



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

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August 24, 1973

The Honorable Price Daniel, Jr.  
Speaker, House of Representatives  
State Capitol Building  
Austin, Texas

Letter Advisory No. 58

Re: Whether a person elected to the House of Representatives of the 63rd Legislature, having resigned that office, may be appointed to and serve in the position of House Administrator before the expiration of the term for which he was elected to the House.

Dear Speaker Daniel:

Rule 6 of the Rules of the House of Representatives adopted by the 63rd Legislature calls for a House Administrator whose duties are specified therein.

Section 11 of Rule 1 provides, in part: "All officers and employees of the House shall be selected and appointed by the Speaker and he shall have the right to discharge any of them, which authority may be delegated to the Committee on House Administration to the extent and for such time as the Speaker may determine. . . ."

Article 3, § 9 of the Constitution provides that the House of Representatives shall elect its Speaker from its own members and "choose its other officers." Whether these are to be chosen from among its own members is not specified. Nor do the House Rules specify whether the House Administrator is to be a member of the House of Representatives.

Either House of the Legislature may impose upon its members additional unpaid duties to be fulfilled by them as members of the Legislature. Terrell v. King, 14 S. W. 2d 786 (Tex. 1929) and see also, Eucaline Medicine Co. v. Standard Inv. Company, 25 S. W. 2d 259 (Tex. Civ. App., Dallas, 1930, err. ref'd.); Jones v. Alexander, 59 S. W. 2d 1080 (Tex. 1933). Thus, if a legislator is to be appointed to the unpaid office of House Administrator, and remain a member of the Legislature we see no problem. The office would neither be one "of profit" nor "of emolument" and the appointment would not violate either Article 3, § 18 or Article 16, § 40 of the Constitution.

Your letter, however, asks concerning whether "a person elected to the House of Representatives of the 63rd Legislature, having resigned that office, may be appointed to and serve in the position of House Administrator before the expiration of the term for which he was elected to the House."

Article 3, §18 of the Constitution provides that no representative, during the term for which he may be elected, shall be eligible to any "civil office of profit" under this State which was created, or the emoluments of which were increased, during that term.

Each House of Representatives adopts its own rules and establishes its own organization. Article 3, §9. Therefore, although there may have been provision for an Administrative Officer in other Legislatures, the provision for that office in the 63rd Legislature is, in our opinion, a civil office of profit which was created during the term of the 63rd Legislature.

We recognize that there might be some who would say that the office of Administrative Officer was not such an office as was contemplated by the Constitution, but rather that it was an employment. See, for example, Attorney General Opinions V-308 (1947); C-556 (1965) and undoubtedly others. These opinions, in our view, mistakenly equate "public officer" to "office". There is, to the contrary, a substantial difference.

In Aldine Independent School District v. Standley, 280 S. W. 2d 578 (Tex. 1955) it was held that an assessor-collector of taxes was not a "public officer" within Article 5, §24 and Article 16, §30 of the Constitution. When confronted with the holdings in Odem v. Sinton Independent School District, 234 S. W. 1090 (Tex. Comm. App. 1921) and Pruitt v. Glen Rose Independent School District No. 1, 84 S. W. 2d 1004 (Tex. 1935) that the office of assessor-collector of taxes was an "office of emolument" within the prohibition of §40 of Article 16, as it then read, the Court said:

" . . . In no one of these opinions is it held that one holding such office is a public officer of this state . . . ." (280 S. W. 2d at 585) (emphasis added)

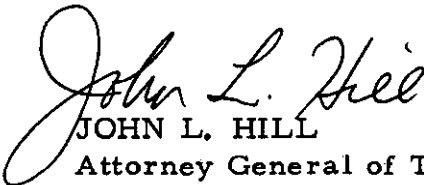
In view of the language of the Supreme Court, we are not inclined to agree with the statement in Tilley v. Rogers, 405 S. W. 2d 220 (Tex. Civ. App., Beaumont, 1966, err. ref'd., n. r. e.) that: "We see no difference in the meaning of public office and civil office." The judgment of that court was supportable on other grounds.

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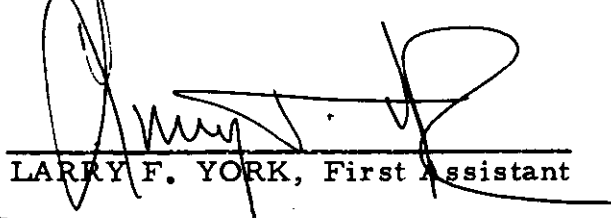
As we construe the reference in various constitutional provisions such as § 40 of Article 16 and § 18 of Article 3 to "civil office" it encompasses something more than a mere employment. It is our opinion that the position of Administrative Officer of the House of Representatives, if it provides a salary or other emolument, is a "civil office of profit."

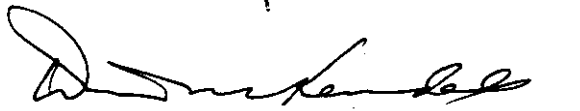
Since each Legislature adopts its own rules and establishes its own organization (Article 3, § 9, Constitution of Texas), the office of House Administrator was created "during the term of the 63rd Legislature." Thus no member of the 63rd Legislature would be eligible to appointment to that office having resigned from the Legislature to accept it.

Very truly yours,

  
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Attorney General of Texas

APPROVED:

  
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