



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

July 7, 2021

The Honorable Will Thompson  
Navarro County District Attorney  
300 West 3rd Avenue, Suite 301  
Corsicana Texas 75110

**Opinion No. KP-0375**

Re: Eligibility of a newly elected constable under chapter 86 of the Local Government Code (RQ-0394-KP)

Dear Mr. Thompson:

You ask generally about the eligibility of a newly elected constable under chapter 86 of the Local Government Code under certain circumstances.<sup>1</sup> Local Government subsection 86.0021(a) provides that

[a] person is not eligible to serve as constable unless:

(1) the person is eligible to be licensed under Sections 1701.309 and 1701.312, Occupations Code, and:

(A) has at least an associate's degree conferred by an institution of higher education accredited by an accrediting organization recognized by the Texas Higher Education Coordinating Board;

(B) is a special investigator under Article 2.122(a), Code of Criminal Procedure; or

(C) is an honorably retired peace officer or honorably retired federal criminal investigator who holds a

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<sup>1</sup>See Letter from Honorable Will Thompson, Navarro Cnty. Dist. Att'y, to Honorable Ken Paxton, Tex. Att'y Gen. at 1 (Jan. 7, 2021), <https://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/rq/2021/pdf/RQ0394KP.pdf> ("Request Letter"). The Honorable Martin Placke, Lee County Attorney, submitted briefing in response to this request that posed additional questions related to the construction of subsection 86.0021, and our analysis incorporates those questions. See Letters from Honorable Martin Placke, Lee Cnty. Att'y, to Office of the Att'y Gen., Op. Comm. at 1–2 (Jan. 26, 2021), (July 2, 2021) (on file with the Op. Comm.).

certificate of proficiency issued under Section 1701.357, Occupations Code; or

(2) the person is an active or inactive licensed peace officer under Chapter 1701, Occupations Code.

TEX. LOC. GOV'T CODE § 86.0021(a). Thus, the statute provides two avenues for constable eligibility through either subsection 86.0021(a)(1) or subsection 86.0021(a)(2). Subsection 86.0021(b) then provides:

On or before the 270th day after the date a constable takes office, the constable shall provide, to the commissioners court of the county in which the constable serves, evidence that the constable has been issued a permanent peace officer license under Chapter 1701, Occupations Code. A constable who fails to provide evidence of licensure under this subsection or who fails to maintain a permanent license while serving in office forfeits the office and is subject to removal in a quo warranto proceeding under Chapter 66, Civil Practice and Remedies Code.

*Id.* § 86.0021(b).

### **Background**

You tell us that a person elected to the position of constable is “deferring taking office while he pursues licensure as a peace officer,” presuming this would allow time to establish eligibility pursuant to subsection 86.0021(a)(2). *Id.* at 3. Pointing to the evidence-of-licensure requirement of subsection 86.0021(b), you ask whether the person “may take office immediately and provide evidence of licensure as a peace officer within 270 days or is he required to defer taking office until he satisfies the requirements” of section 86.0021 by becoming a licensed peace officer under chapter 1701. *Id.*

### **Constable must assume office on, or as soon as possible after, January 1**

Subsection 86.0021(b) grants a constable 270 days “after the date” of taking office to “provide . . . evidence that the constable has been issued a permanent peace officer license under Chapter 1701, Occupations Code.” TEX. LOC. GOV'T CODE § 86.0021(b). Subsection 601.003(a) of the Government Code provides the date for when a constable takes office, stating that the “regular term of an elective . . . county, or precinct office begins on January 1 of the year following the general election for state and county officers.” TEX. GOV'T CODE § 601.003(a). “A person elected to a regular term of office shall qualify and assume the duties of the office on, or as soon as possible after, January 1 of the year following the person’s election.” *Id.* § 601.003(b). Thus, a constable elected in the November general election must qualify and assume the duties of that office on January 1, or as soon as possible thereafter. *See id.* § 601.003. While “as soon as possible” thereafter is undefined in Government Code chapter 601, a court would likely construe it to mean within a reasonable time period. *Shreve Chair Co. v. McCarty*, 246 S.W. 733, 734 (Tex. App.—Fort Worth 1922, no writ). What is a reasonable time is generally a question of fact.

*WesternGeco, L.L.C. v. Input/Output, Inc.*, 246 S.W.3d 776, 785 n.6 (Tex. App.—Houston [14th Dist.] 2008, no pet.). We do not find facts in the opinion process and therefore do not make a factual determination about the eligibility of a specific individual to hold office or by which date an individual must assume office. *See* Tex. Att’y Gen. Op. No. KP-0133 (2017) at 2.

## **Construction of Local Government Code subsection 86.0021(b)**

### **1. Application to eligibility requirements of subsection 86.0021(a)**

Subsection 86.0021(b)’s 270-day period is to give the constable time to “provide . . . evidence” that he or she has or has been issued a permanent peace officer license under Occupations Code chapter 1701. TEX. LOC. GOV’T CODE § 86.0021(b). You ask us to construe subsection (b) to apply to the eligibility requirement of subsection (a)(2) but not the eligibility requirement of subsection (a)(1). *See* Request Letter at 2–3. Such a construction is unlikely because it would mean that a person eligible under subsection (a)(1) need never provide evidence that they secured the license or be subject to removal for having not secured the license. Moreover, subsection 86.0021(b) is characterized elsewhere in the statute as a license requirement and as such applies independently of subsection (a) to require a constable to provide evidence of licensure within the specified time period regardless of how he or she is eligible to serve as constable. *See* TEX. LOC. GOV’T CODE § 86.0021(b), (c) (“The *license requirement of Subsection (b)* supersedes the license requirement of Section 1701.302, Occupations Code.” (emphasis added)). A court therefore is not likely to construe subsection 86.0021(b) as applying to only subsection (a)(2).

### **2. Application of subsection 86.0021(b)’s time period to cure ineligibility**

Given such a construction, the question is whether subsection (b) gives a constable 270 days after taking office to cure his ineligibility. The Election Code generally provides that “[t]o be eligible to be a candidate for, or elected . . . to, a public elective office in this state, a person must [among other items] satisfy any other eligibility requirements prescribed by law for the office.” TEX. ELEC. CODE § 141.001(a)(7).

In many judicial opinions considering the scope of eligibility in section 141.001’s predecessor in other contexts, Texas courts wrestled with the temporal aspect of “eligibility” by considering the range of possible dates by which a person must satisfy eligibility requirements. The options considered and approved by the various courts for setting eligibility fall between the day the person seeks the office, the day the person is to assume the office, or the day of the canvass. *See, e.g., Kothmann v. Daniels*, 397 S.W.2d 940, 942 (Tex. App.—San Antonio 1965, orig. proceeding) (per curiam) (considering “whether the word ‘eligible,’ as used in the Constitution, refers to the time of a person’s election to office, or to the time when he assumes the duties of office”); *Lemons v. State*, 570 S.W.2d 593, 595 (Tex. App.—Amarillo 1978, writ ref’d n.r.e.) (involving candidate who was ineligible at the time of the filing deadline, the time of the primary election, and the time for canvassing election returns); *Rose v. White*, 536 S.W.2d 395, 396 (Tex. App.—Dallas 1976, orig. proceeding) (considering eligibility as between a person’s election to office or a person’s assumption of duties).

**S U M M A R Y**

Section 86.0021 of the Local Government Code provides the requirements for a constable for eligibility to serve and produce evidence of licensure as a peace officer.

Section 86.0021 does not address the exact date by which a constable must assume office, but under section 601.003 of the Government Code, a person elected to the office of constable in the November general election must qualify and assume the duties of that office on January 1, or as soon as possible thereafter.

Very truly yours,

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

KEN PAXTON  
Attorney General of Texas

BRENT E. WEBSTER  
First Assistant Attorney General

LESLEY FRENCH  
Chief of Staff

MURTAZA F. SUTARWALLA  
Deputy Attorney General for Legal Counsel

VIRGINIA K. HOELSCHER  
Chair, Opinion Committee

CHARLOTTE M. HARPER  
Assistant Attorney General, Opinion Committee