

TEXAS HOUSE OF REPRESENTATIVES

RECEIVED

By Opinion Committee at 4:44 pm, Aug 05, 2020



Terry Canales
District 40

Honorable Ken Paxton
Texas Attorney General
P.O. Box 12548
Austin, Texas, 78711-2548

RQ-0369-KP

FILE# ML-48848-20

I.D.# 48848

Re: Request for Attorney General Opinion
City of Palmview

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

Dear Attorney General Paxton:

The City of Palmview, Texas is a Home Rule Municipality that has also adopted four-year terms and is within the same geographical area of the La Joya Independent School District (LJISD). Recently, Councilmember Anthony Uresti commenced a campaign seeking to be elected to the La Joya Independent School Board of Trustees by placing 4x8 political signs on public properties that state "Elect Anthony Uresti for Place 5 of LJISD School board." Furthermore, Councilmember Uresti has posted on his personal social media account the same political advertisement with a caption that reads "After great anticipation... I look forward in sharing this journey with you!" Your office has opined, "*The generally understood meaning of "announce" is to make a public statement about a fact, occurrence, or intent. See MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 50 (11th ed. 2005) (defining "announce" as "to make known publicly: PROCLAIM"); THE NEW OXFORD AMERICAN DICTIONARY 63 (2001) (defining "announce" as to "make a public and typically formal declaration about a fact or occurrence or intention"); see also Smith v. State Lottery Comm 'n, 812 N.E.2d 1066, 1072 (Ind. App. 2004) ("announce" is defined as 'to give public notice of; make known officially or publicly;*



deliver news of" (quoting *WEBSTER'S THIRD NEW INT'L DICTIONARY (2002)*)); *Tex. Att'y Gen. Ope No. DM-377 (1996)* at ("To 'announce' is 'to deliver news; to make public or official intimation of, to proclaim'" (quoting *1 THE OXFORD ENGLISH DICTIONARY 485 (2d ed. 1989)*)). Thus, the generally understood meaning of the constitutional language requires a public statement of intent to become a candidate or to run for an office. See *Tex. Att'y Gen. Ope No. GA-0643 (2008)* See also *Tex. Atty. Gen. Ope. JC-0403*. The City of Palmview, via its legal counsel, concludes that Councilmember Uresti announced his intent to run for another elected position by placing 4x8 political signs with definitive language of his intent to be elected to the La Joya Independent Board of Trustees along with his social media post stating the same.

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." Additionally, your office has opined "the office of trustee of the board of a consolidated school district is an "office of profit or trust" for purposes of article XI, section 11." Therefore, the City of Palmview concludes Councilmember Uresti has triggered the automatic resignation provision since he seeks office on the Board of Trustees of an independent school district. See *Tex. Att'y Gen. Ope No. JC-0403 (2000)* See also *Ramirez v. Flores 505 S. W. 2d 406 (Tex. Civ App. 1973)*.

Finally, the City of Palmview concludes since councilmembers serve four-year terms and Councilmember Uresti was sworn into office on Nov. 27, 2018 and more than 50% of his term remains, the City Council must declare a vacancy and hold a special election within 120 days from the date the vacancy occurred. An officer who automatically resigns holds over in the office until a successor is appointed and qualified for the office. *Tex. Const. Art. 16, § 17; Tex. Atty. Ge. Ope. No. JC-0318 (2000)*. The board of a consolidated school district is the legal equivalent of the board of an independent school district. See *Tex. Educ. Code. Ann. § 11.151(a)* (powers and duties of board of trustees of an independent school district), 13.155 (Consolidated school district is an independent school district school district) (Vernon 1996).

The City of Palmview, under direction of the City Attorney, is reaching out to your office to ensure their conclusions are correct on the following questions:

1. Do placing political signs on public property and making public statements on Facebook constitute an "announcement?"

2. Given the facts stated above, do Councilmember Uresti's actions trigger the automatic resignation provision?
3. Is the vacancy filled by special election or appointment by the council?
4. Since Councilmember Uresti has more than fifty percent of his term remaining, does the holdover provision apply?
5. Since the City of Palmview has a general election in November, does the city hold the special election in conjunction with that election or at a later date?
6. In the event he attempts to reconsider his "announcement," is he allowed to? See Tex. Att'y Gen. LO-94-059 (1994); Tex. Att'y Gen. Op. No. DM-0406 (1996).

Your attention to this opinion request is greatly appreciated.

Very truly yours,



Terry Canales
Chairman of the House Committee on Transportation
House District 40

CC: City of Palmview
Exhibit A: City Charter
Exhibit B: Social media Post
Exhibit C: Sign