



- Chairman of Committee on Criminal Jurisprudence
- Member of Committee on Judicial Affairs

Texas House of Representatives

District 40: (part) McAllen, Elsa, Edcouch, Edinburg & San Carlos

Juan J. Hinojosa

March 9, 2001

Honorable John Cornyn
Texas Attorney General
P.O. Box 12548
Austin, TX 78711-2548

RECEIVED

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OPINION COMMITTEE

RQ-0366-JC

FILE # ML-41927-01
I.D. # 41927

Re: Request for Attorney General Opinion
City of Elsa

Issue: Whether a City Council Member's announcement as candidate for a local School Board Trustee operates as an ipso facto resignation of his seat as City Council Member under Article XI Section 11 of the Texas Constitution and thereby place on the Mayor the duty to declare the seat vacated and call a special election immediately.

Dear Attorney General Cornyn:

The City of Elsa, Texas is a Home Rule Municipality within the same geographical area of the Edcouch-Elsa Consolidated Independent School District (EECISD). Recently, Commissioner Domingo Rodriguez commenced campaigning in order to be elected to the Edcouch-Elsa Consolidated School District Board of Trustees and intends to formally file to be placed on the ballot.

Mayor Gregorio Madrigal is aware that the common law doctrine of incompatibility of office applies and that Commissioner Domingo Rodriguez will automatically resign his seat on the City Council if and when elected to the School District as Board Trustee. However, the question remaining is whether Article XI Section 11 of the Texas Constitution would require an immediate, automatic resignation and thereby place the duty on Mayor Gregorio Madrigal to order the seat vacated and immediately call a special election to fill the vacancy.

As a Home Rule Municipality, the City looks to the Constitution of Texas for limitations on its powers and authorities. Texas Constitution Article XI Section 11 reads in pertinent part "if any of such officers, elective or appointive, **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**".

- District Office: 612 Nolana, Suite 410B, McAllen, TX 78504-3089 (956) 972-1841 Fax: (956) 686-8462
- Austin Office: P.O. Box 2910, Austin, TX 78768-2910 (512) 463-0636 Fax: (512) 463-0229
- E-mail: JUAN.HINOJOSA@HOUSE.STATE.TX.US

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Attorney General John Cornyn

Recently, your office found that “the term ‘office of profit or trust’ is a broad term that embraces **any office, paid or unpaid**. The term has been specifically construed in attorney general opinions to include membership on both a home-rule or general-law city council. See Tex. Att’y Gen. Op. Nos. JM-533 (1986) at 2 (home-rule city council member holds an office of trust within meaning of Texas Constitution Article XVI, section 65); JM-395 (1985) at 4 (general-law city council member holds an office of trust within meaning of Texas Constitution Article XVI, section 65.” **Tex. Att’y Gen. Op. No. JC-0318(2000)**.

A school board trustee is not an office of profit or emolument. However, under your most recent analysis of an office of “profit or trust” may be construed as a “civil office” without regard to pay or compensation.

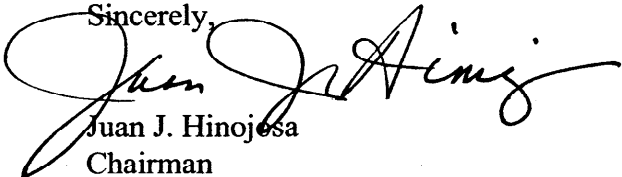
Therefore, if Article XI Section 11 embraces any office, paid or unpaid, Gregorio Madrigal, as Mayor of the City of Elsa, must declare the commissioners seat vacated upon Commissioner Domingo Rodriguez’ becoming a candidate for the office of School Board Trustee. The issue then being in substantial part whether a School Board Trustee holds an “office of profit or trust” as defined in Article XI Section 11 of the Texas Constitution.

Mayor Gregorio Madrigal, under the doctrine of incompatibility must not act at present, until Domingo Rodriguez prevails and accepts the second office. In contrast, under interpretations of Article XI Section 11 of the Texas Constitution he must act since the terms “profit or trust” apply to any office.

Finally, if the doctrine of dual office holding has constitutional aspects, that relate to Article XI Section 11, then Mayor Madrigal may have to act by declaring the seat vacated and ordering a special election prior to the election results of the School Board Race under the very same doctrine.

Your attention to this opinion request is greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Juan J. Hinojosa". The signature is fluid and cursive, with the first name "Juan" being particularly prominent and stylized.

Juan J. Hinojosa

Chairman

Committee on Criminal Jurisprudence

cc: City of Elsa