



HOUSE OF REPRESENTATIVES
AUSTIN

August 3, 2007

The Honorable Greg Abbott
Attorney General of Texas
Supreme Court Building
P.O. Box 12548
Austin, TX 78711-2548

Attention: Opinion Committee

Re: RQ-0589-GA

Dear General Abbott:

Thank you for requesting our input on Request for Opinion RO-0589-GA. The four separate questions posed to you can be condensed into one succinct question:

"Does the Texas Constitution permit the removal and replacement of a duly elected Speaker during a regular or called session for political or personal reasons?"

Your analysis in your official capacity is limited to only a discussion of whether the Texas Constitution permits the political or personal removal of a Speaker. The Office of Attorney General may opine on matters of constitutional and statutory construction, but is specifically proscribed, as a member of the Executive Department, *Tex. Const. Art. 4, Section 1*, from interfering in the rules, process, or procedure of the Senate or House of Representatives, *Tex. Const. Art. 2, Section 1*. Accordingly, matters of rule construction and interpretation are exclusively and uniquely to be determined by each separate body.

In recognizing that division of power and its own responsibility, the House adopted its first rule:

"Enforcement of the Rules - The speaker shall enforce, apply, and interpret the rules of the house in all deliberations of the house and shall enforce the legislative rules prescribed by the statutes and the Constitution of Texas." *House Rule 1 Section 1.*

It is important to note that the House's first rule does not grant authority to any one other than the Speaker to interpret and enforce its rules. Furthermore, that the Texas House of Representatives Rules do not specifically provide for a rule or process to remove a Speaker may not be presumed to be a matter of oversight. To the contrary, it must be presumed that the exclusion of such a rule was the intent of the House of Representatives of the 80th Legislature. As the members are constitutionally elected to a full two-year term regardless of popularity during the term of office, so too, have the members elected a Speaker and empowered that Speaker with broad authority for the full term of the 80th Legislature.

As you may recall, the request for this opinion originated from the decision of the Speaker during the 80th regular legislative session to not recognize a member for a motion to vacate the chair. There is no such motion available in the House Rules, so the Speaker declined to recognize the movant. In choosing not to recognize a member to make a motion clearly excluded from the House Rules, the Speaker was not only exercising the right the body gave him in House Rule 5, Section 24 and Rule 1, Section 1, but correctly enforcing the entirety of the House Rules and protecting the members from being forced to debate and vote on a motion the members intentionally excluded from their rules. Please note that the House Rules specifically provide a process for amendment of the rules during a regular or called session with a standing committee empowered to hear and deliberate on those proposed amendments. *House Rule 3, Section 36 (1) and (3)*. Had a member chosen to file a resolution amending the House Rules, that avenue was available to the member throughout the session. In fact, such resolutions were filed, HR 2669 and HR 2671 during the 80th Legislative Session.

You are left to only opine on whether the Texas Constitution allows for the removal and replacement of a Speaker during a legislative session. The House may expel from the House a member for an offense *Tex. Const. Art. 3, Sec 11*; the legislature may enact a law to remove a speaker for political reasons, *Tex. Const. Art. 15, Sec 7*, which has not been done; a speaker or any member may be removed by impeachment, *Govt. Code Sec. 665*, which applies to all state officers; a House member may be removed by their own acts, such as a violation of the dual officeholding prohibition, *Tex. Const. Art. 16, Sec. 40*; or removing residence from their house district *Tex. Const. Art 3, Sec 23 and Art. 16, Sec 14*; or automatically expelled upon conviction for bribery *Tex. Const. Art 16, Sec 5*; or per disqualification in an election contest *Tex Const. Art. 3, Sec 8*.

The first order of business of the House, when it initially assembles each regular session, is to elect a Speaker from its own members. *Tex. Const. Art. 3, Sec. 9 (b)*. From that point forward, and subject only to the limitations in Article 3, Section 5 (b) and Article 3, Sections 29 through 43, each body is on its own. Legislation not complying with the constitutional process may be subject to a challenge of unconstitutionality in the courts. Otherwise, the Texas Constitution allows the House to conduct its business, including the election of Speaker, the removal of a Speaker, or any other House officer, by its own rules. Even the initial election is done by the adoption of temporary rules.

In conclusion, the Texas Constitution specifically gives the House of Representatives the authority, through its rules, to decide when and on what basis a Speaker may be removed from office for political or personal reasons. The House Rules are outside the province of jurisdiction for advisory opinions of the Office of Attorney General. Accordingly, the Office of Attorney General should refrain from issuing an advisory opinion interpreting the House Rules. The Office of Attorney General should opine only that the Texas State Constitution does not authorize a process or procedure for removing a Speaker for political or personal reasons.

Respectfully submitted,


Leo Berman



Betty Brown



Fred Brown



Bill Callegan

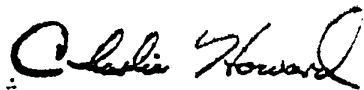

Frank J. Corte, Jr.


John Davis


Rob Eissler


Dan Flynn


Linda Harper-Brown

A handwritten signature in black ink, appearing to read "Charlie Howard". The letters are cursive and fluid.

Charlie Howard

A handwritten signature in black ink, appearing to read "Carl Isett". The signature is more compact and stylized than the one to its left.


Carl Isett

A handwritten signature in black ink, appearing to read "Jim Jackson". The signature is cursive and has a long, sweeping tail.

Jim Jackson

A handwritten signature in black ink, appearing to read "Jim Murphy". The signature is cursive and has a distinct loop at the end.

Jim Murphy

A handwritten signature in black ink, appearing to read "Beverly Woolley". The signature is cursive and has a long, flowing tail.

Beverly Woolley

A handwritten signature in black ink, appearing to read "Bill Zedler". The signature is cursive and has a long, sweeping tail.

Bill Zedler