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OPINION COMMITTEE

RQ-0195-jc

February 16, 2000

Office of the Attorney General
Attorney General John Cornyn
P.O. Box 12548
Austin, Texas 78711-2548

FILE # ML-41296-00
I.D. # 41296

RE:

Dear General Cornyn:

Our office has been asked to request your opinion concerning whether Tex. Const., art. XVI § 65 prohibits a sitting County Court at Law judge from seeking a Republican Party Executive Committee nomination to be a general election candidate for the vacancy in the office of the newly created 401st Judicial District Court.

The requesting person is a sitting County Court at Law judge with more than one year remaining on his term.

Thank you in advance for your assistance in this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Tom O'Connell", written over a horizontal line.

Tom O'Connell
Criminal District Attorney
Collin County, Texas

TOC:rt

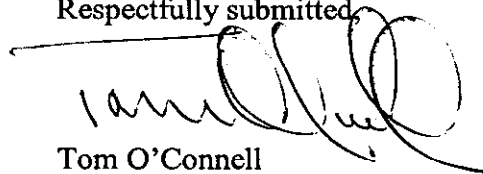
BRIEF INCIDENT TO REQUEST FOR OPINION.

This office is aware of DM-96-107 which gave a strict construction of the term of "candidate" as used in Tex. Const., art. XVI § 65, and limited it to candidates for an election, but that opinion did not deal specifically with Election Code § 251.001 which gives some examples of "candidates."

By the express terms of Election Code § 251.001 (H) it appears a person becomes a candidate when he [seeks] the nomination of an executive committee of a political party and therefore, when a sitting County Court at Law judge with more than one year left on his term addresses the executive committee as a group or individually for the purpose of being considered as the party nominee for the forthcoming general election, he might well trigger the resign to run provision.

It is our assessment that Tex. Elec. Code Ann. § 251.001 (Vernon 1999) is unconstitutional, as it is an attempt by the legislature to define the terms of art. XVI § 65 and violates the separation of powers doctrine as an encroachment on the judiciary's power to interpret the State's Constitution.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Tom O'Connell", written over a horizontal line.

Tom O'Connell
Criminal District Attorney
Collin County, Texas