Tex. Const. art. XVI, § 65(b).
² Tex. Const. art. XVI, § 65(a).
A school board trustee is not one of the specified public officers to whom this law applies. Thus, under the Texas Constitution, a school board trustee is not required to resign to run for another public office; however, because school board trustee is an office of trust under Texas law, 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.³

In addition to the Texas Constitution, state law may affect whether a current school board member 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.⁴

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. If elected, however, the question arises as to whether the person may legally accept the second office.

**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.⁵ An emolument includes any amount received in excess of actual expenses.⁶ 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.

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• **School District Employees:** Texas Constitution, article XVI, section 40(b) 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 . . . .

In the attorney general’s opinion, whether a person is a “schoolteacher” for purposes of this provision depends on whether the person directly instructs students in required curriculum.  

**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. This doctrine “is premised upon the desire to protect the integrity of state and local governments by promoting impartial service by local officials.” 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. 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.” In other words, one cannot hold two separate positions in which one is subordinate and accountable to the other.

- **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

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The key aspect of self-employment incompatibility is supervision. 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.

- **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. “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.” In other words, this doctrine “prohibits an individual from simultaneously holding two positions that would prevent him . . . from exercising independent and disinterested judgment in either or both positions.”

Conflicting loyalties incompatibility applies only in situations involving two offices and not an office and an employment. In addressing whether a school trustee could serve as an umpire at district baseball games, the attorney general stated that the determining factor that distinguishes a public officer from an employee is whether the person can exercise any sovereign function of the government for the benefit of the public, independent of the control of others.

**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.

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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.

- Two offices are likely incompatible if a contract exists between the two governing bodies.

- Two offices are likely incompatible if one entity can exert authority contrary to the interests of the other.

- Two offices are likely incompatible when one governmental body has the authority to impose its will on the other.

If two offices are incompatible, a person automatically resigns from the first office upon qualifying for and accepting the second. The person does not hold over in the first office under the constitutional holdover doctrine.

When faced with a dual office holding question, a prospective candidate should consult his or her personal attorney or TASB Legal Services at 800.580.5345.

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24 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).


### Authorities on Holding the Office of School Board Trustee and Another Position

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29 Tex. Tax Code § 6.03(a).
30 See Tex. Att’y Gen. LO-92-074 (1992) (finding that the decisions of the appraisal district review board affect the appraised value of property on which each taxing unit imposes ad valorem taxes; thus, the offices are incompatible if the boundaries of each district overlap.) This reasoning would apply equally to a school board trustee if the district’s boundaries overlap those of the appraisal district review board.


33 Tex. Att’y Gen. Op. No. KP-114 (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.)

34 See Tex. Att’y Gen. Op. No. JM-519 (1986)(concluding that the offices are not incompatible, but the resign to run provision will apply if the constable announces his or her candidacy for the office of school trustee when the unexpired term as constable exceeds one year; and he or she will automatically resign the office of constable).

35 See Tex. Att’y Gen. LO-95-029 (1995) (concluding that “because the county attorney is constitutionally and statutorily vested with the authority to investigate matters and institute proceedings regarding the possible criminal conduct of school district officers, he is thus precluded from participating or serving as both county attorney and a member of the school board of trustees.”).

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\(^{42}\) Tex. Elec. Code § 161.005; see Tex. Att’y Gen. Op. No. JC-537 (2002) (holding that a school board trustee does not hold an “office of the state government,” and, therefore, is not prohibited from being a candidate for or serving as county or precinct party chair).


\(^{48}\) 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; thus, the positions are not incompatible).
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55 Tex. Loc. Gov’t Code § 171.009; see 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).


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\(^{58}\) Compare Tex. Att’y Gen. Op. No. GA-328 (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-54 (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).


\(^{60}\) Tex. Gov’t Code § 574.005(b).


\(^{62}\) 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 county to assess and collect its taxes). But see State ex rel. Brennan v. Martin, 51 S.W.2d 815 (Tex. Civ. App.—San Antonio 1932, no writ) (holding that the office of city tax assessor was not incompatible with school trustee).


\(^{64}\) 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).

\(^{65}\) Tex. Const. art. XVI, § 40(d); see Tex. Att’y Gen. Op. No. GA-421 (observing that a city council member would automatically resign his council seat upon qualifying for the legislature); see also Tex. Att’y Gen. Op. No. 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.”).

\(^{66}\) See Tex. Att’y Gen. Op. No. GA-127 (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).
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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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67 Tex. Const. art. XVI, § 12.