TEXAS HOUSE OF REPRESENTATIVES
COMMITTEE ON CRIMINAL JURISPRUDENCE

Sam W. Russell
Chairman

September 26, 1991

RQ-212

ID# 13733
MJ

RECEIVED
SEP 27 91
Opinion Committee

The Honorable Dan Morales
Attorney General of Texas
Price Daniel, Sr. Building
P.O. Box 12548
Austin, Texas 78711

RE: Request for Attorney General's Opinion concerning the eligibility of a County Sheriff to run for office when such official has been indicted, temporarily suspended from the duties of office pending final disposition and adjudication of the cause, but not convicted of an offense.

Dear General Morales:

I am hereby requesting a letter opinion from your office concerning the authority of a county sheriff to run for re-election to the office of the County Sheriff when such official has been indicted for a criminal offense, temporarily suspended pending final disposition and adjudication of the cause, but not yet convicted of such offense.

It is the position of the sheriff that he is eligible and therefore entitled to run for office because at the time of the filing for his candidacy, such indictment is not a final conviction, and as such does not bar his eligibility to run for office under V.A.T.S., Texas Constitution, Article XVI, Section 2 or V.A.T.S., Election Code, Section 141.001(a)(4).

Article XVI, Section 2, of the Texas Constitution mandates that the Legislature enact laws "to exclude from office...those who may have been or shall hereafter be convicted of bribery, perjury, forgery, or other high crimes...." (emphasis added.) Pursuant to such mandate, the Legislature enacted V.A.T.S., Election Code, Section 141.001(a)(4) which provides in relevant part:

> To be eligible to be a candidate for, or elected or appointed to, a public elective office in this state, a person must:
>
> (4) have not been finally convicted of a felony from which the person has not been pardoned or otherwise released from the resulting disabilities;....(Emphasis added.)

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The Code Construction Act, Tex. Gov't. Code Ann., arts, 311.001-311.032 gives direction to courts for construction of words used in statutes. Article 311.011 of the Act provides:

> (a) Words and phrases shall be read in context and construed according to the rules of grammar and common usage.
> (b) Words and phrases that have required a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly.

Some courts have held that the technical meaning of the word "conviction" requires a judgment. See, e.g., McNew v. State, 608 S.W.2d 166.171 (Tex. Crim. App. 1978).

In addressing what is a "final conviction", some assistance may be found in applications of courts to the removal statutes found in Chapter 87 of the Local Government Code. In Eckels v. Gist, 743 S.W. 2d 330, 382 (Texas App.--Houston (1st Dist. 1987), the court held:

> We hold that the word "conviction" as used in Tex. Local Gov't. Code section 87.031(a) requires a judgment. A "judgment" is the written declaration of the court signed by the trial judge and entered of record, showing among other things the conviction or acquittal of the defendant.

Further, in Minton v. Perez, 783 S.W.2d 803 (Tex. App.--San Antonio 1990), the court in interpreting section 87.031 interpreted that section to be applicable based upon actual time of conviction so as to make the date of occurrence of the acts forming the basis of conviction irrelevant and immaterial.

In addition, in Sullivan v. State, 572 W.W.2d 778, 784 (Tex. App.--El Paso 1978), the court duly noted that "no evidence had been heard in the criminal cases" at the time the trial judge proposed a disposition of the issues. The court wrote: "Thus, at the time ..., there had actually been no disposition of the criminal charges." Therefore, it would appear that courts have consistently held that the words "conviction" and "final conviction" require a judgment.

In summary, I would appreciate your opinion regarding the eligibility of a county sheriff to stand for re-election when said sheriff has been indicted and temporarily suspended form office pending final disposition of the criminal charges.

Very Truly Yours,

Sam W. Russell
Chairman
Committee on Criminal Jurisprudence