

# THE ATTORNEY GENERAL

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## Opinions

### Opinion No. KP-0462

The Honorable Franklin McDonough

31st Judicial District Attorney

Post Office Box 1592

Pampa, Texas 79066

Re: Whether a constable may simultaneously serve as a municipal court judge (RQ-0517-KP)

### SUMMARY

Texas Constitution, article XVI, section 40, prohibits one person from holding more than one office of emolument at the same time. An individual may not simultaneously serve as a compensated municipal judge and a constable.

While it is for the State Commission on Judicial Conduct to discipline judges, certain canons of the State Code of Judicial Conduct likely prevent a municipal judge from simultaneously holding a position as a law enforcement officer. In particular, the State Commission on Judicial Conduct has issued a public statement condemning the practice of a judicial officer concurrently serving as a law enforcement officer due to separation-of-powers concerns.

The common-law doctrine of incompatibility prohibits the simultaneous holding of two offices with conflicting loyalties. As a peace officer,

the constable's duties could require the constable to appear before the municipal judge as magistrate, rendering the two positions incompatible. Moreover, such concurrent service implicates the concerns raised by the State Commission on Judicial Conduct. Accordingly, a court would likely conclude that a municipal judge may not simultaneously serve as a constable.

Under either article XVI, section 40, or common-law incompatibility, acceptance of a second office incompatible with the first office results in effective resignation from the first office. Thus, when the individual at issue accepted the incompatible office of municipal judge he effectively resigned from the office of constable.

A municipal judge is not required to comply with the provision in Canon 5(3) of the State Code of Judicial Conduct calling for a judge to resign from judicial office before becoming a candidate in a contested election for a non-judicial office.

*For further information, please access the website at [www.texasattorneygeneral.gov](http://www.texasattorneygeneral.gov) or call the Opinion Committee at (512) 463-2110.*

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