



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

June 16, 1988

Honorable David H. Cain
Chairman
Committee on Transportation
Texas House of Representatives
P. O. Box 2910
Austin, Texas 78769

LO-88-72

Dear Representative Cain:

You ask whether a member of the Texas House of Representatives may be employed as president of Gray Line, a sightseeing operation owned by a mass transit authority. As we understand, VIA, a metropolitan rapid transit authority operating in San Antonio, Texas, owns Gray Line. You indicate that VIA was created pursuant to article 1118x, V.T.C.S., and is eligible for state funds under article 6663(c), V.T.C.S. You also indicate that the authority has not received any state funds since 1983.

Pursuant to article 1118x, VIA is managed, controlled, and operated by a board appointed by the governing body of the city of San Antonio. The board, through its general manager, hires all employees necessary to operate the authority.

~~Although you do not ask about any specific provision,~~ we believe your question is answered by article XVI, section 40, of the Texas Constitution. Article XVI, section 40 provides, in relevant part:

No member of the Legislature of this State may hold any other office or position of profit under this State, or the United States, except as a notary public if qualified by law.
(Emphasis added.)

Tex. Const. art. XVI, § 40. The emphasized language has been held to prevent a legislator from receiving compensation as an employee of a state supported junior college, Letter Advisory No. 4 (1973) or a state university, Letter Advisory No. 153 (1978). In Attorney General Opinion C-221

(1964), this office concluded that the position of an employee of the Sabine River Authority was a "one of honor, trust or profit" under the state of Texas. The Sabine River Authority was viewed as "a governmental agency of the State of Texas, a body politic and corporate." Therefore, an employee of the authority was an employee of an agency of the state.

Section 6 of article 1118x establishes the authority of an entity created under that article. Subsection (a) of that section provides:

The authority, when created and confirmed, shall constitute a public body corporate and politic, exercising public and essential governmental functions, having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Act

It is our opinion that an employee of a mass transit authority created pursuant to article 1118x, V.T.C.S., holds a position of profit under the state. Therefore, article XVI, section 40, of the Texas Constitution, quoted earlier, prohibits a member of the Texas House of Representatives from being employed by such authority.

It has been suggested that a legislator's employment as president of this sightseeing service does not constitute a position of profit. It is urged that the employment must be considered "temporary" because it is not for a fixed period. This argument seems to rely on opinions of this office which concluded that service as a juror and as a special commissioner in a condemnation proceeding are not positions of profit. Attorney General Opinions JM-847 (1988); V-371 (1947). We think that the employment contemplated in this instance is readily distinguishable from the single shot activities discussed in those earlier opinions. Unlike a juror or a special commissioner, a person employed as president of a sight seeing service may reasonably expect his employment to be for an extended period. Also, the compensation to be paid to an executive-level employee is likely to exceed greatly the amount received as fees for jury service or as payment to a commissioner in a single condemnation proceeding. In our opinion, the contemplated employment implies sufficient duration, stability, and compensation to constitute a position of profit. See generally Attorney General Opinion H-1304 (1978) and authorities cited therein.

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A member of the Texas House of Representatives may not be employed by a rapid mass transit authority created pursuant to article 1118x, V.T.C.S.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Karen C. Gladney".

Karen C. Gladney
Assistant Attorney General
Opinion Committee

KCG/er
ID# 3438
RQ-1437