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OPINION COMMITTEE

**Geoffrey S. Connor**  
ASSISTANT SECRETARY OF STATE  
State of Texas

RQ-0555-JC

May 20, 2002

The Honorable John Cornyn  
Texas Attorney General  
209 W. 14<sup>th</sup> Street  
Austin, Texas 78701

FILE # ML-42623-02

I.D. # 42623

RE: Request for an Opinion interpreting the Definition of "state officer" in HJR 75, a 2001 constitutional amendment, regarding the filing of the Statement of Officer by elected and appointed officers.

Dear General Cornyn:

I respectfully request your opinion concerning the definition of "state officer" as that term is used in Section 8.01 of HJR 75, a constitutional amendment passed by the 77<sup>th</sup> Legislature and approved by the voters in 2001. The referenced Section 8.01 amended Article 16, Section 1 of the Texas Constitution concerning, among other things, the filing of the pre-oath anti-bribery statement (Hereinafter sometimes referred to as "Statement of Officer").

### Background

Prior to 1989, the anti-bribery statement was included as part of the official oath of office for both elected and appointed officers. In 1989, the 71<sup>st</sup> Legislature passed and the voters approved HJR 40, a constitutional amendment to Article 16, Section 1 of the Texas Constitution. HJR 40 divided the oath of office into two elements. The first element was the anti-bribery statement which was required to be filed prior to taking the oath of office, and the second element was the oath of office. HJR 40, as originally filed, pertained only to members of the Legislature. In the filed version of HJR 40, all other elected and appointed officers were to continue to take an oath of office which incorporated the anti-bribery statement. However, HJR 40 was amended in both the House and Senate, and a conference committee was appointed to draft a final version of HJR 40. A conference committee substitute was adopted which provided that all elected and all appointed officers would be required to execute the Statement of Officer and file it with the Secretary of State prior to taking the official oath of office. Specifically, HJR 40 amended Article 16, Section 1 of the Texas Constitution to read in pertinent part:

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(e) Members of the Legislature and all other elected officers shall file the signed statement required by Subsection (b) of this section with the Secretary of State before taking the Oath or Affirmation of office prescribed by Subsection (a) of this section.

(f) The Secretary of State and all other appointed officers shall file the signed statement required by Subsection (d) of this section with the Secretary of State before taking the Oath or Affirmation of office prescribed by Subsection (c) of this section

HJR 40 did not specify the elected or appointed officers who were required to file the Statement with the Secretary of State. Consequently, the Office of the Secretary of State has been inundated with an escalating number of filings from various subdivisions of the state. (There were 15,297 filings in 1991 and 35,719 filings in 2000.)

Subsequently, in 2001, the 77<sup>th</sup> Legislature adopted and the voters approved HJR 75. Section 8.01 of HJR 75 amended Article 16, Section 1 to read in pertinent part:

(c) Members of the Legislature, the Secretary of State, and all other elected and appointed state officers shall file the signed statement required by Subsection (b) of this section with the Secretary of State before taking the Oath or Affirmation of office prescribed by Subsection (a) of this section. All other officers **shall retain the signed statement** required by Subsection (b) of this section **with the official records of the office.** (Emphasis added.)

The bill analysis of the enrolled HJR 75 which was prepared by the Office of House Bill Analysis stated that "House Joint Resolution 75 amends the Texas Constitution to eliminate obsolete, archaic, redundant, and unnecessary provisions and to clarify, update, and consolidate certain other provisions." It appears that the amendment to Article 16, Section 1 was intended to clarify that not all pre-oath Statements of Officer are required to be filed with the Secretary of State. HJR 75 specifies that only "state officers" are required to file the statement with the Secretary of State. However, "state officer" is not defined in HJR 75 or Article 16, Section 1 of the Constitution. It appears that the term state officer was added to indicate that only officers who receive their authority directly from the state are required to file the Statement of Officer with the Secretary of State. The amendment further indicates that officers who receive their authority from subdivisions of the state are required to file the Statement of Officer with the official records of the office to which they are elected or appointed. For example, it appears that although an elected District Attorney may be required to file the Statement of Officer with the Secretary of State, an Assistant District Attorney appointed by the District Attorney would execute the Statement and could retain it on file in the District Attorney's Office.

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**Question**

What officers are included in the term "state officer" found in Article 16, Section 1 of the Texas Constitution?

We respectfully request your response to this question to assist us in interpreting the language so that there can be certainty as to which office is the proper filing place for Statements of Officer.

Thank you for your advice and assistance in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "G. S. Connor". The signature is written in a cursive, somewhat stylized font.

Geoffrey S. Connor