

THE ATTORNEY GENERAL

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An index to the full text of these documents is available on the Attorney General's website at <https://www.texas.attorneygeneral.gov/attorney-general-opinions>. For information about pending requests for opinions, telephone (512) 463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: <https://www.texasattorneygeneral.gov/attorney-general-opinions>.)

Requests for Opinions

RQ-0585-KP

Requestor:

The Honorable B.D. Griffin
Montgomery County Attorney
501 North Thompson, Suite 300
Conroe, Texas 77301

Re: Interpretation and application of the Open Meetings Act to members of a home-rule city council (RQ-0585-KP)

Briefs requested by April 7, 2025

For further information, please access the website at www.texasattorneygeneral.gov or call the Opinion Committee at (512) 463-2110.

TRD-202500848
Justin Gordon
General Counsel
Office of the Attorney General
Filed: March 11, 2025



Opinions

Opinion No. KP-0485

The Honorable Donna Campbell, M.D.
Chair, Senate Committee on Nominations
Texas State Senate
Post Office Box 12068
Austin, Texas 78711-2068

Re: Relating to the rights of a mentally incapacitated person who is a ward of a guardianship to represent themselves in civil or criminal matters (RQ-0545-KP)

S U M M A R Y

A court with probate jurisdiction may establish a guardianship for an incapacitated person who is substantially unable to perform certain essential functions because of a mental condition. The court may appoint a guardian with either full or limited authority over the ward's person, the ward's estate, or the ward's person and estate. The court order appointing a guardian provides evidence of the scope of the guardian's

powers and duties. A ward retains all rights and powers not specifically granted to a guardian by the appointing court.

The Sixth Amendment to the United States Constitution provides criminal defendants a limited right to self-representation and its assertion requires waiver of the right to assistance of counsel. While a court with probate jurisdiction must determine whether a ward is mentally incapacitated, a ward seeking to proceed pro se may assert the right to self-representation in the trial court conducting criminal proceedings. The trial court then determines whether the ward is competent to conduct trial proceedings on his own behalf and whether waiver of the right to counsel is voluntary, knowing, and intelligent.

Guardians may be authorized by a court with probate jurisdiction to hire counsel to defend a ward in civil litigation because assertion of the right to defend oneself in that context does not require the waiver of other rights.

A court with probate jurisdiction may not authorize non-attorney guardians to proceed pro se on a ward's behalf. A non-attorney guardian that represents a ward in litigation could be found to have engaged in the unauthorized practice of law. An attorney that assists non-attorney guardians in performing an activity that constitutes the unauthorized practice of law violates the Texas Disciplinary Rules of Professional Conduct.

Opinion No. KP-0486

Ms. Laura Lee Brock, CPA
Clay County Auditor
214 North Main
Henrietta, Texas 76365

Re: Whether, using certain grant funds, a county's hiring of an administrative assistant to work in a dual role for the county judge and the prosecuting attorney constitutes a conflict of interest (RQ-0548-KP)

S U M M A R Y

Neither the dual-officeholding prohibition in Article XVI, subsection 40(a) of the Texas Constitution nor the common-law incompatibility doctrine prohibits one person from working in a "dual role" as an administrative assistant for a county judge and a prosecuting attorney.

The question whether the dual employment results in a violation of the Disciplinary Rules of Professional Conduct for attorneys, the Code of Judicial Conduct for judges, Due Process, or a local policy or regulation requires the resolution of fact questions, which is beyond the scope of an Attorney General opinion.

Opinion No. KP-0487

The Honorable Sean B. Galloway

Andrews County Attorney

121 N.W. Avenue A

Andrews, Texas 79714

Re: Whether a county commissioner may simultaneously serve as chief of the local fire department (RQ-0551-KP)

S U M M A R Y

Article XVI, subsection 40(a) of the Texas Constitution does not bar a person from simultaneously serving as a county commissioner and a fire chief of a volunteer fire department in the same county. A court would likely conclude the common-law doctrine of incompatibility also does not bar such dual service.

Opinion No. KP-0488

The Honorable Bob Hall

Chair, Senate Committee on Administration

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether a vote by the board of a school district or governing body of an open-enrollment charter school affirming the existing policy to

permit a chaplain to be hired by or volunteer at a school complies with the Eighty-eighth Legislature's Senate Bill 763 (RQ-0553-KP)

S U M M A R Y

Section 3 of Senate Bill 763, enacted by the Eighty-eighth Legislature, directs the board of trustees of a school district and governing body of an open-enrollment charter school to vote on whether to authorize employee or volunteer chaplains. The term "chaplain" refers to the official, substantive title for a particular position with a school district or open-enrollment charter school. The support, services, and programs authorized must be related to the individual's role as a school chaplain.

Ultimately, a school board or charter governing body does not comply with Section 3 by voting on whether to authorize hiring certain individuals for "any position" or "any open position" but does comply by voting on whether to authorize hiring "for a school chaplain position."

For further information, please access the website at www.texasattorneygeneral.gov or call the Opinion Committee at (512) 463-2110.

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