

## Dual Office Holding Issues for School Board Trustees

Published online in [TASB School Law eSource](#)

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. In some cases, the Texas Constitution, a statute, an attorney general's opinion, or a court case specifically addresses whether one person may run for or hold two public offices at the same time. In other instances, 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.

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

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 announce candidacy or become a candidate for any "office of profit or trust." Tex. Const. art. 16, § 65. See Tex. Att'y Gen. Op. No. KP-0351 (2021) (concluding that an announcement of candidacy must be made in public and be clear and unequivocal). 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
- Tax Assessors and Collectors
- Justices of the Peace
- Public Weighers

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 longer than 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, 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. 16, § 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 relinquishing the first.

## 2. 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 16, section 40(a), states, "No person shall hold or exercise at the same time, more than one civil office of emolument."

- **School Board Trustee:** 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 bar a trustee from holding another elected office.
- **School District Employee:** 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. 16, § 40(b).

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. Tex. Att’y Gen. Op. Nos. KP-0211 (2018), GA-0530 (2007). If a school district employee does not qualify as a “schoolteacher,” the person may not receive compensation for serving in public office. See Tex. Att’y Gen. Op. No. KP-0211 (2018) (considering whether three school district employees—counselor, assistant principal, and special education coordinator—could receive compensation for city council service).<sup>1</sup>

**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. JM-0129 (1984). 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-95-029 (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-95-029 (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 appoint.” *Ehlinger v. Clark*, 8 S.W.2d 666, 674 (Tex. 1928). See also Tex. Att’y Gen. Op. No. JM-0934 (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-95-029 (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-0934 (1988), C-0452 (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-95-029 (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). Whether supervision exists may also depend on the specific duties assigned in connection with the employment. See Tex. Att’y Gen. Op. No. KP-0447 (2023) (concluding self-employment

<sup>1</sup> For more information on school employees holding elected county offices, see *County of Maverick v. Ruiz*, 897 S.W.2d 843, 847 (Tex. App.—San Antonio 1995, no writ) (concluding that “other local governmental districts” does not include a county) (cited in Tex. Att’y Gen. Op. Nos. GA-1026 (2013), JC-0074 (1999)).

incompatibility does not generally bar a constable from serving as a school resource officer so long as the assigned duties do not create a supervisory relationship).

- **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-95-029 (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-0054, 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-0119, at 2 (2016) (quoting Tex. Att’y Gen. Op. No. GA-0169 (2004)).

Conflicting loyalties incompatibility applies only in situations involving two offices and not an office and an employment. Tex. Att’y Gen. Op. No. GA-0536 (2007). In addressing whether a school board 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. Tex. Att’y Gen. Op. No. GA-0127 (2003); *see also* Tex. Att’y Gen. Op. No. KP-0032 (2015) (concluding that incompatibility did not bar a school district police chief from serving as constable in the precinct where the school district was located); Tex. Att’y Gen. Op. No. GA-0688 (2009) (concluding that incompatibility did not bar school district police chief from serving on city council for a city in the district).

### 3. 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. JS-0006 (2023) (offices of school board trustee and irrigation board member); 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).

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, 1006 (Tex. Comm’n App. 1935, judgment adopted); *Thomas v. Abernathy County Line Indep. Sch. Dist.*, 290 S.W.152 (Tex. Comm’n App. 1927, judgment adopted); Tex. Att’y Gen. Op. No. JM-0634 (1987); Tex. Att’y Gen. LO-92-004 (1992). The person does not hold over in the first office under the constitutional holdover doctrine. Tex. Att’y Gen. Op. No. KP-0125 (2017) (citing Tex. Att’y Gen. Op. No. GA-0015 (2003); Tex. Const. art. 16, § 17).

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

School Board Trustee and . . .	The Authority Says . . .
Appraisal District Board of Directors	Both offices may be held pursuant to Texas Tax Code. <sup>2</sup>
Appraisal Review Board	Both offices may NOT be held pursuant to Texas Tax Code. <sup>3</sup>
Appraisal District Employee	Both positions may NOT be held pursuant to Texas Tax Code. <sup>4</sup>
Assistant District Attorney	Both positions may be held. <sup>5</sup>
City Alderman or Council Member	Both offices may NOT be held; they are incompatible. <sup>6</sup>
City Manager	Both positions may be held when city manager is not an officer. <sup>7</sup>
City Planning and Zoning Commission	Both offices may NOT be held; they are incompatible. <sup>8</sup>
Constable	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. <sup>9</sup>

<sup>2</sup> Tex. Tax Code § 6.03(a).

<sup>3</sup> Tex. Tax Code § 6.412.

<sup>4</sup> Tex. Tax Code § 6.054 (a school district employee also may not be employed by an appraisal district). See Tex. Att’y Gen. Op. No. KP-0329 (2020) (concluding that the position of school board trustee is an office within the scope of section 6.054).

<sup>5</sup> Tex. Att’y Gen. LO-89-082 (1989).

<sup>6</sup> *Thomas v. Abernathy County Line Indep. Sch. Dist.*, 290 S.W.152 (Tex. Comm’n App. 1927); Tex. Att’y Gen. Op. No. JM-0634 (1987); Tex. Att’y Gen. LO-93-022 (1993), LO-92-005 (1992), LO-90-052 (1990) (regarding trustees of a county-wide junior college district). *But see* Tex. Att’y Gen. LA-149 (1977) (finding office of junior college trustee is not incompatible with position on city council of city in junior college district where none of the junior college district’s property or activities were within the territorial jurisdiction of the city and there was no relationship between the city and the college).

<sup>7</sup> Tex. Att’y Gen. Op. No. GA-0766 (2010).

<sup>8</sup> 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).

<sup>9</sup> Tex. Att’y Gen. Op. No. JM-0519 (1986).

School Board Trustee and . . .	The Authority Says . . .
County Attorney	Both offices may NOT be held; they are incompatible. <sup>10</sup>
County Clerk	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. <sup>11</sup>
County Commissioner	Both offices may NOT be held; they are incompatible. <sup>12</sup>
County Court at Law Judge	Both offices may NOT be held; they are incompatible. <sup>13</sup>
County Hospital District Board	Both offices may NOT be held if the entities have taxing authority in overlapping geographical jurisdictions. <sup>14</sup>
County Improvement District Board	Both offices may NOT be held; they are incompatible. <sup>15</sup>
County Judge	Both offices may NOT be held; they are incompatible. <sup>16</sup>
County or Precinct Chair of Political Party	Both offices may be held pursuant to Texas Election Code. <sup>17</sup>

<sup>10</sup> 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).

<sup>11</sup> Tex. Att’y Gen. Op. No. GA-0468 (2006).

<sup>12</sup> See Tex. Att’y Gen. Op. Nos. KP-0119 (concluding that a community college trustee may not serve as a county commissioner); JM-0129 (1984) (confirming that a community college trustee may not serve as a county commissioner).

<sup>13</sup> Tex. Att’y Gen. Op. No. JM-0213 (1984); *see also* Tex. Att’y Gen. LO-98-094 (1998) (discussing the reasoning of JM-213).

<sup>14</sup> Tex. Att’y Gen. Op. No. KP-0023 (2015).

<sup>15</sup> Tex. Att’y Gen. Op. No. GA-0307 (2005).

<sup>16</sup> Tex. Att’y Gen. Op. No. KP-0228 (2019).

<sup>17</sup> Tex. Elec. Code § 161.005. *See* Tex. Att’y Gen. Op. No. JC-0537 (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).

School Board Trustee and . . .	The Authority Says . . .
County Treasurer	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. <sup>18</sup>
District Attorney's Investigator	Both positions may be held. <sup>19</sup>
District Judge	Both offices may NOT be held; they are incompatible. <sup>20</sup>
Groundwater Conservation District Board	Both offices may NOT be held; they are incompatible. <sup>21</sup>
Irrigation District Board	Both offices may NOT be held; they are incompatible. <sup>22</sup>
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 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. <sup>23</sup>
Juvenile Probation Officer	Both positions may be held. <sup>24</sup>
Mayor of type A general-law municipality	Both offices may NOT be held; they are incompatible. <sup>25</sup>
Municipal Judge	Both offices may be held. <sup>26</sup>
Municipal Utility District Board	Both offices may NOT be held if the entities have taxing authority in overlapping geographical jurisdictions. <sup>27</sup>

<sup>18</sup> Tex. Att'y Gen. Op. No. JC-0490 (2002).

<sup>19</sup> Tex. Att'y Gen. LO-94-045 (1994).

<sup>20</sup> See generally Tex. Att'y Gen. LO-98-094 (1998) (adopting the reasoning of Tex. Att'y Gen. LO-95-029 (1995) as to the incompatibility of the offices of county attorney and school board trustee).

<sup>21</sup> Tex. Water Code § 36.051(b); Tex. Att'y Gen. Op. No. JC-0557 (2002).

<sup>22</sup> Tex. Att'y Gen. Op. No. JS-0006 (2024).

<sup>23</sup> *Turner v. Trinity Indep. Sch. Dist. Bd. of Trs.*, 700 S.W.2d 1 (Tex. App.—Houston [14th Dist.] 1983, no writ).

<sup>24</sup> 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).

<sup>25</sup> See generally Tex. Att'y Gen. Op. No. GA-0808 (2010) (applying the reasoning of *Thomas v. Abernathy County Line Indep. Sch. Dist.*, 290 S.W. 152 (Tex. Comm'n App. 1927) to a mayor of a type A general-law municipality that is located wholly within the geographical boundaries of the school district).

<sup>26</sup> See generally Tex. Att'y Gen. Op. No. JC-0216 (2000) (involving a junior college trustee).

<sup>27</sup> See generally Tex. Att'y Gen. Op. No. GA-0032 (2003) (involving a junior college trustee).

School Board Trustee and . . .	The Authority Says . . .
Parks & Wildlife Commissioner	Both offices may be held. <sup>28</sup>
Police Chief	Both positions may be held. <sup>29</sup>
Principal of DAEP Cooperative	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. <sup>30</sup>
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. <sup>31</sup>
Regional ESC Board of Directors	Both offices may NOT be held pursuant to Texas Administrative Code. <sup>32</sup>
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. <sup>33</sup>
Sheriff	It depends on the circumstances. <sup>34</sup>
State Employee	Both positions may be held. <sup>35</sup>
Staff Member of State Representative	Both positions may be held. <sup>36</sup>
State Agency Governing Body	Both offices may be held pursuant to Texas Government Code. <sup>37</sup>
State Board of Education	Both offices may NOT be held pursuant to Texas Education Code. <sup>38</sup>

<sup>28</sup> Tex. Att’y Gen. Op. No. CM-1146 (1972).

<sup>29</sup> See Tex. Att’y Gen. Op. No. GA-0393 (2006) (finding municipal chief of police to be an employee of the city; thus, no incompatibility existed).

<sup>30</sup> Tex. Att’y Gen. Op. No. GA-0738 (2009).

<sup>31</sup> Tex. Loc. Gov’t Code § 171.009. See Tex. Att’y Gen. Op. No. GA-0597 (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).

<sup>32</sup> 19 Tex. Admin. Code § 53.1001(b)(1).

<sup>33</sup> Tex. Att’y Gen. Op. No. GA-0377 (2005).

<sup>34</sup> 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).

<sup>35</sup> Tex. Const. art. 16, § 40(b).

<sup>36</sup> Tex. Att’y Gen. Op. No. DM-0055 (1991).

<sup>37</sup> Tex. Gov’t Code § 574.005(b).

<sup>38</sup> Tex. Educ. Code § 7.103(a).

School Board Trustee and . . .	The Authority Says . . .
Student	Both positions may be held as long as the student meets the eligibility requirements. <sup>39</sup>
Tax Assessor-Collector	It depends on the circumstances. <sup>40</sup>
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. <sup>41</sup>
Texas Legislature	A school board trustee can run for the Texas Legislature. <sup>42</sup> If elected, however, the trustee automatically resigns upon qualification for the legislative office. <sup>43</sup>
Umpire at School District game	Both positions may be held. <sup>44</sup>
U.S. Congressman	Both offices may NOT be held pursuant to the Texas Constitution. <sup>45</sup>
Volunteer Teacher	It depends on the circumstances. <sup>46</sup>
Water Improvement District Board	Both offices may NOT be held if the entities have taxing authority in overlapping geographical jurisdictions. <sup>47</sup>

<sup>39</sup> Tex. Att’y Gen. Op. Nos. JH-0084 (1973), JH-0301 (1974).

<sup>40</sup> 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 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 board trustee).

<sup>41</sup> Tex. Att’y Gen. LA-114 (1975) (same district); Tex. Att’y Gen. Op. No. DM-0055 (1991) (different districts).

<sup>42</sup> 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).

<sup>43</sup> Tex. Const. art. 16, § 40(d). See Tex. Att’y Gen. Op. No. GA-0421 (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-0464 (2002) (finding that the term *office* in article 16, § 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. No. GA-0386 (2005) (article 16, § 40 prohibits a 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 16, § 40 does not extend to an independent contractor for a school district).

<sup>44</sup> 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).

<sup>45</sup> Tex. Const. art. 16, § 12.

<sup>46</sup> See *generally* Tex. Att’y Gen. Op. No. JC-0371 (2001) (concluding that a trustee is barred by the common-law doctrine of incompatibility from serving as a part-time volunteer teacher in a regular academic classroom for a single semester). *But see* Tex. Att’y Gen. LO-98-036 (1998) (concluding that a regent did not violate common-law incompatibility by serving as a volunteer coach for a section of the football team).

<sup>47</sup> Tex. Att’y Gen. Op. No. GA-0224 (2004).

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*Originally published December 2017. Updated August 2024.*