



IO# 15944
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Fred Toler
Executive Director

**Texas Commission on
Law Enforcement Officer Standards and Education**

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AUSTIN, TEXAS 78752

May 1, 1992

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The Honorable Dan Morales
Attorney General of Texas
Price Daniel Sr. Building
Austin, Texas 78701

Opinion Committee

RE: The public interest concerning the official duty of the Texas Commission on Law Enforcement Officer Standards and Education to license appointed and/or elected Constables.

Dear Mr. Attorney General:

Pursuant to Section 402.042 of the Government Code, I hereby request an official Attorney General's Opinion regarding a matter affecting the public interest and concerning the official duty of the Texas Commission on Law Enforcement Officer Standards and Education ("Commission").

Pursuant to Section 415.015 of the Government Code, Subsection (c) a constable elected after September 1, 1985 is subject to the licensing, and other requirements contained in Chapter 415 of the Government Code. In addition, pursuant to Section 415.053 of the Government Code, a constable has two years from the date he takes office to be licensed by the Commission. If the constable is not licensed within the two year period he is subject to removal from office for incompetence under Title 110, Revised Statutes (codified at Chapter 87 of the Local Government Code), Article 5, Section 24 of the Texas Constitution, or other applicable laws.

Over the past few months, the Commission has received numerous phone calls from representatives and private citizens of various counties inquiring about the status of constables in their individual counties. There appears to be a number of constables in Texas counties who were elected or appointed and took office after September 1, 1985, have been in office for two years or more, but who are not licensed by the Commission.

For the reasons stated above, the Commission sets forth questions in the following format in order to obtain clarification on these issues:

1st Proposed Scenario: Sam Allman ("Allman") was elected Constable of Precinct 1 in Anywhere County, Texas after September 1, 1986 and took office on January 1, 1987. Allman was not licensed within the two year period required by section 415.053, Government Code, and is still not licensed.

1. Under applicable Texas law, can Allman run for reelection for the Office of Constable, Precinct 1 in Anywhere County, Texas?
 - (a) and if elected, can Allman take office ever though he has exceeded the initial two year licensing period?
 - (b) and would Allman have another two years in which to obtain his license before he is subject to removal?
2. Under applicable Texas law, can Allman run for election for the Office of Constable of a different precinct in Anywhere County, Texas?
 - (a) and if elected, can he take office?
 - (b) and would he have another two years in which to obtain his license before he is subject to removal?
3. Would the responses for questions 1. and 2. change if Allman had been officially removed as Constable for Precinct 1 in Anywhere County, Texas under Section 415.053, Government Code and the removal laws?
4. If Allman is not prohibited from running for the Office of Constable and is then reelected as Constable for Precinct 1 in Anywhere County, Texas, does Allman have another two years to be licensed from the time he takes office before he is subject to removal? or
 - (a) is Allman subject to immediate removal upon taking office because he is still not licensed by the Commission and was removed for incompetency before?
5. If Allman is not prohibited from running for the Office of Constable and is then elected as Constable for a different precinct in Anywhere County, Texas, does Allman have another two years to be licensed from the time he takes office before he is subject to removal? or
 - (a) is he subject to immediate removal upon taking office because he is still not licensed by the Commission and was removed as Constable from a different precinct for incompetency?

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2nd Proposed Scenario: What if Allman had not been removed from the Office of Constable but instead, after the two year period, resigned because he was not licensed by the Commission and the Commissioner's Court, being fully aware that Allman is not licensed by the Commission, appoint him as Constable to either the same or different precinct.

1. Does Allman have another two years in office before he is subject to removal from office for not being licensed?
2. Would the members of the Commissioner's Court be subject to prosecution under Section 415.065 of the Government Code?
3. Is Allman subject to prosecution under Section 37.11 of the Penal Code, Impersonating a Public Servant?
4. Could Allman successfully invoke the peace officer exception to being prosecuted under Section 46.02 of the Penal Code, Unlawful Carrying Weapons?

If you have any questions or if we can provide you with additional information, please contact Ms. Johanna McCully-Bonner, General Counsel, at (512) 406-3619.

Sincerely,



Fred Toler,
Executive Director

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