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OPINION COMMITTEE

3 August 2006

The Honorable Greg Abbott
Office of the Attorney General, Opinion Committee
P.O. Box 12548
Austin, TX 78711

RE: Input regarding Opinion Request RQ-0589-GA

FILE # RQ-0589-LA
I.D. # 45300

Dear Attorney General Abbott:

Thank you for the opportunity to provide input with regard to opinion request RQ-0589-GA, related to the powers and terms of the Speaker of the Texas House of Representatives. In reviewing the questions posed in the 18 June 2007 request by Chairman Keffer and Chairman Cook (hereafter "request"), I would like to provide my opinion with regard to some of the questions presented.

While I would welcome your insights into this issue, I believe that, as a matter of propriety and legislative prerogative, this issue be left for the House to resolve. In the alternative, Question 4 of the request asks if the House Rules give the Speaker unilateral authority to not recognize members for the purposes of presenting any motion. I believe that Rule 5, Section 24 of the House Rules provides clear instruction on this matter. This rule grants the authority to recognize, or not recognize, any motion from the House Floor. This includes motions regarding questions of privilege. When the House convened in regular session in January 2007, this longstanding rule was again adopted by the House when it adopted House Resolution 2 by a vote of 141 in favor to 4 against.

Question 3 of the request focuses on the options before the House upon the removal of the Speaker by "any legal means". For purposes of clarification, I assume that "any legal means" may include death, illness, or even resignation, in addition to impeachment as contemplated in the request. I believe that the Texas Constitution and the House Rules are instructive on this matter. First, the Constitution states in Article 3, Section 9 that "[t]he House of Representatives shall, when it first assembles, organize temporarily, and thereupon proceed to the election of a Speaker from its own members." The timing of this election is further contemplated in Chapter 302, Government Code, where a Speaker must be selected when "the House of Representatives first convenes in regular session". Each reference here is equally instructive: the House of Representatives may select its Speaker at that specific time when it first convenes. My review of the Texas Constitution and the Government Code does not identify any other temporal juncture where it is appropriate for the House to elect a Speaker.

Given that the Constitution and state law are clear that the Speaker shall be elected when the House first convenes in regular session, a reasonable question arises with regard to the proper course in the event of a Speaker's unanticipated departure by the aforementioned legal means. While the Constitution and state law are silent on this matter, I believe that the Rules of the Texas House clearly anticipate this scenario. In particular, Rule 1, Section 10 of the House Rules authorize the Speaker to appoint a Speaker Pro Tempore who, in the absence of the Speaker, may call the House to order and exercise those duties and responsibilities incumbent to the station. Should a Speaker unexpectedly expire during the course of a legislative session, or even during an interim, and that Speaker has identified a Speaker Pro Tempore, then that individual shall serve as Speaker for the time being up until that point when the next Legislature convenes.

Looking back at the tumultuous events during the waning days of the 80th Session, it was clear to me that certain parties sought to inaugurate another, additional race for the position of Speaker of the House. As I discussed earlier in this letter, both the Constitution and state law provide for one, and only one, election for the Speaker of the House every two years. The Rules of the Texas House are also instructive in this regard. In particular, Rule 1, Section 18, prohibits a member from soliciting written pledges of support from others for any person for the office of Speaker during a regular legislative session. Implicit in this prohibition of soliciting written pledges is a bar upon any explicit campaign or, more importantly, election for the position of Speaker during a regular legislative session.

I believe that the reason for the strictly biennial election for the Speaker of the House is simple: the Founders of the Texas Constitution envisioned a House that would focus entirely on legislative matters, and not be distracted by campaigns or other elections. Invariably, the Office of the Speaker of the House is an institution for each and every legislative biennia. The certainty of that institution ensures that committees may function, legislation may proceed, a budget will be passed, in addition to Sunset bills, and that the House may engage in its business as a representative body. In the absence of this certainty, that the Speaker may preside for each biennium for which he is elected to serve, the order and affairs of the House would be rendered ineffective, a plausible outcome that shirks those expectations placed upon our body by the Texas Constitution and, more importantly, the people of this state.

I sincerely thank you for providing me with the opportunity to provide my input on this matter. Please do not hesitate to contact me should you have any questions with regard to my comments.

Sincerely,



W. A. Callegari, Chair
House Committee on Government Reform