



RECEIVED

MAR 10 2004

Mary Denny  
Chair  
Charlie Howard  
ViceChair

House of Representatives **OPINION COMMITTEE**  
Committee on Elections

Members:  
Dwayne Bohac  
Garnet Coleman  
Joe Deshotel  
Linda Harper-Brown  
Carlos Uresti

March 5, 2004

FILE # ML-435670A  
I.D. # 43567

The Honorable Greg Abbott  
209 West 14th Street  
Austin, TX, TX 78701

RQ-0194-GA

Dear General Abbott:

This is a request for an opinion regarding whether an appointment to the Texas Ethics Commission ("Commission") was made in conformance with Texas law.

On November 5, 1991, Texas voters approved an amendment to the Texas Constitution that created the Texas Ethics Commission.<sup>1</sup> TEX. CONST. art. III § 24a. Article III, section 24a(3) specifically states that the agency consists of eight members, two of which must be "members of different political parties appointed by the speaker of the house of representatives from a list of at least 10 names submitted by the members of the house from each political party required by law to hold a primary[.]" TEX. CONST. art. III §24a(3). Neither the constitutional provision nor any other law or rule requires that appointees to the Commission obtain confirmation by the Senate.

On December 31, 2002, former Speaker of the House James E. "Pete" Laney appointed Mr. Ralph Wayne to the Commission for a term to expire on November 19, 2005. On January 11, 2003, Mr. Laney appointed outgoing state representative Tom Uher, D-Bay City, to the Commission for a term to expire on November 19, 2003.

It stands to reason that Mr. Uher's appointment represents the appointment of a Democrat to the Commission, as Mr. Uher was a Democrat elected to the House of Representatives from 1967-2002. Therefore, by process of elimination, Mr. Wayne represents the Republican appointee to the Commission.

The routine practice in the past has been for the speaker to solicit nominees from the

---

<sup>1</sup>A copy of Article 3, section 24a, Texas Constitution in its entirety is attached for your reference.

House Republican Caucus. The current speaker, in an attempt to be even more inclusive, recently solicited nominations from *all* House Democrats -- not just the caucus -- to fill the vacancy created when Mr. Uher's term expired.<sup>2</sup>

In the instant case, there is no evidence that Mr. Wayne's name was ever submitted to Mr. Laney as a nominee to the Commission by the Republican Caucus, a House Republican, or any other arm of the Republican Party. The former Chairman of the caucus, Representative Kenny Marchant, has no recollection of being asked to submit the names of any Republican nominees. Additionally, there is no evidence of nominations being sought from House Republicans in a similar manner to that employed by Speaker Craddick.

Therefore, the issue is whether an appointment made to the Commission of a person whose name was not submitted by the members of the house from each political party required by law to hold a primary is an invalid appointment. I request that you answer the following questions:

1. Whether article III, section 24a of the Texas Constitution requires that a nominee to the Texas Ethics Commission be made from a list of at least 10 names submitted by the members from each political party required to hold a primary, acting together in some form, whether by formal caucus vote or through some sort of joint action?
2. If the answer to the first question is "yes", is an appointment made that was not in conformity with article III, section 24a, invalid?
3. If the answer to the second question is "yes", is Mr. Wayne a *de jure* officer, a *de facto* officer, or not an officer at all?
4. If the answer to the third question is that Mr. Wayne is not an officer at all or is a *de facto* officer, are any actions or votes taken by Mr. Wayne invalid?
5. If the answer to the third question is that Mr. Wayne is not an officer at all or is a *de facto*

---

<sup>2</sup>Attached for your reference is a copy of Speaker Craddick's letter to all House Democrats.

The Honorable Greg Abbott  
March 5, 2004  
Page 3

officer, is there as a consequence a vacancy on the Commission as a result of the failure to comply with the requirements of article III, section 24a?

In advance, your consideration and attention to this matter are greatly appreciated. Please feel free to contact me if you have nay questions or require clarification.

Sincerely,

A handwritten signature in black ink that reads "Mary Denny". The signature is written in a cursive, flowing style.

Mary Denny

MD/nb

cc: Texas Ethics Commissioners

Enclosures: (2)

**Sec. 24a. TEXAS ETHICS COMMISSION.** (a) The Texas Ethics Commission is a state agency consisting of the following eight members:

(1) two members of different political parties appointed by the governor from a list of at least 10 names submitted by the members of the house of representatives from each political party required by law to hold a primary;

(2) two members of different political parties appointed by the governor from a list of at least 10 names submitted by the members of the senate from each political party required by law to hold a primary;

(3) two members of different political parties appointed by the speaker of the house of representatives from a list of at least 10 names submitted by the members of the house from each political party required by law to hold a primary; and

(4) two members of different political parties appointed by the lieutenant governor from a list of at least 10 names submitted by the members of the senate from each political party required by law to hold a primary.

(b) The governor may reject all names on any list submitted under Subsection (a)(1) or (2) of this section and require a new list to be submitted. The members of the commission shall elect annually the chairman of the commission.

(c) With the exception of the initial appointees, commission members serve for four-year terms. Each appointing official will make one initial appointment for a two-year term and one initial appointment for a four-year term. A vacancy on the commission shall be filled for the unexpired portion of the term in the same manner as the original appointment. A member who has served for one term and any part of a second term is not eligible for reappointment.

(d) The commission has the powers and duties provided by law.

(e) The commission may recommend the salary of the members of the legislature and may recommend that the salary of the speaker of the house of representatives and the lieutenant governor be set at an amount higher than that of other members. The commission shall set the per diem of members of the legislature and the lieutenant governor, and the per diem shall reflect reasonable estimates of costs and may be raised or lowered biennially as necessary to pay those costs, but the per diem may not exceed during a calendar year the amount allowed as of January 1 of that year for federal income tax purposes as a deduction for living expenses incurred in a legislative day by a state legislator in connection with the legislator's business as a legislator, disregarding any exception in federal law for legislators residing near the Capitol.

(f) At each general election for state and county officers following a proposed change in salary, the voters shall approve or disapprove the salary recommended by the commission if the commission recommends a change in salary. If the voters disapprove the salary, the salary continues at the amount paid immediately before disapproval until another amount is recommended by the commission and approved by the voters. If the voters approve the salary, the approved salary takes effect January 1 of the next odd-numbered year. (Added Nov. 5, 1991.)

**Sec. 25. SENATORIAL DISTRICTS.** The State shall be divided into Senatorial Districts of contiguous territory, and each district shall be entitled to elect one Senator. (Amended Nov. 6, 2001.)

**TEMPORARY TRANSITION PROVISION.<sup>4</sup>**

**Sec. 26. APPORTIONMENT OF MEMBERS OF HOUSE OF REPRESENTATIVES.** The members of the House of Representatives shall be apportioned among the several counties, according to the number of population in each, as nearly as may be, on a ratio obtained by dividing the population of the State, as ascertained by the most recent United States census, by the number of members of which the House is composed; provided, that whenever a single county has sufficient population to be entitled to a Representative, such county shall be formed into a separate Representative District, and when two or more counties are required to make up the ratio of representation, such counties shall be contiguous to each other; and when any one county has more



**TEXAS HOUSE OF REPRESENTATIVES**

**TOM CRADDICK  
SPEAKER**

November 24, 2003

~~The Honorable Roberto R. Alonzo  
State Representative  
Capitol Extension, Room E1.314  
Austin, Texas 78701~~

Dear Roberto:

Under Article III, Section 24a(3), Texas Constitution, the speaker of the house appoints two members to the Texas Ethics Commission ("commission"). Those two members must be from different political parties, and the speaker is required to select his appointees from a list of at least 10 names submitted by the members of the house from each political party required by law to hold a primary (currently only the Republican and Democratic parties).

The term of a current speaker appointee, former State Representative and Speaker Pro Tem Tom Uher, a Democrat, expired on November 19 of this year. This letter is to solicit from you, as a Democratic member of the house, the name of a person who is qualified to hold this office. If you believe it necessary or appropriate to submit more than one name, please rank your nominees.

In considering whether a person is qualified to be nominated for membership on the commission, a sitting member of the legislature is not eligible for appointment to this position. Article XVI, Section 40(d), prohibits a member of the legislature from simultaneously holding any other office under the State. See Op. Tex. Att'y Gen. No. JC-464 (2002). Additionally, HB 1606, 78th Leg., R.S. (2003) prohibits a person who is required to register as a lobbyist under Chapter 305 of the Government Code from being named to the commission after September 1, 2003. Finally, a member of the commission may not be a candidate for an elective public office for 12 months after the date on which the member ends service on the commission. TEX. GOV'T CODE ANN. § 571.028 (Vernon 1994).

In closing, I look forward to your thoughtful and deliberate consideration of nominees for this position, and I would appreciate receiving your nominations no later than December 15.

Sincerely,

A handwritten signature in dark ink, appearing to read "Tom Craddick".

**TOM CRADDICK  
Speaker**

TC/nft

cc: District Office