



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

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The Honorable Mark W. Stiles
Chair
Calendars Committee
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Letter Opinion No. 95-071

Whether article XVI, section 65 of the Texas Constitution, the "resign to run" provision, is triggered by an announcement that a potential candidate is "seriously considering" a decision to run for a particular office, and a related question (ID# 36748)

Dear Representative Stiles:

You have requested our opinion as to whether article XVI, section 65 of the Texas Constitution, the "resign to run" provision, is triggered in particular circumstances. Article XVI, section 65 provides in pertinent part:

[I]f 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

You pose a situation in which

the following statement, whether stated verbally in public or contained in a letter to prospective supporters constitutes an "announcement" for purposes of section 65 if it is uttered or published when over one year remains in that officer's term: "If the current county judge resigns or decides not to seek re-election, I will seriously consider running for county judge."

Article XVI, section 65 becomes operative whenever an individual, holding any office named therein, "announce[s]" his or her "candidacy."¹ Since we have found no

¹Article XVI, section 65 is also triggered whenever an individual "in fact become[s]" a candidate." You do not inquire about this portion of the provision, but it seems obvious that it represents a step subsequent to "announce[ment]" of one's "candidacy," and probably does not occur until one actually completes the filing requirements for the office. For purposes of this opinion, we assume that one may "announce his or her candidacy" without thereby becoming a "candidate," but that one may never

cases or opinions that consider the meaning of this expression, we base our decision upon logic and common sense.

In determining what constitutes an "announcement of candidacy," it seems evident that the paramount consideration must be the impression one's statement makes upon his auditors and potential voters. If a reasonable person may conclude after hearing the statement that the individual intends, without qualification, to run for the office in question, we believe that the individual may be said to have "announce[d] his or her candidacy."

We now turn to the specific "statement" you have submitted for our consideration. The individual states only that he "will seriously consider running for county judge." Whatever else the statement denotes, it absolutely fails to indicate that the individual intends, without qualification, to stand for the office in question. "Consider" means "to contemplate mentally, fix the mind upon; to think over, meditate or reflect on, bestow attentive thought upon, give heed to, take note of." III OXFORD ENGLISH DICTIONARY 767 (2d ed. 1989). "Seriously" means "with earnest thought or application; with serious intent; in earnest, earnestly; with gravity; not lightly, superficially, or jocosely." XV *id.* at 16. Without regard to the "if" clause contained in the statement, we can state with certainty that a statement which promises merely to "seriously consider" running for an office may not reasonably be viewed as constituting an announcement of candidacy for that office.

You also ask whether an officeholder who "decides to run for another office instead of seeking re-election" is "prohibited from using campaign contributions for the campaign for that other office that were given to the officeholder on the assumption that the officeholder would run for re-election."

The Election Code does not restrict the use of campaign contributions to expenditures for a particular political campaign. It prohibits their expenditure prior to the appointment of a campaign treasurer, Elec. Code § 253.031; and it proscribes their personal use, *id.* § 253.035. "Personal use" is defined to exclude payments made "in connection with activities as a candidate or in connection with the performance of duties or activities as a public officeholder." *Id.* § 253.035(d)(1). See Ethics Advisory Opinion No. 172 (1993) at 3. We conclude that an officeholder is at liberty to use campaign contributions to defray the expenses of any election campaign in which he or she opts to compete.

(footnote continued)

"become a candidate" without having, either previously or simultaneously, "announce[d] his or her candidacy."

S U M M A R Y

An individual who utters or publishes the statement: "If the current county judge resigns or decides not to seek re-election, I will seriously consider running for county judge," does not thereby "announce his or her candidacy" for county judge for purposes of article XVI, section 65 of the Texas Constitution.

An individual who receives political contributions in connection with a campaign for a particular office is not precluded from using those contributions to finance a campaign for a different office.

Yours very truly,



Rick Gilpin
Deputy Chair
Opinion Committee