



**Office of the Attorney General  
State of Texas**

**DAN MORALES**  
ATTORNEY GENERAL

July 28, 1994

Honorable Michael G. Mask  
Jack County Attorney  
Courthouse, Third Floor  
Jacksboro, Texas 76458

Letter Opinion No. 94-059

Re: Whether a county tax assessor's filing for school board trustee effects an automatic resignation from the tax assessor's office, and related questions (ID# 26736)

Dear Mr. Mask:

You ask about the effect under the "resign-to-run" provisions of article XVI, section 65 of the state constitution, of a county tax assessor's filing an application to appear on the ballot for school board trustee at a time when more than a year remained on his term as tax assessor. You say that the person in question subsequently withdrew his school board candidacy, purportedly retroactive to the date of his filing for that office. Specifically, you ask whether the filing of candidacy for school board trustee created a vacancy in the office of tax assessor, whether the subsequent withdrawal from the candidacy for school board trustee enabled the person in question to avoid the resign-to-run consequences of article XVI, section 65, and whether the office must be filled by election at the general election in November 1994.

Article XVI, section 65, of the state constitution sets out various county and district offices, including that of tax assessor, and provides in pertinent part:

[I]f any of the officers named herein 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 . . . other than the office then held, at any time when the unexpired term of the office then held shall exceed one (1) year, such announcement or such candidacy shall constitute an automatic resignation of the office then held, and the vacancy thereby created shall be filled pursuant to law in the same manner as other vacancies for such office are filled.

We think it clear that the office of school board trustee is an office of profit or trust under article XVI, section 65 such that filing of an application for candidacy for school board trustee by a county or district officer listed in that provision, at a time when more than a year remains on his term, effects an immediate and automatic resignation from the county or district office held, creating a vacancy in that office. See *Ramirez v. Flores*, 505 S.W.2d 406, 409 (Tex. Civ. App.--San Antonio 1973, writ ref'd n.r.e.).

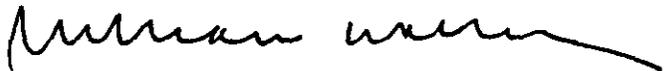
Further, we do not believe that the subsequent withdrawal from school board candidacy, albeit purportedly retroactive to the date of filing "as if my announcement was never made," somehow undid the automatic resignation from the office of tax assessor occasioned pursuant to article XVI, section 65 by the prior filing for the office of school board trustee. In the first place, regardless of any claims to retroactivity made therein or elsewhere, the withdrawal could, by statute, have taken effect only as of the date it was filed. Elec. Code § 145.001(d). Moreover, it is the announcing or becoming a candidate under article XVI, section 65 which, on the face of that provision, effects the automatic resignation. *See Attorney General Opinion JM-132 (1984)*. We find no authority for the revocation or undoing of a public officer's resignation once it has taken effect. *See, e.g., Attorney General Opinion DM-248 (1993)*.

Therefore, the filing for school board here effected the filer's automatic resignation from the Tax Collector's office, leaving a vacancy in that position. The vacancy may be filled by appointment by the commissioners court "until the next general election," in this case the November 1994 general election for state and county officers. *See Local Gov't Code § 87.041*. Where, as here, the vacancy occurred more than 65 days before the general election, "the remainder of the unexpired term shall be filled" at that election. Elec. Code ch. 202; Tex. Const. art. XVI, § 27.<sup>1</sup>

### S U M M A R Y

A county tax assessor with more than a year left on his term who files for school board trustee automatically resigns from and vacates the tax assessor's office. Subsequent withdrawal from the school trustee candidacy, does not undo the resignation from the tax assessor position. If, as here, the vacancy in the tax assessor's office occurs more than 65 days before the next general election, the vacancy is filled at that election for the unexpired term.

Yours very truly,



William Walker  
Assistant Attorney General  
Opinion Committee

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<sup>1</sup>Chapter 202 provides generally, where as here the vacancy occurred more than 65 days before the general election, for the filling of the vacancy at such election. Depending on the time the vacancy occurs, parties may nominate candidates for the position by primary election or the convention method as appropriate, or by action of the appropriate executive committee. The chapter also provides for independent candidacies for the vacant position. *See Elec. Code §§ 202.002, 202.004 - .007*.