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OPINION COMMITTEE

ANNA MOWERY  
DISTRICT 97  
6421 CAMP BOWIE BLVD.  
SUITE 310  
FORT WORTH, TEXAS 76116  
817-732-1372

State of Texas  
House of Representatives

P.O. BOX 2910  
AUSTIN, TEXAS 78768-2910  
512-463-0608

February 10, 2006

FILE # ML-44633-06  
I.D. # 44633

**RQ-0452-GA**

The Honorable Greg Abbott  
Attorney General  
Office of the Attorney General  
P. O. Box 12548  
Austin, Tx. 78711-2548

RE: Request for Opinion Regarding Whether a Council Member of the City of Fort Worth, Texas, who announces candidacy for an elected position (other than councilperson) in an upcoming election should continue to serve on the City Council until their successor is qualified?

Dear General Abbott:

As Chairman of the House Committee on Land and Resource Management, I formally ask you and your office to answer the following question in the form of an Attorney General's Opinion:

In light of *Willman v. City of San Antonio*, 123 S.W.3d 469 (Ct. App – San Antonio, 2003), does a council member of the City of Fort Worth, Texas, who has announced candidacy for Justice of the Peace in the March 7, 2006 primary election, continue to serve on the City Council until their successor is qualified?

Prior to the issuance of *Willman*, this hold-over question centered on the relationship between the city charter and the State Constitution. On the one hand, Chapter III, Section 8 states:

If a member of the council shall become a candidate for nomination or election to any public office, other than that of councilperson, he/she shall immediately forfeit his place in the council; . . .

and Chapter III, Section 4 stated:

Vacancies in the City Council shall be filled by special elections from the districts whose places have been vacated.

Under these Charter provisions, if a council member becomes a candidate for another public office, there is a forfeiture of his/her council position and the City Council is required to call a special election for that position. The Charter does not require a formal resignation from office. The forfeiture occurs by the operation of law upon the Council member becoming a candidate for another office.

Although the Charter speaks of an "immediate" forfeiture of office, the Texas Constitution requires that as an elected official the council member continue to perform his/her council duties until a successor is elected and qualified for that office. Article 16, Section 17 of the Texas Constitution provides:

All officers within this State shall continue to perform the duties of their offices until their successors shall be duly qualified. •

This interrelationship of the Texas Constitution and the City Charter of the City of Fort Worth, Texas, was examined in Texas Attorney General Letter Opinion 96-014. In the opinion, the Attorney General's office determined that the Article 16, Section 17 "holdover" requirement overrode the charter presumption of automatic vacancy of office, just as the Attorney General had previously determined that the holdover requirement had overridden a similar forfeiture provision in the Texas Constitution. See A.G. Opinion DM-377 (1996), at 5.

This is the procedure that has been followed consistently in Fort Worth since that time. Certain subsequent Attorney General opinions are consistent with LO 96-104. See A.G. Opinion JC-318 (2000) at 5 and 8, concluding "A city council member who automatically resigns holds over in office."

A question has arisen with regard to whether the case *Willman v. City of San Antonio* 123 S.W.3d 469 (Ct. App – San Antonio, 2003) changes the previous A.G. Opinions cited above. The Court in *Willman* stated: "This holdover provision becomes operative only after the officer's term has expired. Op. Tex. Att'y Gen. JC-0293 at 3 (2000). On the other hand, the right to holdover does not reside in one who has been removed from office."

Additionally, the A.G. Opinions GA-0175 (April 6, 2004) and GA-0217 (July 14, 2004) contain language regarding "automatic forfeiture" that may be interpreting "automatic forfeiture" as a "removal" from office, and not merely a "resignation" from office. The importance of this distinction is that the "holding over" provision in Art. 16, Section 17 of the Texas Constitution applies to a "resignation" but not to a "removal".

If you have any questions, or need further information regarding this request, please do not hesitate to contact me at (512) 463-0608.

Sincerely,

A handwritten signature in black ink, appearing to read "Anna Mowery". The signature is written in a cursive style with a large, sweeping flourish at the end.

Anna Mowery  
Chairman, House Land and Resource Management Committee