



- Chairman of Committee on Criminal Jurisprudence
- Member of Committee on Judicial Affairs

Texas House of Representatives

District 40: (part) McAllen, Elsa, Edcouch, Edinburg & San Carlos

**Juan J. Hinojosa**

May 22, 2000

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*RQ-0236-JC*

OPINION COMMITTEE  
 Honorable John Cornyn  
 Texas Attorney General  
 P.O. Box 12548  
 Austin, TX. 78711-2548

FILE # ML-41434-00  
 I.D. # 41434

Re: Subject: Request of Attorney General Opinion  
 Municipality: City of Elsa

Issue: Whether an elected official of a Home Rule City who did not receive the majority vote in an election with three candidates must vacate his/her seat pending a run-off election when the term of office is three years or more.

Dear Attorney General Cornyn:

On May 6, 2000 an election was held for Commissioner of the City of Elsa Place Three (3). After the election results were canvassed the following were the results:

<b>Pete Riojas (incumbent)</b>	<b>755</b>
<b>Leo Gonzalez</b>	<b>719</b>
<b>Bene Valdez</b>	<b>99</b>

The City of Elsa is a home rule City whose City Charter requires election by plurality. The City Charter of the City of Elsa further indicates that the office of "[t]he Mayor shall preside at meetings of the Council and shall be recognized as head of city government..., but shall receive no administrative duties."

The City of Elsa follows the recent decision in Estrada v. Adame, 951 S.W. 2d 165 (Thirteenth Cir 1997) herein Estrada which modified home rule Cities by requiring them to adhere to a majority vote when the terms of their Commissioner's Places are three years or more.

The Estrada Court stated in pertinent part that "[t]he Texas Constitution provides that members of the [sic] City Council must be elected by a majority vote (and not by mere plurality). TEX. CONST. art. XI Section 11 (Vernon 1993)".

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Attorney General John Cornyn

As such the Mayor of the City of Elsa did not permit Pete Riojas to be sworn in as City Commissioner. Pete Riojas and Leo Gonzalez were declared the candidates with the highest number of votes and a special election, as required under the Election Code Section 2.024, was called. The run-off between Pete Riojas and Leo Gonzalez is to be held June 3, 2000.

Furthermore, in adherence with the decision in **Estrada**, the Mayor of the City of Elsa, intends to declare the seat vacated pending the results of the run-off election. This is in conformity with the Court's ruling which ordered Mayor Adame of the City of Donna to have the Commissioner's Place vacated immediately.

The **Estrada** Court found no "statutory ambiguity" in reaching its decision under facts that parallel the current election results in the City of Elsa. However, the Court's ruling is in apparent tension with the Texas Constitution Article XVI section 17 which states that "[a]ll officers of this State shall continue to perform the duties of their offices until their successor be duly qualified."

We would require the Attorney General to assist in clarifying whether the Mayor of the City of Elsa has the authority to perform the duty required under **Estrada** and what is the duty required of the Mayor of the City of Elsa.

Sincerely

Juan J. Hinojosa  
Chairman,

House Committee on Criminal Jurisprudence



enclosures

cc: City of Elsa