

Common Cause Texas

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OPINION COMMITTEE603 West 13th St.
Suite 2D
Austin, TX 78701FILE # RQ-0589-LA
I.D. # 45296

July 31, 2007

The Honorable Greg Abbott
Attorney General
209 W. 14th St. 7th Floor
Austin, Texas 78701*Re: Attorney General Opinion request No. RQ-0589-GA*

Dear General Abbott:

As Texas' oldest advocacy organization devoted to open and accountable government, we are intently focused on your response to the requestor's questions. The questions posed present an opportunity to articulate a view of the State House of Representatives and our State government that safeguards the American principles of limited power, and democratic accountability. We are confident that you will consider the long-term importance of these questions, and the impact their eventual resolution will have on the nature of one of the most important institutions in Texas government.

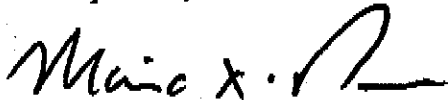
It is clear that both the Speaker of the Texas House of Representatives and the President Pro Tempore of the Texas Senate are not "state officers" under the Texas Constitution. Judicial precedent, and the fact that neither position is directly elected by the electorate, nor appointed by the Governor, indicates that these positions are properly considered "legislative officers" and thereby subject to removal by the membership of the Texas House of Representatives and the Texas Senate, respectively, rather than through the impeachment process of Article 15, Section 7 of the Texas Constitution.

To conclude that these positions are state officers rather than legislative officers would create additional problems. Article 3, Section 11 of the Texas Constitution clearly establishes that members of both legislative bodies may only be expelled by a vote of the chambers' members. It is a longstanding precedent that members of the Texas House and Senate cannot be impeached. Therefore, both positions must be considered legislative officers under the Texas Constitution.

It follows that the rules adopted by the Texas House of Representatives should not be read to foreclose all avenues of exercising this removal procedure. Consequently, a reasonable conclusion, consistent with preserving principles of accountability and

limited, rather than absolute, power would hold that a Speaker cannot prevent his removal through simply refusing to recognize motions for that intended purpose from the floor.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mario X. Perez", with a stylized flourish at the end.

Mario X. Perez
State Chair,
Common Cause Texas