



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 22, 2020

The Honorable John T. Hubert
Kleberg and Kenedy Counties District Attorney
Kleberg County Courthouse
Post Office Box 1471
Kingsville, Texas 78364

Opinion No. KP-0301

Re: Applicability of the constitutional resign-to-run provision to a county constable (RQ-0315-KP)

Dear Mr. Hubert:

You ask whether the Texas Constitution’s resign-to-run provision applies in particular circumstances.¹ Specifically, you ask whether “under the facts presented, a Constable’s statements and the seeking of signatures to place his name on the ballot for Sheriff . . . is considered ‘candidacy’ or ‘an announcement’ for the purposes of the automatic resignation . . . provisions of Article XVI, section 65 of the Texas Constitution.” Request Letter at 1. As the relevant facts, you describe a conversation in which the Kenedy County Constable told the current sheriff that he is “running for Kenedy County Sheriff.” *Id.* You describe meetings of the constable in the homes or offices of several individuals or couples, during which the constable told the individual or couple that “I am running for the Kenedy County Sheriff” and asked for support. *See id.* at 1–2. You also describe similar statements the constable made to individuals in telephone calls wherein he indicated he was “running for Sheriff” and asked for their support. *See id.* at 2. You tell us further that the constable obtained the requisite minimum number of signatures for a petition to be filed in lieu of a filing fee. *See id.*

The resign-to-run provision, Texas Constitution article XVI, section 65, provides that

[i]f any of the [listed] officers . . . 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 year and 30

¹See Letter from Honorable John T. Hubert, Dist. Att’y, Kleberg & Kenedy Counties, to Honorable Ken Paxton, Tex. Att’y Gen. at 1 (Nov. 14, 2019), <https://www2.texasattorneygeneral.gov/opinion/requests-for-opinion-rqs> (“Request Letter”).

days, such announcement or such candidacy shall constitute an automatic resignation of the office then held

TEX. CONST. art. XVI, § 65(b). The list of officers includes constables. *Id.* art. XVI, § 65(a). Two acts trigger this provision: (1) when a named officer “announces” candidacy; or (2) when a named officer “in fact become[s] a candidate.” *Id.* art. XVI, § 65(b). An officer becomes a candidate in fact under subsection 65(b) by formally applying for a place on the ballot. *See* Tex. Att’y Gen. Op. Nos. GA-0769 (2010) at 1, GA-0210 (2004) at 2, JC-0249 (2000) at 3. Here, you do not suggest that the constable applied for a place on the ballot. *See* Request Letter at 1–2. Thus, we consider whether the constable “announced” his candidacy for the office of sheriff² based on the facts you describe.

Article XVI, section 65 does not define the term “announce.” *See* TEX. CONST. art. XVI, § 65; *see also* Tex. Att’y Gen. Op. No. GA-0643 (2008) at 5. Prior opinions from this office, relying on the term’s ordinary meaning, explain “that an officer announces candidacy for office by making a written or oral statement from which a reasonable person may conclude that the individual intends, without qualification, to run for the office in question.” Tex. Att’y Gen. Op. No. GA-0769 (2010) at 2; *see also id.* Nos. GA-0643 (2008) at 6, GA-0210 (2004) at 2, JC-0249 (2000) at 2. For similar reasons, this office construes “announce” to require the candidate’s statement be made in a public setting or be otherwise available to the public. *See id.* Nos. GA-0769 (2010) at 2, GA-0210 (2004) at 2, DM-377 (1996) at 2, WW-1253 (1962) at 2–3. Accordingly, article XVI, section 65 requires the candidate’s announcement to “be both certain and public.” *Id.* Nos. GA-0769 (2010) at 2, GA-0210 (2004) at 2.

We first consider the reported statements. In each instance, you describe the constable making statements such as “I want to let you know that I am running for Kenedy County Sheriff,” and “I am running for Sheriff. Will you support me?” Request Letter at 1–2. These statements are clear and unequivocal. *Compare* Tex. Att’y Gen. LO-95-071, at 2 (concluding individual’s statement that he “will seriously consider running for county judge” failed to indicate the individual’s intent, without qualification, to stand for office). And if made by the constable as alleged, a reasonable person may conclude that the constable intends to run for the office of sheriff. Thus, the statements likely satisfy the certainty requirement.

An announcement of candidacy must also be public. *See* Tex. Att’y Gen. Op. No. GA-0643 (2008) at 6. “Thus, a statement while certain as to the person’s intention to run for an office but made in a private conversation does not constitute an announcement of candidacy for the purposes of article XVI, section 65.” *Id.*; *see also id.* No. GA-0210 (2004) at 2–3. Your letter informs us that the constable made these statements either in a private home or office or in private telephone conversations. *See* Request Letter at 1–2. You make no representation that the constable made any of these statements in a public setting or that the constable otherwise made them available to the public. *See id.* Accordingly, the statements likely do not satisfy the “public”

²Under article XVI, section 65, the office sought must be an “office of profit or trust.” TEX. CONST. art. XVI, § 65(b). Prior opinions equate an “office of trust” with an “office” and an “office of profit” with a “lucrative office.” *See* Tex. Att’y Gen. Op. Nos. JC-0562 (2002) at 2, JC-0318 (2000) at 3. As a county office, the office of sheriff is an office of profit or trust. *See* TEX. CONST. art. V, § 23; *see also* TEX. LOC. GOV’T CODE § 152.011 (providing for compensation for county officers).

requirement. Without the requisite public setting, these statements by the constable do not constitute an announcement of candidacy under article XVI, section 65.

We next consider the petition. You inform us that the constable “obtained the minimum” number of signatures on his petition in lieu of a filing fee. *See* Request Letter at 2. Section 172.021 of the Election Code requires a candidate to make an application for a place on the general primary election ballot. *See* TEX. ELEC. CODE § 172.021(a). This application must be accompanied by either the appropriate filing fee or “a petition in lieu of the filing fee.” *Id.* § 172.021(b); *see also id.* § 172.025 (establishing the number of signatures required for the petition). However, section 172.021 expressly provides that the “circulation of a petition to be filed . . . in connection with a candidate’s application for a place on the ballot does not constitute candidacy or an announcement of candidacy for purposes of the automatic resignation provision[] of Article XVI, Section 65 . . . of the Texas Constitution.” *Id.* § 172.021(d). By itself, the constable’s seeking signatures for the petition does not constitute his announcement.

For these reasons, a court would likely conclude that the Kenedy County Constable did not announce his candidacy under article XVI, section 65 by virtue of the statements and actions you describe.

S U M M A R Y

Texas Constitution article XVI, section 65 provides for the automatic resignation of an officer who announces candidacy for another office of profit or trust at any time when the unexpired term of his or her office exceeds one year and 30 days. An “announcement” under this provision must be both certain and public. Under the facts you describe, a court would likely conclude that the Kenedy County Constable did not announce his candidacy under article XVI, section 65.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style with a large initial "K".

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