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OCT 17 2014

**OPINION COMMITTEE**

October 14, 2014

The Honorable Greg Abbott  
Attorney General of Texas  
Attn: Opinion Committee  
P. O. Box 12548  
Austin, TX 78711-2548

*Via CM-RRR# 7013 1710 0001 4459 7992*

RE: Request for Opinion on when a newly elected Sheriff will take office as a successor to a person appointed to the office of Sheriff by the Commissioners Court to fill a vacancy

Dear Attorney General Abbott,

I hereby request an opinion of the Attorney General on the following issue:

**Questions:**

1. When does a newly elected Sheriff take office when he follows a Sheriff who was appointed by the Commissioners Court to fill a vacancy in the office of Sheriff caused by the death of the elected Sheriff?

**Fact Situation**

James Walters was elected Sheriff of San Jacinto County, Texas in the general election of November, 2012. On January 6, 2013, less than a week into his new term, Sheriff Walters passed away. On January 15, 2013, the Commissioners Court duly appointed David Clark to assume the office of Sheriff until a new Sheriff could be elected at the next general election. As it turns out, both Sheriff Clark and Mr. Greg Capers both ran in the Republican primary for the office of Sheriff. There were no democratic candidates for Sheriff at any time. Mr. Capers won the primary, and since there is no other candidate on the ballot, he has effectively won the office of Sheriff. A dispute has arisen as to when Mr. Capers is to take office. Mr. Capers claims he should take office on

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FILE # ML-47656-14

I.D. # 47656

**RQ-1227-GA**

November 16, 2014 (given election day is November 4<sup>th</sup>, and taking into account 11 in which to canvass votes). Sheriff Clark contends he should remain in office until January 1, 2015.

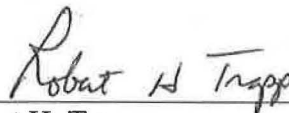
**Argument and Authority**

In Attorney General Opinion No. GA-0263 (2004), this office concluded that, under section 601.003 of the Texas Government Code and Article V, section 23 of the Texas Constitution, an individual elected at a general election held in an even-numbered year does not assume office until January 1 of the following year.

That opinion goes on to say that section 87.041 of the Texas Local Government Code, which allows the Commissioners Court to fill a vacancy in the office of Sheriff by appointing someone who holds office until the next general election, must be read in conjunction with section 601.003 of the Texas Government Code and Article V, section 23 of the Texas Constitution. In doing so, this office reaches the conclusion that the Sheriff previously appointed by the Commissioners Court is entitled to remain in office until the January 1<sup>st</sup> following the general election.

Therefore, although the prior opinions of this office seem to provide a straightforward answer, I nevertheless respectfully request your current opinion as to when the Sheriff-elect it to take office on behalf of the Commissioners Court of San Jacinto County.

Respectfully yours,



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Robert H. Trapp  
Criminal District Attorney  
San Jacinto County, T E X A S