



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 30, 1996

The Honorable Shane Ann Green  
Brewster County Attorney  
P.O. Box 323  
Alpine, Texas 79831

Letter Opinion No. 96-107

Re: Whether the "resign-to-run" provision of the Texas Constitution is applicable when an individual declares herself a "candidate" for an appointed position (ID# 38807)

Dear Ms. Green:

You ask two questions regarding the "resign to run" provision of the Texas Constitution. You first ask whether a sitting county judge automatically vacated that position under Texas Constitution, article XVI, section 65 by attempting to secure appointment to the bench of a newly created judicial district.

Article XVI, section 65 of the Texas Constitution provides the following automatic resignation provision:

*Provided, however, if any of the officers named herein<sup>1</sup> 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,<sup>2</sup> 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.*

Tex. Const. art XVI, § 65 (emphasis and footnotes added).

You argue that the county judge in this instance automatically resigned that position by virtue of the language we have emphasized above. While you recognize that the list of types of elections may be a limiting factor, the term "election" is the operative word, and it is only modified by the types of elections. The Texas Supreme Court instructs that the constitution is to be read according to its plain terms, and that we are not to "thwart the will of the people by reading into the Constitution language not contained therein, or by construing it differently from

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<sup>1</sup>The office of the county judge is one of the "officers named herein." Tex. Const. art. XVI, § 65.

<sup>2</sup>You inform us that the county judge had more than one year remaining in her term.

its plain meaning.” *Cramer v. Sheppard*, 167 S.W.2d 147, 154 (Tex. 1942). The plain meaning of this provision limits the term “candidate” to “candidate in an election.” While the term “candidate” can be used to indicate one seeking office by appointment, we think that the electorate, in adopting this provision, would have understood the word in terms of an election. See II OXFORD ENGLISH DICTIONARY 825 (2d ed. 1989). In this instance, the county judge made no effort to announce or become a candidate in any election at all, but rather sought gubernatorial appointment to the office. Thus, we believe that the automatic resignation provision of this section was not activated by the judge’s attempts to be appointed to another office.

You next ask about the application of article XVI, section 65, to a county commissioner who files an application for candidacy for hospital district board. Since the position on the hospital district board is uncompensated, you ask whether an hospital district board member holds an “office of trust” within article XVI, section 65 of the constitution.<sup>3</sup> Prior opinions show that “office of trust” is interchangeable with “office.” See Attorney General Opinions JM-395 (1985) (city council member holds office of trust within art. XVI, § 65, Tex. Const.), MW-360 (1981) (advisory position is not one of honor or trust). Factors to be considered in making the determination of whether a particular position is an office include delegation of some part of the sovereign power of government to it, the stability and duration of the position, Attorney General Opinion DM-49 (1991) at 5, or its permanence, Attorney General Opinion JM-847 (1988).

Based on the following opinions, we believe that a director of a hospital district holds an office of trust. Attorney General Opinion M-409 used the classic definition of “office” to determine that a director of a hospital district appointed under article 4494n, V.T.C.S. (*see now* ch. 281, Health & Safety Code) holds an office. Attorney General Opinion M-409 (1969); *see also* Attorney General Opinion JM-1064 (1989) (same). Those two opinions primarily based their reasoning on the fact that the board of directors exercises some portion of the sovereign power of government.

Accordingly, we believe that an uncompensated member of a hospital district board holds an office of trust within article XVI, section 65 of the Texas Constitution.

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<sup>3</sup>Although you inquire about a “position of trust,” article XVI, section 65, actually refers to an “office of . . . trust.”

S U M M A R Y

The automatic resignation provision of article XVI, section 65 of the Texas Constitution does not operate to remove a county judge who seeks gubernatorial appointment to a district court bench. A member of the board of directors of a hospital district holds an office of trust.

Yours very truly,

A handwritten signature in cursive script that reads "Susan L. Garrison". The signature is written in black ink and is positioned to the right of the typed name.

Susan L. Garrison  
Assistant Attorney General  
Opinion Committee