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January 7, 2004

Greg Abbott
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OPEN RECORDS DIVISION

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OPINION COMMITTEE

Re: Request for Opinion on Article 16, Section 65, Texas Constitution (automatic resignation from elected office)

FILE # ML-43422-04

I.D. # 43422

Dear General Abbott:

I am requesting an expedited opinion from your office regarding interpretation of Article 16, Section 65, of the Texas Constitution as to automatic resignation from elected office upon announcement of candidacy for another political office.

This is the situation: A justice of the peace whose term is to expire on December 31, 2004, conferred privately with a newspaper reporter on December 31, 2003, and affirmatively stated to the reporter his intention to announce his candidacy for a county commissioner position in the March primary. He was aware of the Constitutional provision and thought that since the announcement would not be officially public until January 1, the Constitutional provision would not apply. The newspaper story was printed the next day, January 1, and a copy is attached for your reference. I have confirmed with both the justice of the peace and the reporter that an affirmative intention to run was expressed.

Section 65 of Article 16, which includes justices of the peace as being affected by the provision, states in part:

(b) If any of the officers named herein shall announce their candidacy, or shall in fact become a candidate, in any General, Special or Primary Election, for any office of profit or trust under the laws of this State or the United States other than the office then held, at *any time* when the unexpired term of the office then held shall exceed one (1) year, such announcement or such candidacy shall constitute an automatic resignation of the office then held, and the vacancy thereby created shall be filled pursuant to law in the same manner as other vacancies for such office are filled. [Emphasis added]

There is little guidance in case law as to what constitutes an "announcement." One treatise states that while there is no definitive rule of what constitutes an announcement for another office under Section 65, "[p]resumably, any statement of definite intent would constitute an announcement without the need to formally become a candidate." Brooks, *County and Special District Law*, §7.18 (West 2002). Activity indicating an interest in an office that falls short of announcing a candidacy

or becoming a candidate in an election does not trigger Section 65. Op. Tex. Att’y Gen. LO-96-107. Any constitutional or statutory provision which restricts the right to hold office must be strictly construed against ineligibility. *Wentworth v. Meyer*, 839 S.W.2d 766, 767 (Tex. 1992). Another Attorney General opinion, relying on a dictionary definition of “announce,” held that remarks reported in a newspaper in which a county court-at-law judge stated affirmatively that he would be a candidate for a district judgeship constituted an announcement of candidacy or established that he had in fact become a candidate. Op. Tex. Att’y Gen. DM-377 (1996)

In a 1962 opinion, the Attorney General held that an automatic resignation occurred when a justice of the peace, whose term expired December 31, 1962, issued a press release on December 11, 1961, announcing that he would be a candidate for county court-at-law judge in a May 1962 election. Op. Tex. Att’y Gen. WW-1253 (1962). Other Attorney General opinions indicate that an officer announces his or her candidacy for office for purposes of Section 65 by making a written or oral statement “[if] a reasonable person may conclude from the statement that the individual intends, without qualification, to run for the office in question.” Op. Tex. Att’y Gen. JC-0249 (2000). A person has announced his candidacy for purposes of Section 65 when he states in a press release without qualification his intention to run for a particular office. *Id.* This opinion concluded, however, that an officer in fact becomes a candidate by the act of applying for a place on the ballot, relying on an interpretation of Section 141.031, Election Code, which on its face appears to contradict earlier opinions as to when a candidacy is announced. Also, this same opinion appears to make a distinction between seeking the nomination of a political party’s executive committee for a new position and becoming a candidate in a primary election. *Id.*

Because of the imminency of the March primary, it would be appreciated if an opinion on this requested issue could be expedited as to whether or not the justice of the peace in this case has triggered the resign-to-run mandate of Section 65. Should you require additional information, I will be pleased to comply.

Yours very truly,



Rick Miller
Bell County Attorney

Encl.

Cc: Eddie Lange
Justice of the Peace