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Floyd, Briscoe, Dickens and Motley Counties
110th Judicial District

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Opinion Committee

October 5, 1999

Ms. Elizabeth Robinson
Chair, Opinion Committee
Office of the Attorney General
Post Office Box 12548
Austin, Texas 78711-2548

RQ-0127-JC

FILE # ML-41015-99
I.E. 41051

Dear Ms. Robinson:

In accordance with your letter of September 27, 1999, (a copy of which is included for your reference), enclosed is a Brief that I have prepared which references the relevant state statute, a prior opinion, and my conclusions regarding my request for opinion mailed to you on September 17, 1999.

If you have any further questions, please let us hear from you.

Sincerely,

Becky McPherson

BMcP:pmo

Enclosure

BRIEF

Question Presented: Is the appointment made by the commissioners court void since an ineligible candidate was appointed? Can the person appointed be sworn in as county attorney when she meets her residency requirement without the commissioners court voting on the appointment again after she is an eligible candidate?

Applicable Statute: V.T.C.A. Election Code 141.001.

Prior Attorney General's Opinion: Letter Opinion No. 95-086

Conclusion: Based on the applicable statute and the prior Attorney General's opinion, it appears that the decision of the Motley County Commissioners Court is void, and because it is void - rather than voidable - then Tempie Hutton Angeley cannot be sworn in as Motley County Attorney upon meeting the six-months residency requirement. The matter would have to be placed on the agenda for commissioners court at that time and be voted on again by the commissioners court.