



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

**CRAWFORD C. MARTIN  
ATTORNEY GENERAL**

January 13, 1971

Honorable Robert S. Calvert  
Comptroller of Public Accounts  
State of Texas  
Austin, Texas 78711

Opinion No. M-772

Re: Construction of Section 33  
of Article XVI, Constitution  
of Texas.

Dear Mr. Calvert:

Your request for an opinion on the above subject matter reads in part as follows:

"The Comptroller of Public Accounts respectfully requests your official opinion in regard to the issuance and payment of warrants for salaries to State employees who have held other offices or positions of trust or profit under the State of Texas in circumstances made known to the Comptroller as described below.

". . .

"Your opinion is requested whether the Comptroller may issue and pay warrants for the salaries of the individuals mentioned above following vacation by them of their offices as commissioners, councilmen and mayors of Texas cities. If your answer is in the affirmative, please advise as to each individual the effective date from which payment of salary may commence."

You state in your request that the State employees in question held concurrently with their State employment the office of city mayor, city commissioner, or city councilman. Each has now resigned his position as city mayor, city commissioner, or city councilman, as the case may be, and such resignation has been duly accepted, and their successors in each occasion have now been duly appointed and have qualified for the office.

On November 23, 1970, in Cause No. 181,374, in the 53rd District Court of Travis County, Texas, it was determined

by judgment and decree of the Court that Section 33 of Article XVI of the Constitution of Texas, prohibits the Comptroller of Public Accounts from drawing a warrant in payment of salary or compensation of a person who is employed as a professor at Texas A&M University so long as that person holds the elective office of Mayor or City Councilman of the City of College Station, Texas. Since that cause is still pending in the courts of this State, we will not express an opinion concerning whether Section 33 of Article XVI is applicable to a State employee who concurrently holds the office of mayor, city commissioner or city councilman. However, in view of the fact that each employee involved in your request no longer holds the office of mayor, city commissioner or city councilman, we are permitted to answer your questions without deciding the question which is involved in the above referred to pending litigation.

A public officer cannot arbitrarily divest himself of his office. McGhee v. Dickey, 23 S.W. 405 (Tex.Civ.App. 1893, no writ). The resignation of a public officer does not become effective until it has been accepted by the proper authority. Sawyer v. City of San Antonio, 149 Tex. 408, 234 S.W.2d 398 (1950; Tobin v. Valerio, 309 S.W.2d 479 (Tex.Civ.App. 1958, error ref.).

Section 17 of Article XVI requires all public officers to occupy their office and perform the duties incident thereto until a successor has qualified. This provision operates to continue in office an officer who has not effectively resigned, Jones v. City of Jefferson, 66 Tex. 576, 1 S.W. 903 (1886); as well as one whose resignation has been duly accepted but no successor qualified. El Paso and S.W.R. Co. v. Ankenbauer, 175 S.W. 1090 (Tex.Civ.App. 1915, error ref.); Keen v. Featherston, 69 S.W. 983 (Tex.Civ.App. 1902, error ref.); Attorney General's Opinion M-659 (1970).

In each of the instant cases described in your request, the State employee has resigned the office he held with the city, his resignation has been accepted, and his successor has qualified. You are accordingly advised the Comptroller may issue and pay warrants for the salaries of the individuals mentioned in your request on the date each of their successors qualified for the office with the city that such State employees previously held.

S U M M A R Y

Since the State employees in question have resigned city offices previously held by them and their successors to such offices have qualified, the Comptroller may issue and pay warrants for salaries of such State employees.

Yours very truly,

  
CRAWFORD C. MARTIN  
Attorney General of Texas

Prepared by John Reeves  
Assistant Attorney General

APPROVED:  
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