



CAMERON COUNTY DISTRICT ATTORNEY

Armando R. Villalobos
County and District Attorney

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Civil Division

JUN 25 2007

OPINION COMMITTEE June 18, 2007

FILE # ML-45244-07
I.D. # 45244

CERTIFIED MAIL RETURN RECEIPT REQUESTED #7002 1000 0004 8984 8418

Honorable Gregg Abbott, Attorney General
Office of the Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

RQ-0594-GA

Re: Request for Attorney General Opinion about whether Article XI, Section 11 of the Texas Constitution supersedes the Harlingen City Charter regarding the filling of temporary vacancies on the City Commission.

Dear General Abbott:

An issue has arisen in the City of Harlingen regarding the filling of a vacancy on the Harlingen City Commission. Our question is: Does Article XI, Section 11 of the Texas Constitution supersede the Harlingen City Charter, regarding the filling temporary vacancies on the City Commission?

Facts

Chris Boswell was elected Mayor in the May 2007 election, and there was no clear majority winner for his successor in the Place #4 position on the City Commission. The City Commission has set June 23, 2007 as the date for the run-off election between the two individuals who received the largest number of votes.

Pending the run-off election, the City Commission sought to appoint an interim Commission member to assure a quorum and so that City business could continue without interruption. The City Attorney relied on Article IV, Section 4 of the Harlingen City Charter for the process to appoint a Commission member when a vacancy occurred. The City Attorney's opinion of this Charter provision allowed for the City Commission to appoint a qualified person to serve on the City Commission until the run-off election could be held. The City Commission, by majority vote, appointed Heriberto Medran, who had previously served on the City Commission in the Place #5 position and had not

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run for re-election. The successor to his prior position, Place #5, had been elected by a majority vote, and had already been sworn into office.

A citizen brought to the attention of the City Attorney that Article XI §11 of the Texas Constitution could possibly prohibit such action on the part of the City Commission in filling that temporary vacancy.

Relevant Law

The relevant provision of the City Charter is:

Section 4. Vacancies of Mayor or City Commissioners.

Vacancies in the office of Mayor or City Commissioner shall be filled for the remainder of the unexpired term by a majority of the qualified voters of the City at a special election duly called by ordinance. However, if such a vacancy occurs with ninety (90) days of the end of the term of the vacated office, the remaining City Commissioners, by a majority vote, shall appoint a qualified person to fill the unexpired term.

Article XI, Section 11 of the Texas Constitution reads as follows:

Section 11 – TERM OF OFFICE EXCEEDING TWO YEARS IN HOME RULE AND GENERAL LAW CITIES; VACANCIES

- (a) A Home Rule City may provide by charter or charter amendment, and a city, town or village operating under the general laws may provide by majority vote for the qualified voters voting at an election called for that purpose, for a longer term of office than two (2) years for its officers, either elective or appointive, or both, but not to exceed four (4) years; provided, however, that tenure under Civil Service shall not be affected hereby; **provided, however, that such officer, elective or appointive, are subject to Section 65(b), Article XVI, of the Constitution, providing for automatic resignation in certain circumstances, in the same manner as a county or district officer to which that section applies.**
- (b) A municipality so providing a term exceeding two (2) years but not exceeding four (4) years for any of its non-civil service officers must elect all of the members of its governing body by majority vote of the qualified voters in such municipality, and any vacancy or vacancies occurring on such governing body shall not be filled by appointment but must be filled by majority vote of the qualified voters at a special election called for such purpose within one hundred and twenty (120) days after such vacancy or vacancies occur. Texas Constitution Article XI, §11 [emphasis added].

The Legislature pursued these revisions through a Joint Resolution, No. 75, which included over thirty-two (32) sections of the Texas Constitution therein. This Constitutional provision was amended in November 2001, as part of the Legislature's attempt to reformat the Constitution by consolidating duplicative provisions and deleting

outdated language. It was intended to be non-substantive (Bill Analysis of the 77th Regular Session attached as Exhibit A).

Article XI, Section 11 applies the "resign-to-run" provision of the Texas Constitution to Texas municipalities. It provides that when a governing body official's term of office exceeds two years, and he announces that he is running for another position when he has more than one year left on his term, such announcement serves as an automatic resignation.

Prior to seeking your assistance, the legislative history of this Constitutional provision was researched and three Attorney General Opinions on point were found. Attached is the text of the proposed JHR No. 75 (redlined version) as Exhibit B, the Analyses of Proposed Constitutional Amendments prepared by the Texas Legislative Council in September 2001, as Exhibit C, and three Attorney General Opinions: JC-0318 (2000), JC-0403 (2001), and GA-0217 (2004), as Exhibit D.¹

The Texas Election Opinions issued by the Texas Secretary of State interpreting Article XI, §11 of the Texas Constitution were also researched. See MAM-01 (Exhibit E). That opinion states that a city council must call a special election within 120 days of the vacancy. Here, the Harlingen City Commission has already set a special election for this vacancy, which is June 23, 2007.

We have found nothing to suggest that this Constitutional provision addresses any other type of vacancies in municipal offices, other than in the "resign-to-run" situation. However, we request an Attorney General Opinion on the issue due to the dearth of guidance for Texas municipalities on this issue and the likelihood that this situation could arise in the future.

Sincerely,

Lewis R Haws
Assistant District and County Attorney

cc: Brendan Hall

¹ Two of the three Attorney General opinions pre-date the Constitutional amendment; however, as stated *supra*, the amendment was intended to be non-substantive.

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