



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 7, 1996

The Honorable Kenneth Armbrister  
Chair, State Affairs Committee  
Texas State Senate  
P.O. Box 12068  
Austin, Texas 78711

Letter Opinion No. 96-011

Re: Whether the filing of an application for school board trustee results in an automatic resignation from the office of criminal district attorney under article XVI, section 65 of the Texas Constitution (ID# 35324)

Dear Senator Armbrister:

You inform us that the Jackson County Criminal District Attorney filed for election to the Edna Independent School District Board of Trustees in March 1995. You ask whether his application for the school board position constituted an automatic resignation under article XVI, section 65 of the Texas Constitution from the office of criminal district attorney.

Article XVI, section 65 of the Texas Constitution establishes four-year terms for criminal district attorneys, county commissioners, and other district, county, and precinct officers. It includes the following "resign to run" provision:

Provided, however, 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.

You state that the individual in this case took the oath of office as Jackson County Criminal District Attorney in January of 1995. On or about March 22, 1995, while serving as criminal district attorney, he filed a formal application to run for a position on the board of trustees of the Edna Independent School District.<sup>1</sup>

---

<sup>1</sup>You inform us that the criminal district attorney was not elected school trustee. Whether or not the officeholder wins the second office has no bearing on the question before us.

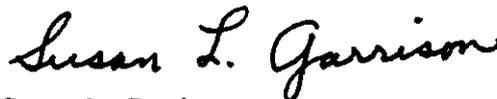
As we have already pointed out, a criminal district attorney is one of the officers named in article XVI, section 65 of the Texas Constitution. He is therefore subject to automatic resignation under the language quoted above. In *Ramirez v. Flores*, 505 S.W.2d 406 (Tex. Civ. App.--San Antonio 1973, writ ref'd n.r.e.), the court determined that a trustee of an independent school district holds an "office of trust under the laws of this state" and concluded that a county commissioner automatically resigned his office pursuant to article XVI, section 65 when he applied to have his name placed on the ballot for school trustee at a time when more than a year remained on his unexpired term. *Id.* at 409; see Attorney General Opinion JM-132 (1984).

We conclude that the Jackson County Criminal District Attorney automatically resigned his office as criminal district attorney when he filed a formal application to run for trustee of the Edna Independent School District.<sup>2</sup> The vacancy created in the office of criminal district attorney "shall be filled pursuant to law in the same manner as other vacancies for such office are filled." Tex. Const. art. XVI, § 65; see *id.* art. IV, § 12 (vacancies in state and district offices shall be filled, unless otherwise provided by law, by appointment of governor).

### S U M M A R Y

The Jackson County Criminal District Attorney filed a formal application to run for trustee of the Edna Independent School District in March 1995, at a time when he had more than one year remaining to serve as criminal district attorney. His application for the school board position constituted an automatic resignation pursuant to article XVI, section 65 of the Texas Constitution from the Office of Criminal District Attorney. Article XVI, section 65 provides that the vacancy created by the automatic resignation shall be filled in the same way that other vacancies in that office are filled,

Yours very truly,



Susan L. Garrison  
Assistant Attorney General  
Opinion Committee

---

<sup>2</sup>This office has determined that Texas Constitution article XVI, section 17, the "holdover" provision, applies to a person who has resigned an office pursuant to article XVI, section 65 of the Texas Constitution. Attorney General Opinions DM-377 (1996); H-161 (1973); C-43 (1963); WW-1253 (1962).