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OPINION COMMITTEE



OFFICE OF THE GOVERNOR

RICK PERRY September 24, 2007  
GOVERNOR

The Honorable Greg Abbott  
Attorney General of Texas  
P.O. Box 12548  
Austin, Texas 78711-2548

FILE # ML-45368-07  
I.D. # 45368

**RQ-0629-GA**

RE: Attorney General Opinion Request

Dear General Abbott:

Senate Bill 1951 passed by the 80th Legislature and signed into law by Governor Perry created the 444th Judicial District Court and the 445th Judicial District Court in Cameron County. The effective date for the creation of the courts is September 1, 2007. Thus, as of September 1, a vacancy was created in both courts.

Relying on a rider in the Appropriations Act (Article IV-37, Section 4), the Cameron County Commissioners Court has taken the position that they have the ability to delay the creation and funding of the courts. Article IV, Section 12 of the Texas Constitution provides that "all vacancies in State or district offices, except members of the Legislature, shall be filled unless otherwise provided by law by appointment of the Governor." The Supreme Court of Texas previously reaffirmed that the Legislature is prohibited "from circumventing the Governor's appointment power by redefining the meaning of the constitutional term 'vacancy.'" See *The State of Texas ex rel. Angelini v. Hardberger* 932 S.W. 2d 489 (Tex. 1996).

Pursuant to Section 402.042 of the Texas Government Code, I am seeking an opinion from your office regarding the following questions:

- 1) As of the effective date of the statute, are the courts created such that the Governor can make an appointment to either or both courts?
- 2) If a vacancy does exist and a judge assumes the seat either by appointment or election are the courts required to be funded, and is the judge's salary required to be paid?

Thank you for your prompt attention to this matter. Do not hesitate to contact me should you need further information.

Sincerely,

A large, handwritten signature in black ink that reads "Rick Perry".  
Rick Perry  
Governor