



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 7, 1995

The Honorable José Rodríguez  
County Attorney  
El Paso County Courthouse  
500 E. San Antonio, Texas 79801

Letter Opinion No. 95-069

Re: Whether article III, section 19 of the Texas Constitution prevents a city council member from running for the state legislature after resigning his city council post (ID# 36821)

Dear Mr. Rodríguez:

You ask whether article III, section 19 of the Texas Constitution prevents a city council member from running for the Texas Legislature after he has resigned his position as city council member. Article III, section 19 provides as follows:

No judge of any court, Secretary of State, Attorney General, clerk of any court of record, or any person holding a lucrative office under the United States, or this State, or any foreign government shall during the term for which he is elected or appointed, be eligible to the Legislature.

The individual you inquire about is a city council member for the City of El Paso.<sup>1</sup> His term of office as a council member will end in May of 1997. He wishes to run for the Texas Legislature and, if elected, his term will begin in January of 1997. He intends to resign from his city council post before announcing his intent to run for the legislature. You ask whether the individual's "term of office" as city council member would overlap the legislative term so that article III, section 19 would render him ineligible for the legislature.

Prior to the decision of the Texas Supreme Court in *Wentworth v. Meyer*, 839 S.W.2d 766 (Tex. 1992), it was consistently held that an officeholder was ineligible to serve as a legislator during the entire term of the office to which he was elected or

---

<sup>1</sup>You have not stated that this individual holds a "lucrative" or compensated office, see *Willis v. Potts*, 377 S.W.2d 622 (Tex. 1964), but, since you are concerned about article III, section 19 of the Texas Constitution, we will assume that he does.

appointed, even though he resigned before running for the legislature. *Lee v. Daniels*, 377 S.W.2d 618 (Tex. 1964), *overruled by Wentworth v. Meyer*, 839 S.W.2d 766 (Tex. 1992); *Willis v. Potts*, 377 S.W.2d 622 (Tex. 1964); *Kirk v. Gordon*, 376 S.W.2d 560 (Tex. 1964), *overruled by Wentworth*, 839 S.W. 2d 766; Attorney General Opinions MW-513 (1982), H-278 (1974); *see also Dawkins v. Meyer*, 825 S.W.2d 444 (1992). In *Wentworth*, the Texas Supreme Court determined that article III, section 19 did not make an individual ineligible for the state senate, even though he had been appointed to the Board of Regents of the Texas State University System, for a term that overlapped the legislative term by twenty-one days.

Having been appointed in 1987 to the Board of Regents for a six-year term ending on February 1, 1993, relator Jeff Wentworth resigned as regent in 1988 to assume office as a state representative. *Wentworth v. Meyer*, 839 S.W.2d 766, 767 (Tex. 1992). In 1992, he won the republican nomination for state senator from District 26 for a term beginning January 12, 1993. The state chairman of the Republican Party of Texas, after certifying Wentworth as the party's nominee for the office, notified the secretary of state that article III, section 19 of the Texas Constitution rendered him ineligible. *Id.* Representative Wentworth sought a writ of mandamus to secure a place on the ballot. *Id.* at 766-67.

The court determined that article III, section 19 did not make Representative Wentworth ineligible for the legislature. Justice Cook wrote for the court, in an opinion joined in by Justice Hightower and Justice Hecht. Justice Cook relied on the purpose of section 19 to provide for the separation of powers by protecting the legislature from undue influence by certain office holders. He also relied on the rule that provisions restricting the right to hold office must be strictly construed against ineligibility and concluded that the officeholder's "term of office" referred to his or her "tenure in office," rather than the entire term. *See Spears v. Davis*, 398 S.W.2d 921 (Tex. 1966) (distinguishing between individual's "tenure in office" and "term of office"). Justice Cook wrote as follows:

To allow Wentworth to take his seat as a senator does not violate either the express language or the purpose of article III, section 19 of the Texas Constitution. The language does not prevent those who have resigned from their offices from running for the legislature. The purpose of the provision, that is, to maintain separation of the powers of our government, is not served by excluding from the legislature those who hold none of the offices enumerated in section 19.

*Wentworth*, 839 S.W.2d at 769.

All but one of the other members of the court wrote a separate opinion.<sup>2</sup> Justice Hecht's concurring opinion summarized the court's decision as follows:

[F]ive Members of the Court--JUSTICE COOK, JUSTICE GONZALEZ, JUSTICE HIGHTOWER, JUSTICE CORNYN and myself--hold that article III, section 19 of the Texas Constitution does not prohibit an officeholder who resigns his position from serving in the Legislature during a time when he would otherwise have remained in his former office. These five Justices also hold that *Lee v. Daniels*, 377 S.W.2d 618 (Tex. 1964), and *Kirk v. Gordon*, 376 S.W.2d 560 (Tex. 1964), are overruled to the extent that they conflict with today's decision.

*Id.* at 772 (footnote omitted).

Although five justices agreed that an individual's resignation from a lucrative office would end his or her disqualification under article III, section 19, they do not appear to have agreed on when the individual must leave the office. Justice Gonzalez maintained that the officeholder must relinquish the lucrative office before filing for a legislative office:

Today's opinion should not, however, be viewed as license to hang onto one office while prospecting for another. A chairman may not certify an ineligible candidate for the primary ballot. A chairman may refuse to receive and reject the application to be placed on the primary ballot of one who is ineligible. *One who has filed for an office without resigning a current office with an overlapping term risks disqualification which later resignation after the filing deadline would not cure.*

*Id.* at 771 (emphasis added) (citations omitted).

Justice Cornyn, in whose opinion Justice Hecht joined, concluded that article III, section 19 disqualified only persons "holding a lucrative office." *Id.* at 778. He pointed out that relator Wentworth had once held a lucrative office, but was no longer holding a

---

<sup>2</sup>Justices Gonzalez, Mauzy, Gammage, and Hecht wrote concurring opinions, and Justice Cornyn wrote a concurring opinion in which Justice Hecht concurred. Chief Justice Phillips and Justice Doggett wrote dissenting opinions.

lucrative office when the chairman of the Republican Party determined he was disqualified. *Id.* Justice Cornyn did not explicitly state when resignation must take place.

Justice Cook stated in a footnote that “[w]e reserve the issue when an officeholder must resign to avoid article III, section 19.” *Id.* at 767 n.1. This footnote could mean that other officeholders whose circumstances differ from Wentworth’s should not rely on judicial statements in *Wentworth v. Meyer* about the timing of resignation from the lucrative office. However, five justices either made or agreed with general statements to the effect that an officeholder’s resignation from a lucrative office ends the ineligibility created by article III, section 19. Justice Gonzalez took a strict view that resignation must always take place prior to the filing deadline, whether or not the candidate’s eligibility is questioned at that time, while language in other opinions suggests that a later resignation might serve. Footnote 1 may merely reserve a decision as to whether Justice Gonzalez stated the correct view, or whether an officer might, in some cases, qualify for the legislature even if his or her resignation from the lucrative office takes place after the filing deadline. *But see id.* at 789 (Doggett, J., dissenting) (in footnote 1, plurality “invites another round of election year litigation”).

It appears that Justices Cook, Gonzalez, Hightower, Cornyn, and Hecht would at least agree that resignation prior to the filing date would remove an officeholder from the restrictions of article III, section 19, and individual justices among them might find a later resignation sufficient. We conclude that article III, section 19, as interpreted in *Wentworth*, does not disqualify the holder of a lucrative office from running for the legislature even though the term of the lucrative office overlaps the legislative term, if the officeholder resigns from the lucrative office before filing for the legislature.<sup>3</sup>

We finally point out that in addressing your question in light of *Wentworth*, we are mindful that it is a ground-breaking case, and that it deals with an unusual fact situation. Cases that arise in the future under article III, section 19 will involve different facts and

---

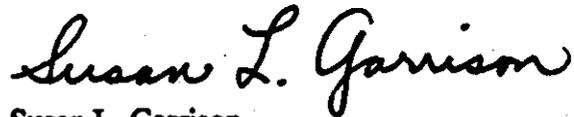
<sup>3</sup>In referring to “resignation” from the lucrative office, we will not overlook the effect of article XVI, section 17, the holdover provision, which provides that “[a]ll officers within this State shall continue to perform the duties of their offices until their successors shall be duly qualified.” Even though an officer resigns and his resignation is accepted by the appropriate authority, the law operates to continue him in office until his successor qualifies. *Plains Common Consol. Sch. Dist. No. 1 v. Hayhurst*, 122 S.W.2d 322 (Tex. Civ. App.—Amarillo 1939, no writ). A holder of a lucrative office who resigns the office to run for the legislature in reliance on *Wentworth v. Meyer* may be disqualified from the legislative office until his or her successor has qualified. As Justice Cook expressly noted, *Wentworth’s* position as regent was filled by someone else. 839 S.W.2d at 769. Thus, the effect of article XVI, section 17 was not an issue in *Wentworth*.

may raise different policy issues, so that the courts may need to distinguish *Wentworth*.<sup>4</sup> If so, the unique fact situation and the multiple opinions in that case would provide numerous grounds to do so. Whether a court might distinguish, depart from, broaden, or restrict *Wentworth* in the future is, of course, a question that cannot be resolved in the opinion process.

### S U M M A R Y

In *Wentworth v. Meyer*, 839 S.W.2d 766 (Tex. 1992), the Texas Supreme Court determined that article III, section 19 of the Texas Constitution did not make an individual ineligible for election to the state legislature, where the individual had been appointed to the board of regents of a state university system for a term that overlapped the legislative term by twenty-one days, but had resigned four years before he ran for the state senate. Article III, section 19, as interpreted in *Wentworth*, does not disqualify the holder of a lucrative office from running for the legislature even though the term of the lucrative office overlaps the legislative term, if the officeholder resigns from the lucrative office before filing for the legislature.

Yours very truly,



Susan L. Garrison  
Assistant Attorney General  
Opinion Committee

---

<sup>4</sup>For example, the weight given to the separation of powers policy underlying article III, section 19 might differ from case to case, depending on whether a judge, the secretary of state, the attorney general, another state officer, or an officer of a political subdivision sought legislative office.