



OFFICE OF THE SECRETARY OF STATE

DAVID A. DEAN
SECRETARY OF STATE

STATE CAPITOL
P.O. Box 12697
AUSTIN, TEXAS 78711

July 7, 1982

The Honorable William P. Clements, Jr.
Governor of the State of Texas
Capitol
Austin, Texas 78701

Election Law Opinion DAD-35
Re: Construction of laws governing state district judge appointed to fill vacancy on Supreme Court, that individual's ability to remain on general election ballot as a candidate for state district judgeship and if elected when may that individual assume the duties of state district judge.

Dear Governor Clements:

This opinion is rendered in response to your inquiry of June 25, 1982.

This official election law opinion is rendered by me as chief election officer of the State in accordance with Tex. Elec. Code Ann. art. 1.03, subd. 1 (Vernon Supp. 1982).

Your first question asked the length of term for a Harris County state district judge appointed on June 17, 1982 as a justice of the Supreme Court of Texas to fill a vacancy created by the death of the previous justice on June 10, 1982. As a subsidiary question you ask whether an unexpired term would exist between certification of the elected candidate on November 2, 1982 and January 1, 1983, and if so, would the unexpired term be subject to Tex. Elec. Code Ann. art. 13.12(a) (Vernon Supp. 1982). See Tex. Rev. Civ. Stat. Ann. art. 1715 (Vernon Supp. 1982). Tex. Const. art. V, § 28 (Vernon Supp. 1982) states:

"Vacancies in the office of judges of the Supreme Court. . .shall be filled by the Governor until the next succeeding General Election. . . ."

Since the individual appointed to fill the vacancy on the Supreme Court serves until the "next succeeding General Election. . .", it becomes necessary to ascertain when the individual elected at the general election will be qualified to assume the duties of his office.

Tex. Const. art. XVI, § 17 (Vernon 1969) provides that "All officers within this state shall continue to perform the duties of their offices until their successors shall be duly qualified." See also Tex. Rev. Civ. Stats. Ann. art. 18 (Vernon 1969). To determine when an individual elected to a statewide office is qualified to assume the duties of that office, reference must be made to Tex. Rev. Civ. Stat. Ann. art. 17 (Vernon 1969). It provides:

"The regular terms of office for all elective state, district, county and precinct offices of the State of Texas, excepting the offices of Governor, Lieutenant Governor, State Senator, and State Representative, shall begin on the first day of January next following the general election at which said respective offices are regularly filled, and those who are elected to regular terms shall qualify and assume the duties of their respective offices on the first day of January following their election, or as soon thereafter as possible." (Emphasis added.)

The newly elected Supreme Court judge would be entitled to enter upon the duties of his office on January 1, 1983 under the provisions of art. 17, Texas Revised Civil Statutes. See Ex Parte Sanders, 147 Tex. 248, 215 S.W.2d 325 (1948), Spears v. Davis, 389 S.W.2d 921 (Tex. 1966). The provisions of Tex. Elec. Code Ann. art. 13.12a which govern nomination and election to unexpired terms do not apply in this instance since there is no unexpired term between the November 2, 1982 general election and January 1, 1983. In Tex. Att'y Gen. Op. No. M-742 (1970) it was held that no vacancy existed between the date of certification of the winner of a Justice of the Peace race at the general election on November 3, 1970 and January 1, 1971 when the elected Justice of the Peace could assume the duties of office under Article 17, Texas Revised Civil Statutes. In support of its holding A.G. Op. No. M-742 cited State v. Jordan, 28, S.W.2d 921 (Tex. Civ. App.--Amarillo 1930, error dismissed). In State v. Jordan at page 923, the Court in discussing Article 16, § 17, Texas Constitution and Article 18, Texas Revised Civil Statutes, stated:

These provisions are held to be mandatory and have the effect of continuing the officer as such in office with all the powers incident thereto until his successor has duly qualified, to the end that there should be no vacancy in any office and the functions of government should not cease.

Accordingly, the district judge appointed on June 17, 1982 to fill the vacancy on the Supreme Court will continue to perform the duties of that office until January 1, 1983 when the individual elected at the November, 1982, General Election will be qualified to assume the duties of his office.

Your second question asked whether the newly-appointed Supreme Court justice may remain on the November general election ballot as a candidate for a state district judgeship. The answer to your question is yes. There is no applicable provision in the Texas Election Code, Texas Constitution, or Texas Revised Civil Statutes which would mandate the individual's name being removed from the general election ballot because he has been appointed to fill a vacancy on the Supreme Court of Texas. Additionally you asked, if the answer to the question of whether the newly appointed Supreme Court justice could remain on the general election ballot is answered in the affirmative, then at what time may the individual assume the duties of the state district judge's office if elected.

Reference is made to the first question you asked in this election law opinion where it was determined that the newly appointed Supreme Court justice may serve until January 1, 1983 when his successor will be duly qualified to assume the duties of that office. Additionally, individuals elected to full terms as state district judges at the general election are subject to the provisions of Article 17, Texas Revised Civil Statutes and may not enter into the duties of office until "the first day of January next following the general election at which said respective offices are regularly filled." The appointee to the Supreme Court, therefore, would continue in office until January 1, 1983 at which time he would assume the duties of state district judge if he is elected to that office.


SUMMARY

A state district judge appointed on June 17, 1982 to fill a vacancy on the Supreme Court of Texas created by the death of the previous officeholder on June 10, 1982 may serve until January 1, 1983. Additionally, there is no unexpired term and/or vacancy between the November 2, 1982 general

election and January 1, 1983 which would be subject to the provisions of Article 13.12a, Texas Election Code, which govern nomination and election to unexpired terms.

There is no provision in the Texas Constitution, Texas Revised Civil Statutes, or Texas Election Code that would require that the name of the Supreme Court appointee, because of his appointment, be removed from the general election ballot as a candidate for a state district judgeship. The Supreme Court appointee, therefore, may remain on the November general election ballot as a candidate for state district judge and if elected he may assume the duties of that office on January 1, 1983.

Sincerely,


David A. Dean
Secretary of State

Willis Whatley
Counsel to the Secretary of State

Charles C. Bailey
Special Assistant for Elections

Prepared by Horace Jennings III
APPROVED:
OPINION COMMITTEE

Karen C. Gladney, Chairman
Charles E. Evans
Horace Jennings III
Felix R. Sanchez
Donna Brown