



Office of the Attorney General
State of Texas

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February 26, 1996

The Honorable Toby Goodman
Chair
Committee on Juvenile Justice
and Family Issues
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Letter Opinion No. 96-014

Re: Status of the mayor and a council member of the City of Fort Worth who have resigned to run for another office (ID# 38543)

Dear Representative Goodman:

You have requested our opinion regarding the status of the mayor and a council member of the City of Fort Worth, each of whom has resigned to run for another office.

You indicate that in December, 1995, Mayor Kay Granger and council member Kenneth Barr both announced that they were candidates for other offices. Under the terms of the Charter of the City of Fort Worth, each of them were then deemed to have immediately vacated his or her first office:

If a member of the council shall become a candidate for nomination or election to any public office, other than that of councilperson, he/she shall immediately forfeit his place in the council;¹ and any appointive officer or employee of the city who shall become a candidate for nomination or election to any public office shall immediately forfeit the office or employment held under the city.

FORT WORTH, TEX., CHARTER, ch. III, § 8, *reprinted in* CODE OF THE CITY OF FORT WORTH (Municipal Code Corporation 1986) (footnote added).

On the other hand, article XVI, section 17, Texas Constitution, provides that "[a]ll officers within this State shall continue to perform the duties of their offices until their successors have qualified." We have very recently said that this "holdover" requirement prevails over another *constitutional* provision, article XVI, section 65, that deems an announcement of one's candidacy for another office under certain circumstances to effect an automatic vacation of the first office. Attorney General Opinion DM-377 (1996) at 5. It is obvious that the "holdover" provision of article XVI, section 17, overrides any

¹We presume for purposes of this opinion that, under the charter, the mayor is a member of the council.

charter presumption of automatic vacation. With this background in mind, we now consider the specific situations you present.

In the case of a council member, chapter III, section 4 of the charter prescribes that a vacancy "shall be filled by special election." In that instance, the council member must be deemed to continue to hold his or her office until such special election has occurred and a replacement has been elected and qualified. In the case of the mayor, however, chapter III, section 4 declares that "[s]hould a vacancy occur in the office of mayor, the mayor pro tem shall serve until a special election shall be called under the rules pertaining to filling vacancies among the other councilmembers." Thus, under the terms of the charter, there is no "vacancy" in the office of mayor: the mayor pro tem instantly assumes the office of mayor. As a result, the mayor will "hold over" by virtue of article XVI, section 17, only until the mayor pro tem "qualifies" for the office of mayor, presumably, that is, immediately.

S U M M A R Y

Under the terms of the charter, a council member of the city of Fort Worth immediately vacates his office as soon as he or she "becomes a candidate" for another office, but article XVI, section 17, Texas Constitution, deems the council member to "hold over" until his or her successor "shall be duly qualified," that is, subsequent to a special election as provided in the charter. The charter also provides that, pending a special election, a vacancy in the office of mayor shall be immediately filled by the mayor pro tem. Thus, the mayor holds over only until the mayor pro tem has qualified for the office of mayor.

Yours very truly,



Rick Gilpin
Deputy Chief
Opinion Committee