



SENATOR GONZALO BARRIENTOS  
CHAIRMAN

Texas Senate  
Committee on Nominations

**RQ-490**

MB /  
file # ~~ML-18295-9~~  
FDH # ~~18295~~ 1891

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December 15, 1992

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Opinion General

Honorable Dan R. Morales  
Attorney General of Texas  
P.O. Box 12548  
Austin, Texas 78711-2548

Dear General Morales:

As the Chairman of the Senate Committee on Nominations, I am requesting your legal opinion as to the necessity of Senate confirmation of recess gubernatorial nominees who are replaced by other nominees before the Senate has the opportunity to confirm or reject them in a regular or special session.

Article IV, Section 12 of the Texas Constitution says "the Senate may give its advice and consent on an appointment of the Governor made during the recess of the Senate." A constitutional amendment in 1990 further clarified that the Senate's advice and consent is optional during a special session, but necessary during the following regular session or the recess nominee shall be considered "rejected" by the Senate. This is an important implication for those recess nominees whose terms extend past the end of the following regular session, but what does it mean for those nominees whose terms end before confirmation?

My questions specifically relate to recess nominees who resign, die, become ineligible, lose election, have their terms expire, or otherwise vacate their appointed positions and are replaced before Senate confirmation:

- 1). Must the Governor submit their names to the Senate for confirmation?
- 2). Must the Senate act on them?
- 3). Is Senate action on the nomination necessary to "validate" the nominee's actions before he or she vacated the position?
- 4). Does Senate rejection of a nominee's term following his leaving office "invalidate" the nominee's actions during that term?

For example, on May 19, 1992, Governor Ann Richards appointed Ms. Kathleen Hamilton to the position of Commissioner of Health and Human Services. On June 15, 1992, Ms. Hamilton resigned and Mr. Richard Ladd was appointed and sworn in as Commissioner of Health and Human Services for a term expiring February 1, 1993. When the Senate convenes for the 73rd Regular Session, must Governor Richards submit Ms. Hamilton's name to the Senate and must the Senate act on her term of service as Health and Human Services Commissioner?

I understand it may be a Senate tradition to confirm recess nominees even though the point of confirmation is moot. However, if there is no legal necessity to confirm recess nominees who have been replaced, we would like to end this time-consuming practice.

I am hoping that an answer to this opinion request can be expedited. It would be very helpful to the Senate to know how it should proceed with replaced recess nominees before the beginning of the 73rd Regular Session, which begins on January 12, 1992.

Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Gonzalo Barrientos". The signature is written in black ink and has a long, sweeping horizontal line extending to the right from the end of the name.

Gonzalo Barrientos  
Chairman

GB/rh

cc: Governor Ann W. Richards  
Lt. Governor Bob Bullock