



Office of the Attorney General
State of Texas

October 13, 1997

DAN MORALES
ATTORNEY GENERAL

The Honorable Tom Haywood
Chair, Agriculture Committee
Texas State Senate
P.O. Box 12068
Austin, Texas 78711

Letter Opinion No. 97-092

Re: Whether a county judge must resign his or her office
in order to run for state representative (ID# 39589)

Dear Senator Haywood:

You ask whether a person serving as county judge is required to resign the person's position as county judge in order to run for the office of state representative. You inquire specifically about article XVI, section 65 of the Texas Constitution, the "resign-to-run" provision. This section of the Texas Constitution provides that if any of the officers subject to it "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 a time when the unexpired term of the office then held exceeds one (1) year, the announcement or candidacy will constitute an automatic resignation of the office then held. A county judge is subject to this provision.¹ A legislator holds an "office of profit or trust," within this provision.² Thus, if a county judge announces his or her candidacy for the legislature or becomes a candidate when more than one year remains of the term of office, he or she will automatically resign as county judge.

Article III, section 19 of the Texas Constitution is also relevant to your question. It provides as follows:

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.

A county judge holds a "lucrative office" within this provision.³

Prior to the decision of the Texas Supreme Court in *Wentworth v. Meyer*, 839 S.W.2d 766 (Tex. 1992), it was held that an officeholder was ineligible to serve as a legislator during the entire

¹Tex. Const. art. XVI, § 65.

²See *id.* art. III, § 24a (compensation for legislators).

³*Id.* art. V, § 15; Local Gov't Code § 152.011, .013; see Attorney General Opinion MW-110 (1979) (county salary statute applies to county judge).

term of the office to which he was elected or appointed, even though he resigned before running for the legislature.⁴ In *Wentworth*, the Texas Supreme Court determined that article III, section 19, did not make an individual ineligible for the state senate, even though he had been appointed to the Board of Regents of the Texas State University System, for a term that overlapped the legislative term by twenty-one days. In Letter Opinion 95-69, we determined that “article III, section 19, as interpreted in *Wentworth*, does not disqualify the holder of a lucrative office from running for the legislature even though the term of the lucrative office overlaps the legislative term, if the officeholder resigns from the lucrative office before filing for the legislature.” Letter Opinion No. 95-69 (1995) at 3. Accordingly, article III, section 19 would not disqualify a county judge from running for the legislature even though the term of office as county judge overlaps the legislative term, if the county judge resigns from that office before filing for the legislature.

Letter Opinion 95-69 also noted the relevance of Texas Constitution, article XVI, section 17, to questions arising under article III, section 19, as interpreted in *Wentworth*. Article XVI, section 17 provides that “[a]ll officers within this State shall continue to perform the duties of their offices until their successors shall be duly qualified.” Even though an officer resigns and his or her resignation is accepted by the appropriate authority, the law operates to continue him or her in office until his successor qualifies. *Plains Common Consol. Sch. Dist. No. 1 v. Hayhurst*, 122 S.W.2d 322 (Tex. Civ. App.--Amarillo 1939, no writ). A county judge who resigns the office to run for the legislature in reliance on *Wentworth v. Meyer* may be disqualified from the legislative office until his or her successor has qualified. The effect of article XVI, section 17 was not an issue in *Wentworth* because *Wentworth*'s position as regent had been filled by appointment of a successor.⁵ We cannot in the opinion process determine whether the Texas Supreme Court might in the future distinguish *Wentworth* on the basis of article XVI, section 17, or of any other issue of law.

⁴See *Lee v. Daniels*, 377 S.W.2d 618 (Tex. 1964), overruled by *Wentworth v. Meyer*, 839 S.W.2d 766 (1992); *Willis v. Potts*, 377 S.W.2d 622 (Tex. 1964); *Kirk v. Gordon*, 376 S.W.2d 560 (Tex. 1964), overruled by *Wentworth*, 839 S.W.2d 766; Attorney General Opinions MW-513 (1982), H-278 (1974); see also *Dawkins v. Meyer*, 825 S.W.2d 444 (Tex. 1992). We do not know whether the term of the county judge in question will overlap the legislative term for which he wishes to run, so we will discuss Texas Constitution, article III, section 19, for the sake of completeness.

⁵*Wentworth*, 839 S.W.2d at 769.

S U M M A R Y

If a county judge announces his or her candidacy for the legislature or becomes a candidate when more than one year remains of the term of office, he or she will automatically resign as county judge pursuant to article XVI, section 65. Article III, section 19 of the Texas Constitution, as interpreted in *Wentworth v. Meyer*, 839 S.W.2d 766 (Tex. 1992), does not disqualify a county judge from running for the legislature even though the term as county judge overlaps the legislative term, if the county judge resigns from that office before filing for the legislature.

Yours very truly,



Susan Garrison
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Opinion Committee