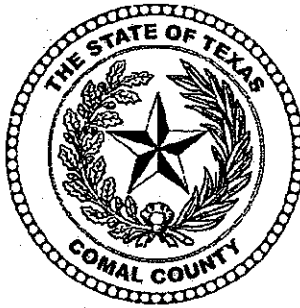


RECEIVED
OCT 26 2009
OPINION COMMITTEE



FILE # ML-46225-09
I.D. # 46225

GEOFFREY I. BARR
COMAL COUNTY CRIMINAL DISTRICT ATTORNEY
150 N. SEGUIN AVENUE, SUITE 307
NEW BRAUNFELS, TEXAS 78130
TELEPHONE 830/221-1300
FACSIMILE 830/608-2008

October 23, 2009

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

RQ-0836-GA

Re: Request for Opinion on whether the conduct of a county commissioner triggered the automatic resignation ("resign to run") provision contained in Article XVI, § 65 of the Texas Constitution

Dear Attorney General Abbott:

The Office of the Attorney General of Texas has established an extensive history of reviewing specific fact patterns and providing legal opinions regarding the "resign to run" issue. In light of this history and on behalf of the Honorable Danny Scheel, Comal County Judge, my office requests your legal opinion on whether the conduct and/or statements of the Honorable Greg Parker, Comal County Commissioner for Precinct #3, triggered the automatic resignation ("resign to run") provision contained in Article XVI, § 65 of the Texas Constitution.

The Facts

Greg Parker is the elected Comal County Commissioner for Precinct #3. His current term began January 1, 2009 and expires December 31, 2012.

On August 20, 2009, an appointment for campaign treasurer for the specific-purpose committee "Texans for Greg Parker" was filed with the Comal County Clerk naming Commissioner Parker's wife, Tasha Parker, as the treasurer. The physical mailing address for both the committee and the campaign treasurer is the same as Commissioner Parker's physical mailing address for his residence. In the blank entitled "office sought" is written "county commissioner." A copy of this treasurer's appointment is attached as Exhibit A hereto and incorporated herein by reference.

In August 2009, Commissioner Parker solicited a \$1,000 contribution from Ms. Norma Blackwell for his political campaign for Railroad Commissioner. Ms. Blackwell responded that she would need to check with her husband. Ms. Blackwell's husband declined. In the month of September, 2009, another person associated with Commissioner Parker's campaign called to confirm a donation and Ms. Blackwell declined. A copy of Ms. Blackwell's affidavit is attached as Exhibit B hereto and incorporated herein by reference.

On August 31, 2009, Commissioner Parker spoke via telephone to Mr. Barron Casteel and requested a donation of \$1,000 from Mr. Casteel and Ms. Carter Casteel to his campaign for Texas Railroad Commissioner. Mr. Casteel asked Commissioner Parker if the necessary campaign paperwork had been filed with the Texas Ethics Commission. Commissioner Parker replied that he did not need to. Mr. Casteel advised Commissioner Parker that he would support him in his run for Texas Railroad Commissioner and would be interested in his campaign. A copy of Mr. Casteel's sworn affidavit is attached as Exhibit C hereto and incorporated herein by reference.

On September 17, 2009, during a telephone conversation with Mr. Ed Clark, Commissioner Parker stated that he was not going to run for re-election as County Commissioner and that he was running for Railroad Commissioner. Commissioner Parker stated that he had already received over \$30,000 in contributions for his campaign for Texas Railroad Commissioner. Mr. Clark wished him good luck on his run for Railroad Commissioner and told him to let him know if he could help with his election campaign. In response, Commissioner Parker stated, "You can provide a check for my campaign for Texas Railroad Commissioner." A copy of Mr. Clark's sworn affidavit is attached as Exhibit D hereto and incorporated herein by reference.

On September 29, 2009, Mr. Casteel found a website promoting Commissioner Parker's campaign for Texas Railroad Commissioner and donated to the campaign online through a PayPal account on the website. Mr. Casteel also purchased two coffee mugs and a beer stein which state, "I support Greg Parker Republican for Railroad Commissioner-www.parkerfortexas.com." The sales receipt reflects that Mr. Casteel purchased the beer stein for \$15.99, the two coffee mugs for \$27.98 and paid \$6.25 for shipping. A copy of Mr. Casteel's affidavit is attached as Exhibit C hereto and incorporated

herein by reference. A photo of one of the coffee mugs and the beer stein purchased by Mr. Casteel are attached as Exhibit E and Exhibit F, respectively, hereto and incorporated herein by reference. A copy of a receipt for the purchase in the amount of \$50.22 for the coffee mugs and the beer stein is attached as Exhibit G hereto and incorporated herein by reference.

On September 29, 2009, Mr. Casteel received a letter from "Texans for Greg Parker" that was signed by Commissioner Greg Parker thanking Mr. Casteel for his donation. The letter included the statement, "Hard working Texans like you are telling me you want a balanced energy vision and a leader who can go to Austin and have the courage to fight for that vision. You want a conservative leader who understands that all energy options are on the table and Texas's energy future is now. I am that leader. With your help, we can bring that vision to Austin and to Texas." A copy of Mr. Casteel's affidavit is attached as Exhibit C hereto and incorporated herein by reference. A copy of the letter from "Texans for Greg Parker" is attached as Exhibit H hereto and incorporated herein by reference.

As of September 29, 2009 a website with the domain of www.gregparkeronline.com displayed a campaign political advertisement stating "Greg Parker – Republican for Railroad Commissioner – www.parkerfortexas.com – 3044 Pine Valley, New Braunfels, Texas 78130 (830) 221-5220 – Pol. Ad Paid for by Texans for Greg Parker – Donate – Be sure to purchase Parker Campaign Gear Here >> http://www.cafepress.com/parkerfortexas." A copy of this page from the website is attached as Exhibit I hereto and incorporated herein by reference.

As of September 29, 2009 a website with the domain of www.cafepress.com/parkerfortexas displayed an online "Texans for Greg Parker Campaign Store" selling items consisting of shirts, bags, teddy bears, pet t-shirts, mugs and intimate apparel that are designed with a campaign political advertisement that states, "I Support Greg Parker Republican for Railroad Commissioner – www.parkerfortexas.com – Pol. Ad Paid for by Texans for Greg Parker -- 3044 Pine Valley, New Braunfels, Texas 78130 (830) 221-5220." A copy of this website page is attached as Exhibit J hereto and incorporated herein by reference.

The telephone number on the website "Greg Parker Republican for Railroad Commissioner" rings to Commissioner Parker's cell phone according to Theron Brittain, a reporter for the Comal County's main newspaper, the Herald-Zeitung. A copy of this newspaper article is attached as Exhibit K hereto and incorporated herein by reference.

On October 2, 2009, Mr. Brittain reported about an interview he had with Commissioner Parker regarding his candidacy for Railroad Commissioner. Mr. Brittain reported the following:

Parker said he has not announced his candidacy for the position. He said he is only being considered as a possible appointee to the railroad commission, not a candidate, and therefore not subject to the provision ... 'I have not announced anything,' Parker said Tuesday. 'I'm hoping to take Michael William's place on the Railroad Commission if he steps down ... but that would be an appointment at first and then I would have to run for an election after that. Right now, my name is in consideration, but I have not announced anything ... I am taking donations and all that kind of good stuff, but there is no candidacy. Nothing like that. I'm just setting the groundwork up just in case an appointment does take place. Once the appointment takes place, then you have to run to keep the seat. Unless I get appointed, I'm not planning on running.'

Sometime after the interview both links to the websites "Greg Parker Republican for Railroad Commissioner" and the "Texans for Greg Parker Campaign Store" were removed and changed to read "Donate to Commissioner Greg Parker." According to the news article, when the Herald-Zeitung asked Commissioner Parker why the website changed, Commissioner Parker "would not say who created the website, who authorized the change or why 'Republican for Railroad Commissioner' was removed." Commissioner Parker told the Herald-Zeitung, "It was not a website for candidacy or a campaign or anything to that effect. It was there, and Texans for Greg Parker support me as a county commissioner and that's what parkerfortexas.com is and money can be raised under that for commissioner." When asked about the donations he had collected, Commissioner Parker stated that, "the money will go toward supporting him in his current office." Commissioner Parker did not comment on how much he was involved with Texans for Greg Parker, "but confirmed that he was associated with it" and that he appointed his wife as its treasurer, according to the Herald-Zeitung. A copy of this newspaper article is attached as Exhibit K hereto and incorporated herein by reference.

A public internet search of domain registration information for the domain name of www.gregparkeronline.com revealed that the registrant of this domain is Gregory Parker, 3044 Pine Valley, New Braunfels, Texas 78130. The search also revealed that the administrative and technical contact for the domain is Gregory Parker, texasgovernor@msn.com, 3044 Pine Valley, New Braunfels, Texas 78130, phone (830)-221-5220; fax (310)-822-6857. A copy of this information is attached as Exhibit L hereto and incorporated herein by reference.

A public internet search of domain registration information for the domain name of www.parkerfortexas.com revealed that the registrant of this domain is Gregory Parker, 3044 Pine Valley,

New Braunfels, Texas 78130. The search also revealed that the administrative and technical contact for the domain is Gregory Parker, texasgovernor@msn.com, 3044 Pine Valley, New Braunfels, Texas 78130, phone (830)-221-5220; fax (310)-822-6857. A copy of this information is attached as Exhibit M hereto and incorporated herein by reference.

On October 9, 2009, the Herald-Zeitung printed a letter to the editor by Commissioner Parker in which he reiterated that "at no time did I announce my candidacy for any position." A copy of this letter to the editor is attached as Exhibit N hereto and incorporated herein by reference.

On October 23, 2009, Commissioner Parker delivered me a statement addressed to you. In summary, Commissioner Parker states that he has neither announced his candidacy nor become a candidate in fact for the Office of Texas Railroad Commissioner. A copy of this letter is attached as Exhibit O hereto and incorporated herein by reference.

Legal Authority

Texas Constitution Article XVI, § 65 states that if certain district or county officers "announce their candidacy" or "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 . . . other than the office then held" when more than one year remains on the unexpired term of their current office, then "such announcement or such candidacy shall constitute an automatic resignation of the office then held" by that district or county officeholder.¹ The Texas Supreme Court has held that "any constitutional or statutory provision which restricts the right to hold office must be strictly construed against ineligibility."² County commissioners fall into the list of public offices subject to this constitutional provision.³ "The vacancy thereby created shall be filled pursuant to law in the same manner as other vacancies for such office are filled."⁴ In Texas, county judges are legally responsible for filling vacancies in the offices of county commissioners by appointing a resident from the same precinct to fill the vacancy until the next general election.⁵

¹ TEX. CONST. ART. XVI, § 65.

² *Wentworth v. Meyer*, 839 S.W.2d 766 (Tex. 1992)

³ *Id.*; *Ramirez v. Flores*, 505 S.W.2d 406, 408, 414 (Tex. Civ. App. – San Antonio 1973, writ refused n.r.e.).

⁴ TEX. CONST. ART. XVI, § 65.

⁵ TEX. LOC. GOV. CODE § 87.042 (Vernon 2008).

Announcement of Candidacy

Your office has previously interpreted Article XVI, § 65 to mean that “an officer announces candidacy for office by making a written or oral statement from which a reasonable person may conclude that an individual intends, without qualification, to run for the office in question.”⁶ In reference to an officeholder’s conduct, your office “has derived an objective standard to determine whether a person has ‘announced candidacy’ for another office: Whether a reasonable person would conclude from an individual’s written or oral statement that the individual intends to run for the office in question.”⁷ In determining objectivity, your office seems to have created a two-part test in determining whether an officeholder announced his or her candidacy: (1) was the written or oral statement “made in a public setting or ... otherwise available to the public”; and (2) was the written or oral statement “an unambiguous statement of candidacy shown to have been made by the [officeholder] himself.”⁸ Your office has stressed that an announcement for these purposes “must be made in a public setting or be otherwise available to the public” versus a statement made in private.⁹ Your office has previously concluded that a justice of the peace’s private statement to a reporter that he was seeking another office and which was not published was not deemed an “announcement” triggering Article XVI, § 65.¹⁰ Your office has also stated, “that a person who merely states that he or she would ‘seriously consider running’ for an office if the incumbent resigns has not announced candidacy.”¹¹ “Similarly, another opinion concludes that ‘the mere act of seeking a party’s executive committee’s nomination does not constitute an announcement.’”¹² However, a former Texas attorney general has opined that a county court at law judge, who stated at a commissioners court meeting that he was “at the moment” a candidate for a district court office and which the statement was subsequently published in the newspaper, triggered the resign to run provision of Article XVI § 65.¹³

⁶ TEX. ATT’Y. GEN. OP. NOS. GA-0643 (2008) at 5, GA-0210 (2004) at 2, JC-0249 (2000) at 2; TEX. ATT’Y GEN. LO-95-071 at 2.

⁷ TEX. ATT’Y. GEN. OP. NO. GA-0643 (2008).

⁸ TEX. ATT’Y. GEN. OP. NO. GA-0643 (2008).

⁹ TEX. ATT’Y. GEN. OP. NOS. GA-0643 (2008) at 5, GA-0210 (2004) at 2.

¹⁰ TEX. ATT’Y. GEN. OP. NO. GA-0210 (2004) at 2.

¹¹ TEX. ATT’Y. GEN. OP. NO. GA-0643 (2008) at 5; *See* TEX. ATT’Y GEN. LO-95-071 at 2.

¹² TEX. ATT’Y. GEN. OP. NO. GA-0643 (2008) at 5; *see* Tex. Att’y Gen. Op. No. JC-0249 (2000) at 4.

¹³ TEX. ATT’Y GEN. OP. NO. DM-377 (1996).

Candidacy in Fact

Section 251.001 of the Texas Election Code¹⁴ defines "candidate" as:

a person who knowingly and willingly takes affirmative action for the purpose of gaining nomination or election to public office or for the purpose of satisfying financial obligations incurred by the person in connection with the campaign for nomination or election. Examples of affirmative action include:

- (A) the filing of a campaign treasurer appointment, except that the filing does not constitute candidacy or an announcement of candidacy for purposes of the automatic resignation provisions of Article XVI, § 65 . . . of the Texas Constitution;
- (B) the filing of an application for a place on a ballot;
- (C) the filing of an application for nomination by convention;
- (D) the filing of a declaration of intent to become an independent candidate or a declaration of write-in candidacy;
- (E) the making of a public announcement of a definite intent to run for public office in a particular election, regardless of whether the specific office is mentioned in the announcement;
- (F) before a public announcement of intent, the making of a statement of definite intent to run for public office and the soliciting of support by letter or other mode of communication;
- (G) the soliciting or accepting of campaign contribution or the making of a campaign expenditure; and
- (H) the seeking of the nomination of an executive committee of a political party to fill a vacancy.

¹⁴ TEX. ELEC. CODE §251.001 (Vernon 2003).

Additionally, the Texas Legislature articulated that the “circulation of a petition to be filed . . . in connection with a candidate’s application for a place on the ballot does not constitute candidacy or an announcement of candidacy for purposes of the automatic resignation provisions of Article XVI, Section 65 . . . of the Texas Constitution.”¹⁵

Not much case law exists on this subject; however, at least one appellate court has concluded as a matter of law that the filing of an application to have one’s name placed on a ballot triggers Article XVI, § 65 of the Texas Constitution.¹⁶ The Office of the Attorney General has reached the same conclusion in numerous opinions.¹⁷

However, former Attorney General John Cornyn opined that a “person who merely seeks a political party’s executive committee’s nomination to be the party’s candidate in a general election does not announce his or her candidacy or become a candidate in fact in a general, special, or primary election within the meaning of Article XVI, section 65 and therefore does not trigger the automatic resignation provision.”¹⁸ This opinion suggests that the conduct constituting candidacy listed section 251.001 of the Texas Election Code may not trigger the automatic resignation provision of Article XVI, § 65.¹⁹

The *Flores* case and various other Attorney General Opinions seem to imply that the examples of conduct constituting candidacy listed section 251.001 of the Texas Election Code may have some relevance in determining whether a candidacy in fact exists in regards to the automatic resignation provision of Article XVI, § 65. Sections 251.001 and 172.021 of the Texas Election Code also seem relevant to this analysis due to the fact that the Texas Legislature specifically exempted two acts of conduct as not constituting an automatic resignation, but yet remained silent on the others so as to imply that committing such would constitute an automatic resignation.

¹⁵ TEX. ELEC. CODE §172.021 (Vernon 2003).

¹⁶ See *Ramirez v. Flores*, 505 S.W.2d 406, 408, 414 (Tex. Civ. App. – San Antonio 1973, writ refused n.r.e.) (concluding that a county commissioner who applied to have his name placed on a ballot as a candidate for trustee for the local independent school district constituted an announcement that triggered an automatic resignation under Article XVI, § 65 of the Texas Constitution).

¹⁷ TEX. ATTY. GEN. OP. NO. JC-0249 (2000); TEX. ATTY. GEN. OP. LO-96-011; TEX. ATTY. GEN. OP. LO-96-083; TEX. ATTY. GEN. OP. JM-132 (1984).

¹⁸ TEX. ATTY. GEN. OP. NO. JC-0249 (2000).

¹⁹ See TEX. ELEC. CODE § 251.001(h) (stating that an example of a candidate is one who seeks the nomination of an executive committee of a political party).

Seeking Appointed Position

In a Letter Opinion, former Attorney General Dan Morales opined that Article XVI, § 65 is not triggered when a public officer seeks a gubernatorial appointment to another public office. TEX. ATT'Y GEN. OP. LO-96-107 (opining that Article XVI, § 65 was not triggered to remove a county judge who sought a gubernatorial appointment to a district court bench).

The Request

I respectfully request your legal opinion as to the following:

1. Based on the facts set out above, has Commissioner Parker become a candidate in fact for the Office of Texas Railroad Commissioner thereby automatically resigning his office as Comal County Commissioner for Precinct #3 under Article XVI, § 65 of the Texas Constitution?
2. Based on the facts set out above, has Commissioner Parker announced his candidacy for the Office of Texas Railroad Commissioner thereby automatically resigning his office as Comal County Commissioner for Precinct #3 under Article XVI, § 65 of the Texas Constitution?

Sincerely,



Geoff Bar

Cc: The Honorable Danny Scheel, Comal County Judge
The Honorable Greg Parker, Comal County Commissioner, Precinct #3

EXHIBIT A

APPOINTMENT OF A CAMPAIGN TREASURER BY A SPECIFIC-PURPOSE COMMITTEE

FORM STA
PG 1

See STA INSTRUCTION GUIDE for detailed instructions.

1 Total pages filed:

2 COMMITTEE NAME

Texas FOR Greg Parker

OFFICE USE ONLY
Acct. #

3 COMMITTEE ADDRESS

ADDRESS / PO BOX; APT/SUITE#; CITY; STATE; ZIP CODE
3044 Pine Valley
New Braunfels, TX 78130

Date Received
2009 AUG 20 AM 11:35
RECEIVED
JOY STREATER
DOMAL COUNTY CLERK

4 CAMPAIGN TREASURER NAME

MS / MRS / MR; FIRST; MI; NICKNAME; LAST; SUFFIX
MRS; JASHEA; PARKER

Receipt #

5 CAMPAIGN TREASURER STREET ADDRESS (Residence or business)

STREET ADDRESS (NO PO BOX PLEASE); APT / SUITE #; CITY; STATE; ZIP CODE
3044 Pine Valley
New Braunfels, TX 78130

HD/PM; Amount; Date Processed

6 MAILING ADDRESS
 same as above

ADDRESS / PO BOX; APT/SUITE#; CITY; STATE; ZIP CODE

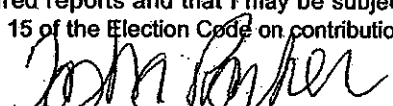
7 CAMPAIGN TREASURER PHONE

AREA CODE; PHONE NUMBER; EXTENSION
(830) 660-9289

8 PERSON APPOINTING TREASURER

FIRST; MI; LAST; SUFFIX
Gregory; PARKER

9 SIGNATURE

I understand that I have been appointed as the campaign treasurer for this specific-purpose committee and that I am responsible for filing all required reports and that I may be subject to fines for failure to do so. I am aware of the restrictions in title 15 of the Election Code on contributions from corporations and labor organizations.

Signature of campaign treasurer

10 ASSISTANT CAMPAIGN TREASURER (see instructions)

FIRST; MI; LAST; SUFFIX

11 ASSISTANT CAMPAIGN TREASURER ADDRESS

ADDRESS / PO BOX; APT/SUITE#; CITY; STATE; ZIP CODE

12 ASSISTANT CAMPAIGN TREASURER PHONE

AREA CODE; PHONE NUMBER; EXTENSION
()

STATE'S EXHIBIT

GO TO PAGE 2

A

SPECIFIC-PURPOSE COMMITTEE: PURPOSE AND MODIFIED REPORTING DECLARATION

FORM STA
PG 2

13 COMMITTEE NAME

Texans for Greg Parker

14 COMMITTEE PURPOSE

OFFICE USE ONLY

SUPPORT CANDIDATE

CANDIDATE / OFFICEHOLDER NAME

Gregory Parker

OPPOSE CANDIDATE

ASSIST OFFICEHOLDER

OFFICE SOUGHT (candidate) / OFFICE HELD (officeholder)

County Commissioner

SUPPORT MEASURE

BALLOT IDENTIFICATION OF MEASURE / #

ELECTION DATE
Month / Day / Year

OPPOSE MEASURE

DESCRIPTION

15

MODIFIED REPORTING DECLARATION

COMPLETE THIS SECTION ONLY IF YOU ARE CHOOSING MODIFIED REPORTING.

****This declaration must be filed no later than the 30th day before the first election to which the declaration applies. ****

****The modified reporting declaration is valid for one election cycle only. ****
(An election cycle includes a primary election, a general election, and any related runoffs.)

The committee does not intend to accept more than \$500 in political contributions or make more than \$500 in political expenditures (excluding filing fees) in connection with any future election within the election cycle. The committee understands that if either one of those limits is exceeded, the committee's campaign treasurer will be required to file pre-election reports and, if necessary, a runoff report.

Year of election(s) or election cycle to which declaration applies

Signature of campaign treasurer

ATTACH ADDITIONAL COPIES OF THIS FORM AS NEEDED

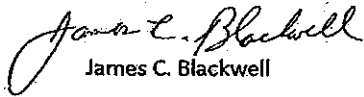
This appointment is effective on the date it is filed with the appropriate filing authority.

EXHIBIT B

October 18, 2009

The Honorable Danny Scheel,

August 2009 Commissioner Parker solicited a \$1,000 contribution for his political campaign (Railroad Commissioner). I responded to him that I would check with my husband. I consulted with my husband who recommended against making a contribution. I got a follow-up phone call in the month of September from his campaign person to confirm donation and we declined.


James C. Blackwell


Norma C. Blackwell

P.O. Box 2397

Canyon Lake, TX 78133

830-822-0361

STATE'S
EXHIBIT

B

EXHIBIT C

AFFIDAVIT

Barron Casteel appeared in person before me today and stated under oath:

"My name is Barron Casteel. I am above the age of eighteen years, and I am fully competent to make this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

On or about August 31, 2009, I received a telephone call from a Precinct 3 Comal County Commissioner Greg Parker.

In advance of my telephone conversation with Commissioner Parker on or about August 31, 2009, I had received one (1) or more calls from Commissioner Parker asking me to return his call. I did return his calls but was not able to contact him before our telephone conversation on or about August 31, 2009.

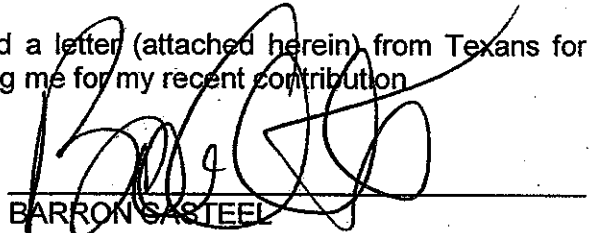
On or about August 31, 2009, during my conversation with Commissioner Parker, I was in the presence of another individual who heard my portion of the conversation with Commissioner Greg Parker.

On this day, Commissioner Parker called me to ask if my mother, Carter Casteel, and I would donate \$1,000.00 to his campaign for Texas Railroad Commissioner. I asked Commissioner Parker if he had filed the necessary documents with regard to his Treasurer with the Texas Ethics Commission and if he had already set up his campaign. To this he responded that he did not need to.

At that time, I told Commissioner Parker that I would be happy to support him in his run for Texas Railroad Commissioner and that I would be interested in his campaign.

On or about September 29, 2009, I was made aware of Commissioner Greg Parker's website promoting his campaign for Texas Railroad Commissioner. I donated to his Commissioner Parker's campaign online via PayPal, as his website directs contributor to do. In this website he stated he was running for Texas Railroad Commissioner. In addition, I purchased some campaign items, including two coffee mugs and a beer stein, which say "I Support Greg Parker-Republican for Rail Road Commissioner-www.parkerfortexas.com".

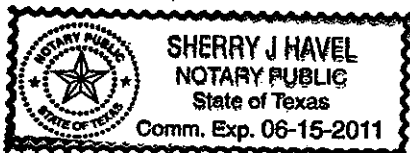
Finally, on September 29, 2009, I received a letter (attached herein) from Texans for Greg Parker and signed by Gregory Parker thanking me for my recent contribution

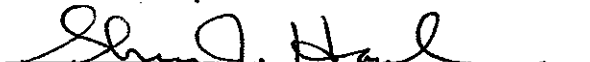

BARRON CASTEEL

State of Texas
County of Comal

§
§

SIGNED under oath before me on October 16, 2009




Notary Public, State of Texas

STATE'S EXHIBIT

EXHIBIT D

AFFIDAVIT

Ed Clark appeared in person before me today and stated under oath:

“My name is Ed Clark. I am above the age of eighteen years, and I am fully competent to make this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

On or about September 17, 2009 Greg Parker returned my phone call.

During our conversation the subject turned to politics and Greg Parker’s next-re-election.

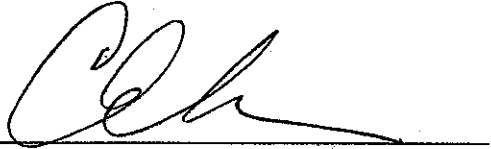
Greg Parker stated to me that he is not going to run for re-election and that he is running for Railroad Commissioner. I began to laugh and asked whether he was joking.

Greg Parker then told me about how Governor Rick Perry has appointed him to head the 911 Commission.

Further, Greg Parker stated to me that he had already raised over \$30,000.00 in contributions for his campaign for Texas Railroad Commissioner.

I stated to Greg Parker, that if a young guy could be elected Railroad Commissioner, that he would be the one. Further, I wished him good luck on his run for Railroad Commissioner and told him to let me know if I could help him with his election campaign.

Greg Parker stated to me, “You can provide a check for my campaign for Texas Railroad Commissioner.”

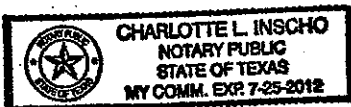


Ed Clark

State of Texas
County of Comal

SIGNED under oath before me on

§
§
October 16, 2009



Charlotte L. Inscho
Notary Public, State of Texas

STATE'S
EXHIBIT

D

EXHIBIT 3

Support

**GREG
PARKER**

1300

STATE'S
EXHIBIT

E

EXHIBIT F



GREG / Support

PARKER

For Railroad Commission
www.parkerforrx.com

STATE'S
EXHIBIT

F

EXHIBIT G



Shipping To:
Barron Casteel
254 East Mill Street
New Braunfels, TX 78130,
US

Order # 91048069
Date: 9/29/2009 5:24 PM
Ship: Economy

Item # and Description	Qty	Each	Total
Stein www.cafepress.com/parkerfortexas.407607095	1	\$15.99	\$15.99
Large Mug www.cafepress.com/parkerfortexas.407607096	2	\$13.99	\$27.98
		Shipping:	\$6.25
		Tax(TX):	\$0.00
		TOTAL:	\$50.22

Enjoy this unique expression of you
For more ideas, shop cafepress.com

**STATE'S
EXHIBIT**

G

EXHIBIT H

★
Texans for Greg Parker

September 29, 2009

Baron Casteel
254 East Mill Street
New Braunfels, TX 78130

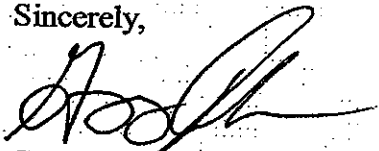
Dear Baron:

I am truly grateful to have your support. Thank you for your recent contribution.

Hard working Texans like you are telling me you want a balanced energy vision and a leader who can go to Austin and have the courage to fight for that vision. You want a conservative leader who understands that all energy options are on the table and Texas's energy future is now. I am that leader. With your help, we can bring that vision to Austin and to Texas.

Again, thank you for your contribution and for joining my team.

Sincerely,



Gregory Parker

P.S. If you are inclined to make an additional contribution, you may do so securely online at www.ParkerForTexas.com. Please tell your friends and neighbors. Thanks again.



www.facebook.com/parkerfortexas
<http://twitter.com/parkerfortexas>

Pol. Ad Paid for by Texans for Greg Parker *
3044 Pine Valley * New Braunfels, Texas 78130 * Tasha Parker Treasurer

STATE'S
EXHIBIT

H

EXHIBIT I

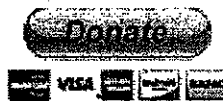
GREG PARKER

Republican For Railroad Commissioner

www.parkerfortexas.com

3044 Pine Valley * New Braunfels, Texas * 78130 * (830) 221-5220

Pol. Ad Paid for by Texans for Greg Parker



STATE'S EXHIBIT

I

Be sure to purchase Parker Campaign Gear Here >> <http://www.cafepress.com/parkerfortexas>

EXHIBIT J



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**STATE'S
EXHIBIT**

J

Texans for Greg Parker Campaign Store

Categories:

Shirts (short)

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Shirts (short)
Shirts (long)
Hats & Caps
Bags
Fun Stuff
Pets
Mugs
Intimate Apparel



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Value T-shirt
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Jr. Spaghetti Tank
\$18.99



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Golf Shirt
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Shirts (long)

[\(back to top\)](#)



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Zip Hoodie
\$41.99



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Jr. Hoodie
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MORE COLORS AVAILABLE
Hooded Sweatshirt
\$26.00



MORE COLORS AVAILABLE
Long Sleeve T-Shirt
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MORE COLORS AVAILABLE
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(back to top)



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Tote Bag
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Fun Stuff

(back to top)



Teddy Bear
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Pets

(back to top)



Dog T-Shirt
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Mugs

(back to top)



Slog Water Bottle 1.0L
\$26.99



Ceramic Travel Mug
\$19.99



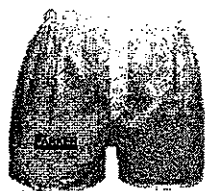
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\$15.99



Large Mug
\$13.99

Intimate Apparel

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EXHIBIT K

The Herald-Zeitung

Commissioner under review

By Theron Brittain
The Herald-Zeitung

Published October 2, 2009

County Judge Danny Scheel will begin collecting affidavits next week from people who claim to have been contacted by Comal County Commissioner Greg Parker seeking donations to his campaign for Texas Railroad Commissioner.

Under Article 16, Section 65 of the Texas election code, commonly known as the "resign to run" provision, county commissioners are required to resign if they wish to run for another office and have more than one year left in the term of their current office. Parker still has three years left on his term.

Parker said he has not announced his candidacy for the position. He said he is only being considered as a possible appointee to the railroad commission, not a candidate, and therefore not subject to the provision.

The Texas Railroad Commission oversees the oil and gasoline industries and is considered the most powerful regulatory agency in the state.

"I have not announced anything," Parker said Tuesday. "I'm hoping to take Michael Williams' place on (the) Railroad Commission if he steps down ... but that would be an appointment at first and then (I) would have to run for an election after that.

"Right now, my name is in consideration, but I have not announced anything."

However, the Web site www.parkerfortexas.com, operating as recently as Sept. 29 and sponsored by Texans for Greg Parker, has solicited donations for his campaign through a PayPal account.

As of Sept. 29, the site read, "Greg Parker, Republican for Railroad Commissioner."
The number provided on the Web site rings to Parker's cell phone.

"I am taking donations and all that kind of good stuff," Parker said Tuesday. "But (there is) no candidacy. Nothing like that. (I'm) just setting the groundwork up just in case an appointment does take place.

"Once the appointment takes place, then you have to run to keep the seat. Unless I get appointed, I'm not planning on running."

**STATE'S
EXHIBIT**

K

Election law

In the first paragraph of the General Provisions of Title 15, Chapter 251 of the election code, a "candidate" is defined as "a person who knowingly and willingly takes affirmative action for the purpose of gaining nomination or election to public office."

According to the General Provisions, examples of "affirmative action" include "the soliciting or accepting of a campaign contribution."

Parkerfortexas.com

The Web site www.parkerfortexas.com was altered sometime after the Herald-Zeitung called Parker on Tuesday to ask him about it.

Before the newspaper's call, the site provided a link for supporters to purchase items bearing the "Greg Parker, Republican for Railroad Commissioner" logo.

The link and the statement "Greg Parker, Republican for Railroad Commissioner" have been removed from the site.

The site now reads "Donate to Commissioner Greg Parker."

When questioned Thursday by the Herald-Zeitung about why the Web site was changed, Parker would not say who created the Web site, who authorized the change or why "Republican for Railroad Commissioner" was removed.

"It was not a Web site for a candidacy or a campaign or anything to that effect," he said. "It was there, and Texans for Greg Parker support me as a county commissioner and that's what parkerfortexas.com is and money can be raised under that for commissioner."

Scheel said he was told about the Web site Wednesday and tried to view it Thursday morning but found only the altered version. After seeing a screen shot of the original site taken by the Herald-Zeitung, Scheel said, "It does not speak about appointments or anything else. It says that he is, in fact, a candidate for Railroad Commissioner."

Collected donations

Asked Thursday about any donations he has received, Parker said the money will go toward supporting him in his current office, but would not disclose how much he raised.

Parker would not say what role he played in Texans for Greg Parker, but confirmed he was associated with it. Documents filed with the Comal County clerk's office show that Parker's wife, Tasha, is the treasurer and that he appointed her.

Parker said his financial reports would be filed in "a timely manner as according to law."

The deadline for filing campaign finance reports in Comal County in Jan. 15, 2010.

"I am currently the county commissioner for Precinct 3, and I am doing that job," Parker said. "I am going to seek to do the best job I can for the people of Precinct 3 and that's what I intend to do."

What now?

Scheel, as the appointing authority of the court is responsible for making a formal request through District Attorney Geoff Barr, the county's legal advisor, for an opinion from the Attorney General's office on the matter.

Schell will discuss the affidavits and the Web site with Barr later next week.

"I'll be asking the people who have called me to send me affidavits to the effect that (Parker) has been calling them personally and soliciting funds," said Scheel. "Then I will ask Geoff Barr to contact the Attorney General's office for him to make a decision as to whether Mr. Parker has violated the provisions of the (resign to run) statute."

"It seems to me to be relatively clear that he has violated the (resign to run) provision," Scheel said.

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EXHIBIT L

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WHOIS results for gregparkeronline.com

STATE'S EXHIBIT

L

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AboutUs: GREGPARKERONLINE.COM

Registrant:
Parker, Gregory**

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US

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Administrative Contact , Technical Contact :

Parker, Gregory**

texasgovernor@msn.com

3044 Pine Valley

New Braunfels, TX 78130

US

Phone: 830-221-5220

Fax: 310-882-6857

Record expires on 10-Jan-2011**Record created on 10-Jan-2009****Database last updated on 10-Jan-2009****Domain servers in listed order:**[Manage DNS](#)[NS7.WEBCONTROLCENTER.COM](#)[NS8.WEBCONTROLCENTER.COM](#)[Show underlying registry data for this record](#)

Current Registrar:	NETWORK SOLUTIONS, LLC.
IP Address:	67.199.126.48 (ARIN & RIPE IP search)
IP Location:	-(-)
Lock Status:	clientTransferProhibited
DMOZ	no listings
Y! Directory:	see listings
Data as of:	23-Apr-2008.

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EXHIBIT M

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You Searched for: [parkerfortexas.com](#)

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STATE'S EXHIBIT

M

Visit AboutUs.org for more information about PARKERFOTEXAS.COM
AboutUs: PARKERFOTEXAS.COM

Registrant:
Parker, Gregory**

Make this info private

3044 Pine Valley
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US

Domain Name: PARKERFOTEXAS.COM

Promote your business to millions of viewers for only \$1 a month!

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texasgovernor@msn.com
3044 Pine Valley
New Braunfels, TX 78130
US
Phone: 830-221-5220
Fax: 310-882-6857

Record expires on 07-Jul-2010

Record created on 07-Jul-2009

Database last updated on 07-Jul-2009

Domain servers in listed order:

[Manage DNS](#)

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Current Registrar:	NETWORK SOLUTIONS, LLC.
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Search by either

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EXHIBIT N

The woes keep piling up for President Barack Obama. While it is unfair to blame him for all the world's problems (although some people try) there is no question he is having trouble finding the right answers.

Is there one for pacifying Afghanistan, even assuming he makes the hard judgment that more American troops must be lost to reach that end?

Nearly 800 have lost their lives since the 2001 invasion began.

Pulling out is not an option, a White House spokesman said this week.

So more Americans are at risk, whether Obama decides on another buildup or stays at about 68,000 troops in Afghanistan.

Next door, in Pakistan, Obama is looking for a way to motivate the government to try harder to neutralize the militant fighters in border sanctuaries. One familiar approach is to contribute U.S. money to aid the government.

But Pakistan's military leaders are questioning the proposed aid package of \$1.5 billion a year for five years as potentially meddling.

How to ensure the nuclear-armed country is a safe and reliable ally against terrorism is a tough one for the president.

So is finding a way to deter Iran from taking the final steps to production of nuclear weapons — a goal Iran denies but many do not doubt it is pursuing.

If Iran does not negotiate a settlement, and the prospects appear dim right now, its power to intimidate would be expanded, and might even be used.

Lurking in the background, meanwhile, is the unresolved Middle East conflict.

Obama seems persuaded that Israel should give ground to the Palestinians to build a state next door, risky as that proposition might be. Militants, taking a break right now, might seize new opportunities to strike their despised target. The fighting would be costly and hard to contain.

This catalog of woes, though, does not tell the whole story of Obama's more than eight months as president.

He is overseeing a faster-than-expected withdrawal of U.S. troops from Iraq with a decline in violence.

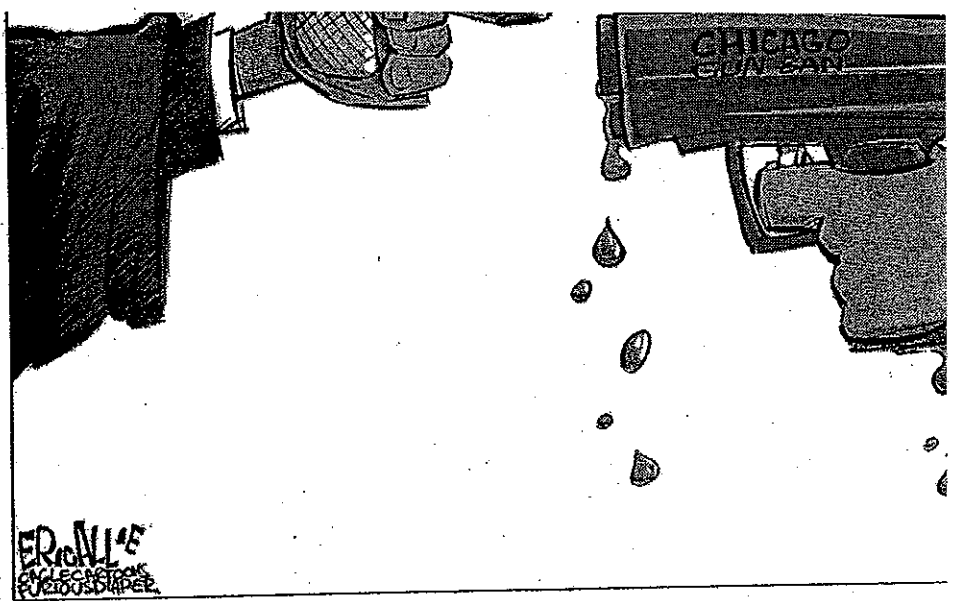
Army Gen. Ray Odierno, the top commander in Iraq, has said 4,000 troops will be sent home this month ahead of schedule.

Obama has ordered all combat troops out of the country by the end of next August.

North Korean leader Kim Jong Il has offered to resume negotiations that are designed to uproot his country's nuclear weapons program. He has reversed himself before, but this is the clearest signal of a willingness to negotiate again since a declaration last year that North Korea would never return to the table.

Relations between the United States and China are on an upward climb with China playing a leading role, for instance, in trying to get North Korean talks started again.

And Obama's decision to shelve a plan for installing an anti-ballistic missile system in the Czech Republic and Poland has improved relations



LETTERS TO THE EDITOR

'I would do nothing purposely to dishonor trust you have placed in me'

I'm writing this today in response to an article that appeared in the Herald-Zeitung. In that article, a concern was raised that I may have violated Article 16, Section 65 of the Texas Election Code, which is referred to as the "resign to run" provision of the code.

Let me be perfectly clear. At no time did I announce my candidacy for any position.

Over the past several years, I have committed myself to serving my constituents in true Texas fashion. The welfare of the people I serve is and always will be my number one priority.

I have been blessed by my constituents to become the youngest and only African-American to serve as a County Commissioner in Comal County, and I would do nothing purposely to dishonor the trust that you have placed in me.

I also want to express my profound belief in our legal system. The fine men and women who stand watch over the actions of our elected officials and citizenry, maintain the law and keep this country great. All that I ask is that those in the legal system be fair, impartial and be allowed the proper time to address the concerns that have been raised.

Any rush to judgment would be a disservice to the people of Comal County and would do little to serve public interest. I pledge to continue to serve my constituents with the dignity and honor they deserve knowing full well that whatever comes I will not only do the right thing, but continue working to make Comal County and the surrounding area a better place for you and your families.

*Gregory Parker, M.P.A.
Comal County Commissioner*

Health care legislation must include public option

Because of a small number relative to a large private industry, insurers lack the ability to use what are called economies of scale.

Large insurers have much more power with health care providers than the pharmaceutical companies.

The proposed federal government plan, commonly called the "public option," would be able to attract millions of people and provide formidable competition. A large percentage of Americans that would result from having the health care reform legislation.

Despite opponents' misbegotten fear tactics, in 13 of 16 polls conducted in the last four months, those in favor outnumbered those opposed.

Any health care legislative option if it is to give the people what they want and need.

Christian Academy still teaches lessons taught by

This past week our school Christian Academy, got the great guest speaker, Johnny Polk Camps. He often describes his kid at camp.

Polk was a joy to have a fitting to have him at our first the new school year. He is connected with the students extra effort to make ever and excited about learning paths to Christ.

STATE'S EXHIBIT

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EXHIBIT O

Honorable Attorney General Greg Abbott
Office of the Attorney General
300 W. 15th Street
Austin, TX 78701

Received by
OCT 23 2009
District Attorney's Office

October 23, 2009

Dear Attorney General Abbott:

As of late there has been a lot of speculation as to whether one of Texas' US Senators will resign and seek the office of Governor. That Senator's resignation could fuel other resignations in other statewide offices, one being the office of Railroad Commissioner which is currently not up for election until 2013. If that incumbent Railroad Commissioner resigned that office to pursue other endeavors a gubernatorial appointment would be needed to fill that unexpired term. These contingencies make for an unexpected situation to say the least and as you know sir the TEX. Const. art. XVI, § 65(b) reads:

"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". TEX. Const. art. XVI, § 65(b) (emphasis added).

Paraphrasing now, 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) (citing *Brown v. Meyer*, 787 S.W.2d42 (Tex. 1990) therefore a very narrow light is applied for the purpose and operation to avoid ineligibility of an officer. As you well know, automatic resignation under this article is triggered in either of two ways: when a named officer "announces" candidacy or "in fact becomes a candidate." Tex. Att'y Gen. Op. No. GA-0210. According to Tex. Att'y Gen. LO-95-071... "a person who has merely stated that he or she will seriously consider running for an office if the incumbent resigns has not announced his or her candidacy." Also, Tex. Att'y Gen. GA-0643 found that an officer must make an unambiguous statement of candidacy himself. While I have spoken privately to some individuals about my desire to seek the gubernatorial appointment, if the incumbent Railroad Commissioner who is not up for reelection until 2013, resigned that office to pursue other endeavors, I have not stated in any public meeting or press release that I would run for any particular office. Further, given the myriad of possibilities that must unfold, an expression of interest does not constitute an announcement of candidacy under constitutional provision article XVI, section 65, Tex. Att'y Gen. Op. No. JC-0249. Further, previous Attorney General Opinions have held that

STATE'S
EXHIBIT

constitutional provision article XVI, section 65 is not applicable when an officer seeks gubernatorial appointment even to an elected office, Tex. Att'y Gen. LO-96-107.

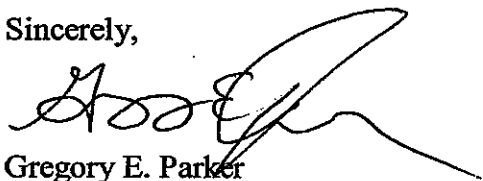
".....or shall in fact become a candidate, in any General, Special or Primary Election."

In defining the term "candidate" for the purposes of this constitutional provision several Attorney General Opinions have concluded that the statutory provision Tex. Elec. Code Ann. § 251.001 *"including affirmation action indicating person is a candidate"* do not apply to the constitution provision article XVI, section 65, Tex. Att'y Gen. Op. No. JC-0249. Further, when the very narrow light is applied to the constitutional provision a "candidate" must have a general, special or primary election Tex. Att'y Gen. Op. No. 96-107. There is no election and if there were, the candidacy of a person who seeks such a nomination would be entirely contingent upon receiving a favorable appointment by the Governor, Tex. Att'y Gen. Op. No. JC-0249 and Tex. Att'y Gen. LO-96-107.

In conclusion, no unambiguous statement of candidacy was ever made by me, there was clearly no candidate because there was clearly no general, special or primary election to be won and based on previous Attorney General Opinions the statutory provision Tex. Elec. Code Ann. § 251.001 including affirmation actions indicating a person is a candidate, do not apply to the constitution provision article XVI, section 65. Therefore, I do not believe I have triggered an automatic resignation under article XVI, section 65 of the Texas Constitution.

I have tremendous faith in our judicial process, I am confident that you will render the proper decision after reviewing this matter. I look forward to the day that we can put this behind us and move onward with the business of serving the great citizens of Texas.

Sincerely,

A handwritten signature in black ink, appearing to read "Gregory E. Parker", with a large, sweeping flourish extending to the right.

Gregory E. Parker