

RECEIVED

By Opinion Committee at 10:11 am, Jan 08, 2021



THE OFFICE OF THE HONORABLE
WILL THOMPSON
NAVARRO COUNTY DISTRICT ATTORNEY
NAVARRO COUNTY COURTHOUSE
300 WEST 3RD AVE., SUITE 301
CORSICANA, TEXAS 75110
PHONE (903) 654-3045
FACSIMILE (903) 875-3976

January 7, 2021

Honorable Ken Paxton
Office of the Attorney General
Attention Opinion Committee
P.O. Box 12548
Austin, TX 78711-2548

RQ-0394-KP
FILE# ML-48919-21
I.D.# 48919

Re: Request for Opinion

Attorney General Paxton:

Mr. Raychaun Ballard was duly elected to the position of Constable, Precinct Two of Navarro County in the 2020 general election. As described below, Mr. Ballard is eligible to be licensed under Sections 1701.309 and 1701.312, Texas Occupations Code as required under Texas Local Government Code §86.0021(a)(1), however he is not eligible under Texas Local Government Code §86.0021(a)(1)(A), (B), (C), or §86.0021(a)(2).

Further clarification is needed as to whether Mr. Ballard may nonetheless assume the office of Constable, Precinct Two of Navarro County and, on or before the 270th day after taking office, provide to the commissioners court of Navarro County, evidence that he has been issued a permanent peace officer license under Chapter 1701, Texas Occupations Code as required by Texas Local Government Code §86.0021(b).

Mr. Raychaun Ballard is currently and has been a deputy sheriff of the Navarro County Sheriff's Department since November 10, 1996. In December 2019 the current Constable of Precinct Two in Navarro County, Mr. David Foreman filed for election to the office of Sheriff of Navarro County as a Republican candidate and therefore did not file for reelection for his current position as constable. Mr. Charles Paul filed for and won the 2020 primary election to be the republican candidate for Constable, Precinct Two of Navarro County. Nobody filed for candidacy in the democratic party nor as an independent candidate. On April 16, 2020, after the primary election and prior to the general election, Mr. Charles Paul died. The Navarro County Republican Party selected Mr. Ballard to be the republican candidate in the general election and Mr. Ballard was the only candidate on the ballot for the position of Constable, Precinct Two of Navarro County in the general election.

Texas Local Government Code §86.0021 provides that:

- (a) 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 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.
- (b) 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.
- (c) The license requirement of Subsection (b) supersedes the license requirement of Section 1701.302, Occupations Code.
- TEX. LOC. GOV'T CODE § 86.0021.

Mr. Ballard has been a Navarro County Sheriff's Deputy since 1996 but he is not, and never has been a licensed peace officer under Chapter 1701, Occupations Code. Mr. Ballard does not have an associate's degree nor any higher degree conferred by any institution of higher education. Mr. Ballard is not currently, and has not ever been a special investigator under Article 2.122(a), Code of Criminal Procedure. Mr. Ballard is not an honorably retired peace officer nor is he an honorably retired federal criminal investigator who holds a certificate of proficiency issued under Section 1701.357, Occupations Code. Mr. Ballard is neither an active nor an inactive licensed peace officer under Chapter 1701, Occupations Code.

In any statute, words and phrases shall be read in context and construed according to the rules of grammar and common usage. TEX. GOV'T. CODE §311.011(a). Construing Tex. Local Gov't. Code §86.0021(a) according to the rules of grammar and common usage, "a person is not eligible to serve as a constable unless:" the requirements that follow such language, be they cumulative or alternative, are satisfied. Subsection (1) is followed by "and" hence the requirement described in subsection (1) should be construed as cumulative to any additional requirements. Subsections (a)(1)(B) and (a)(1)(C) are each followed by "or" suggesting that the requirements of subsections (a)(1)(A), (a)(1)(B), (a)(1)(C) and (a)(2) are alternative. In other words, the requirement described in subsection (a)(1) must be satisfied; but satisfaction of any of

the remaining four subsections, specifically (a)(1)(A) or (a)(1)(B) or (a)(1)(C) or (a)(2) is sufficient to establish eligibility.

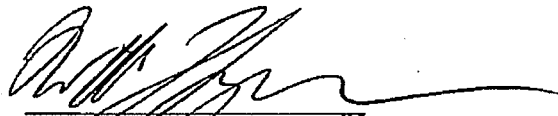
Texas Local Gov't. Code §86.0021(a)(2) is not followed by "and" nor "or" suggesting that the following subsection is neither cumulative nor alternative to the requirements of subsection (a). Additionally, subsection (b) does not describe a prerequisite to eligibility but rather that subsection imposes a requirement for action within 270 days "after the constable takes office..." and provides that a constable who fails to meet that requirement is subject to removal.

In enacting a statute, it is presumed that the entire statute is intended to be effective. TEX. GOV'T. CODE 311.021(2). "In interpreting a statute, we give effect to all its words and, if possible, do not treat any statutory language as mere surplusage. *State v. Shumake*, 199 S.W.3d 279, 287 (Tex. 2006).

An interpretation of Texas Local Government Code §86.0021 to mean that a constable can satisfy the requirements of subsection (a)(1) and (a)(2) by obtaining a permanent peace officer license under Chapter 1701, Occupations code *subsequent* to taking office and providing evidence thereof to the commissioners court within 270 days as required by subsection (b) would render subsections (a)(1)(A), (a)(1)(B), (a)(1)(C) and (a)(2) to be "mere surplusage" and have no real effect on the qualifications for eligibility. In other words, subsection (b) imposes a requirement to provide evidence of licensure within 270 days of taking office, without regard to the eligibility requirements described in subsection (a). Therefore, if compliance with subsection (b) is sufficient to establish eligibility then subsections (a)(1)(A), (a)(1)(B), (a)(1)(C) and (a)(2) have no effect.

Because Mr. Ballard is deferring taking office while he pursues licensure as a peace officer, I respectfully request that your office provide an expedited opinion as to whether Mr. Ballard may take office immediately and provide evidence of licensure as a peace officer within 270 days or he is required to defer taking office until he satisfies the requirements of Texas Local Government Code §86.0021(a) by becoming a licensed peace officer under Chapter 1701, Occupations Code.

Respectfully submitted,



Will Thompson
State Bar No. 24045055
Criminal District Attorney
Navarro County, Texas