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OPINION COMMITTEE

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October 25, 2005

FILE # ML-44482-05

I.D. # 44482

Mr. Greg Abbott  
Texas Attorney General  
Office of the Attorney General  
P.O. Box 12548  
Austin, TX 78711-2548

**RQ-0408-GA**

Dear Attorney General Abbott:

This letter is a request for an Attorney General's Opinion, pursuant to Texas Government Code §402.042.

**A. Facts**

Candidate is a member of a City Council of a Texas Home Rule Municipality (Municipality). Candidate was elected to the Municipality City Council in May 2003. Article III, Section 3.03 of the Municipality's Home Rule Charter (Charter) provides that the City Council may, by ordinance, determine the City Council's compensation, if any.

When Candidate was elected to the City Council in May 2003, an ordinance provided Candidate and other Council Members (but not the Mayor) would receive \$90.00 per year as compensation for serving on the City Council. Candidate received \$90.00 in May 2004 for the previous year's service, and \$90.00 in May 2005 for the previous year's service.

Candidate was re-elected to the City Council in May 2005. On September 19, 2005, the City Council repealed the ordinance providing any compensation for City Council members.

Thus, Candidate **will not** be paid for his second term of service on the City Council (from May 2005-May 2007).

**B. Legal Authorities**

Article III, Section 19 of the Texas Constitution 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.

The courts and the Attorney General have consistently interpreted this provision to provide, in essence, that any person holding a paid office<sup>1</sup> of the State or its subdivisions is not disqualified 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.

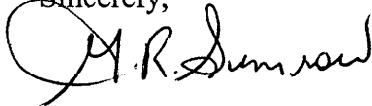
**C. Question Presented**

Candidate's current term of office ends May 2007. Candidate intends to run for the legislature in November 2006. Thus, Candidate's current term of office overlaps with the term of office he seeks. If Candidate is a lucrative officeholder, he would be required to resign from his current position on City Council before he declares his candidacy for the legislature. The question, however, is whether Candidate is a lucrative office holder.

Although paid for his service during his first term on City Council (Candidate was paid \$90.00 in May 2004 for his service from May 2003 through May 2004, and was paid \$90.00 in May 2005 for his service from May 2004 through May 2005), Candidate **will not** be paid for his service on City Council during his second term of office. As such, is Candidate a lucrative office holder such that he is required to resign from his office as City Councilman before he can declare his candidacy for the Legislature? The undersigned contends that the candidate is not a lucrative officeholder in that by virtue of the City Council action, he does not receive compensation.

Thank you for your assistance in this matter.

Sincerely,



Galen Ray Sumrow  
Criminal District Attorney

<sup>1</sup>That is, paid compensation of any form (other than reimbursement for expenses actually incurred). *Whitehead v. Julian*, 476 S.W.2d 844 (Tex. 1972).