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OPINION COMMITTEE

RQ - 1016-6A

FILE # ML-46866-11I.D. # 46866**SENATE CRIMINAL JUSTICE COMMITTEE**

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November 10, 2011

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

Re: Request for Attorney General Opinion

Dear General Abbott,

On August 4, 2006 the Hidalgo County Constable for Precinct #5 (the "Constable") was convicted of a third degree felony. In the Judgment of Conviction by Jury & Order of Community Supervision (the "Original Judgment") the trial court ordered that the Constable "be removed from the Office of Constable for Precinct No. Five (5) pursuant to Section 87.031 of the Texas Local Government Code" and if the Constable appealed "the public interest requires suspension of the Defendant from office, and the Defendant is hereby suspended from the Office of Constable for Precinct No. Five (5) pending the appeal pursuant to Section 87.032 of the Texas Local Government Code." The Constable subsequently appealed his 2006 conviction all the way to the Supreme Court of the United States. During this process the Constable also retired from the Constable's position and an interim Constable was appointed by the Hidalgo County Commissioner's Court to fill the vacancy for the remainder of the term.

Subsequently, the former Constable ran for and won re-election in 2008 for the Office of Constable for Precinct No. Five (5). His new term was scheduled to commence in January of the year 2009. The Constable submitted his new Oath of Office and the required bond; however the Hidalgo County Commissioners Court did not and has not approved the bond. The Supreme Court of the United States denied the Constable's writ of certiorari on February 22, 2011 thus finalizing the Original Judgment and felony conviction.

Due to the fact that the Constable was in the process of appealing his conviction, the Constable was eligible to run for re-election for his office, however, since the US Supreme Court has now denied the writ, the Constable's original felony conviction is now final and a question has arisen on whether the Constable is currently holding the Office of Constable for Precinct Five (5) subject to removal or has been removed from such office as a matter of law under the authority of the Original Judgment thus creating a vacancy for such office.



Because of the vagueness that appears to exist in the current state of the law regarding whether a vacancy exists in the Office of Constable for Precinct No. Five (5) in Hidalgo County due to the Constable's re-election to office during the appellate process, we respectfully ask that you review and opine on the following questions:

- (1) Does the finalization of a conviction, a conviction which was originally rendered prior to a Constable's re-election for the office, remove the Constable from the office to which he was re-elected as a matter of law, requiring no official action and thus creating a vacancy for such public office?
- (2) If a County Commissioner's Court did not and has not approved the bond required to be executed by the Constable as set forth in Section 86.002 of the Texas Local Government Code does such act mean that the Constable never took office and a vacancy currently exists for such office? Is such approval by a County Commissioner's Court a ministerial or discretionary act? If such act is discretionary, does the person appointed to complete the term prior to 2008 election, carryover to the new term under the constitutional holdover provision of the Texas Constitution, Article XVI (16), § 17?

If you opine that a Constable who is re-elected to his office during the appeal of a felony conviction is deemed to hold office to which he was re-elected even though the Commissioner's Court has not approved the Constable's executed bond, then please discuss whether the Constable can be removed from office as discussed in Attorney General of Texas Opinion No. JC-0514.

Thank you for your consideration of this matter.

Sincerely,



JOHN WHITMIRE

Cc: The Honorable Ramon Garcia, Hidalgo County Judge
Hidalgo County Commissioner Mr. Joel Quintanilla, Precinct #1
Hidalgo County Commissioner Mr. Hector "Tito" Palacios, Precinct #2
Hidalgo County Commissioner Mr. Joe M. Flores, Precinct #3
Hidalgo County Commissioner Mr. Joseph Palacios, Precinct #4
Mr. Stephen L. Crain, Esq. Attorney for Commissioner's Court of Hidalgo County
Mr. Rene Guerra, Esq. Hidalgo County District Attorney