



**THE ATTORNEY GENERAL
OF TEXAS**

December 21, 1989

**JIM MATTOX
ATTORNEY GENERAL**

Honorable John T. Monford
Chairman
State Affairs Committee
P. O. Box 12068
Austin, Texas 78711

LO-89-106

Dear Mr. Monford:

You ask about an officeholder's eligibility to run for the legislature. Specifically, you ask whether a Houston city council member is barred by article 3, section 19, of the Texas Constitution from filing an application to be on the general primary ballot in March, 1990, as a candidate for state senator. The council member was reelected to his current position in November, 1989, for a new term to begin on January 2, 1990 when his current term ends.

Article 3, section 19, provides:

No judge of any court, Secretary of State, Attorney General, clerk of any court of record, or any person holding a lucrative office under the United States, or this State, or any foreign government shall during the term for which he is elected or appointed, be eligible to the Legislature.
(Emphasis added.)

This provision renders the holder of a lucrative office ineligible to seek legislative office during his term of office. The provision applies to a salaried city council member. Willis v. Potts, 377 S.W.2d 622 (Tex. 1964). The new term of office for members of the city council begins on January 2, 1990, which is also the filing deadline for the general primary. Thus, an application filed on that date would not be made during the current term.

We understand that the officer-elect resigned his current position on December 20, 1989, and will decline to qualify for the new term of office before that term begins on January 2, 1990, by delivering a written declination to the governing body of the political subdivision in which he

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serves. In accordance with section 201.029, Election Code, a vacancy in the future term will occur on the date of the delivery of the officer-elect's declination. Each vacancy may be filled by appointment in accordance with the laws governing the particular office. Once the officer-elect has declined the future term of office, the provisions of article 3, section 19, are inapplicable.

You also ask whether article 16, section 17, of the Texas Constitution bars the officerholder's candidacy. That constitutional provision requires that "[a]ll officers within this State shall continue to perform the duties of their offices until their successors shall be duly qualified." This mandate is commonly referred to as the "holdover" provision. We understand you to ask whether article 16, section 17, operates to extend the current "term" of office of the officeholder in such a way that article 3, section 19, is triggered. In our opinion, article 3, section 19, refers to the precise term of office established by law. It does not refer to the tenure of a particular individual. Spears v. Davis, 398 S.W.2d 921 (Tex. 1966). A term of office may be legally established for a period of two, three, four or six years. A given individual, however, may serve for a shorter or longer period than the term prescribed by law. Death and disqualification are examples of events that may serve to shorten the tenure but not the term of an office. Similarly, an individual's holding over until his successor qualifies for an office will extend the individual's tenure but not alter the actual term of the office. 67 C.J.S. Officers § 73.

The holdover requirement of article 16, section 17, does not affect the officeholder's eligibility to file an application for a legislative office in the upcoming primary election.

Very truly yours,



Karen C. Gladney
Assistant Attorney General
Opinion Committee

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