



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 28, 1994

Mr. Mike Head
First Assistant District Attorney
Henderson County Courthouse
Athens, Texas 75751

Letter Opinion No. 94-074

Re: Whether section 601.002 of the Government Code empowers a first assistant district attorney to perform the duties of a district attorney who has resigned (ID# 28423)

Dear Mr. Head:

You ask whether section 601.002 of the Government Code empowers a first assistant district attorney to perform the duties of a district attorney who has resigned. We believe the plain language of the statute answers your question in the affirmative.

Section 601.002(a) states:

The first assistant or chief deputy of a public office in which a physical vacancy¹ occurs shall conduct the affairs of the office until a successor qualifies for the office.

In our view, this clearly indicates that upon the vacating of the district attorney's office by resignation, and until a successor qualifies for the office, the powers and duties of the office devolve upon the first assistant or chief deputy, if there is one. *See also* Code Crim. Proc. art. 2.07.

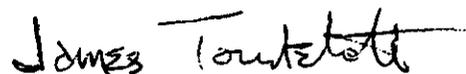
You have also asked us whether section 601.002 of the Government Code is constitutional. You have not, however, offered any basis to suppose the statute unconstitutional, either facially or as applied. Accordingly, we do not consider this question.

¹As we understand it, the elected Henderson County District Attorney, having resigned his office prior to arraignment on a federal fraud charge, was ordered by the United States Magistrate to undergo in-patient treatment for alcohol dependency at a facility in Dallas, Texas. In our view, this set of facts constitutes physical vacancy of the office for the purpose of this statute. We limit this decision to the facts presented.

S U M M A R Y

Section 601.002(a) of the Government Code provides that upon the resignation of the district attorney, the powers and duties of his office devolve upon the first assistant or chief deputy district attorney, if there is one, until a successor qualifies for the office.

Yours very truly,

A handwritten signature in cursive script that reads "James Tourtelott". The signature is written in dark ink and is positioned above the typed name.

James Tourtelott
Assistant Attorney General
Opinion Committee