

RAYFORD PRICE & ASSOCIATES

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

6212 EDWARDS MOUNTAIN COVE
AUSTIN, TEXAS 78731

Telephone (512) 346-4477
Fax (512) 323-6841

Rayford Price
Attorney

RECEIVED

JUL 25 2007

OPINION COMMITTEE

July 23, 2007

FILE # RQ-0589-GA
I.D. # 45280

The Honorable Greg Abbott
Attorney General of Texas
209 W. 14th St., 7th Floor
Austin, Texas 78701

RE: Attorney General Opinion request no. RQ-0589-GA

Dear General Abbott:

As a concerned citizen, lawyer and former member and Speaker of the Texas House of Representatives, I am writing to express my opinion on certain aspects of the referenced opinion request.

Chairmen Keffer and Cook, in their request for an opinion by you, asked the following:

Question 1: Are the Speaker of the Texas House of Representatives and the President Pro Tempore of the Texas Senate "legislative officers" as recently held by the Texas Supreme Court, officers who serve at the pleasure of the membership, according to rules adopted under the authority granted by Article 3, §11 of the Texas Constitution, or are they "state officers" subject to removal only as provided in Article 15, Section 7 of the Texas Constitution?

I have read House Parliamentarian Terry Keel's letter to you dated July 20, 2007 and Speaker Craddick's brief stamped received by your Opinions Committee on July 20, 2007. I agree with Terry Keel's opinions expressed in his letter as they relate to the present House Rules and to the authority of the House to adopt rules that take precedence over statutes as has been done in the present House Rules. However, I strongly disagree with certain aspects of Speaker Craddick's brief (hereinafter refer to as the "Craddick Brief") which motivates me to write this letter.

The Craddick Brief takes the position that a Speaker of the Texas House of Representatives is "both a legislative officer and a public officer of the state who can be removed only as provided by Tex. Const. Art. XV, Sec. 7". In other words, a Speaker can only be removed as provided by statute. The Craddick Brief also takes the position that "the Speaker is elected to a two-year term". I have strong disagreement with both of these positions.

It is clear a Speaker is a legislative officer as he is conceded to be in the Craddick Brief. To be precise, a Speaker is a House officer elected by the members of the House. It is clearly stated in Section 9, Article III, Texas Constitution, that a Speaker is an officer of the House. As a House officer, a Speaker is subject to the Rules of the House and may be removed and replaced as may be provided in the Rules. A Speaker may or may not also be a state officer subject to impeachment under Section 665.002, Chapter 665, Government Code. For the purposes of this letter, I will concede he is such an officer.

The Speaker is not an officer subject to impeachment by the modes provided in the Texas Constitution. Officer who are subject to impeachment by the modes provided in the Texas Constitution are those officers set out in Section 2, Article XV, Texas Constitution which reads as follows:

Impeachment of the Governor, Lieutenant Governor, Attorney General, Commissioner of the General Land Office, Comptroller and the Judges of the Supreme Court, Court of Appeals and District Court shall be tried by the Senate.

If a Speaker is subject to impeachment, it would be under Chapter 665 of the Government Code. Section 665.002, Chapter 665, Government Code reads as follows:

An individual may be removed from an office or a position by impeachment in the manner provided by the constitution and this chapter if the individual is:

- (1) a state officer;
- (2) a head of a state department or state institution; or
- (3) a member, regent, trustee, or commissioner having control or management of a state institution or enterprise.

The problem in relying only on impeachment for the removal of a Speaker is that two legal requirements would come into play which would be absurd when dealing with the removal of a Speaker.

First: If the House passes articles of impeachment against the Speaker, the matter goes to the Senate for trial. For the Speaker to be removed from office, two-thirds of the Senators voting would have to vote for removal. This could lead to the absurd situation where a substantial majority of the members of the House

have voted for impeachment but the Senate fails to get the two-thirds vote necessary for removal. The members of the House would have to continue serving under a Speaker they had voted by a substantial majority to impeach. The House should not have to rely on the Senate to remove its Speaker.

Second: The provisions of Section 5, Article XV, Texas Constitution would come into play if a Speaker were impeached by the House.

Section 5, Article XV, Texas Constitution provides that:

All officers against whom articles of impeachment may be preferred shall be suspended from the exercise of the duties of their office, during the pendency of such impeachment. The Governor may make a provisional appointment to fill the vacancy occasioned by the suspension of an officer until the decision on the impeachment.

If articles of impeachment are preferred against a Speaker by the House, under this constitutional provision, the Speaker would be suspended from exercising his duties as Speaker and the Governor would have the authority to fill the vacancy until the decision on the impeachment is made by the Senate. This would be a flagrant violation of the separation of powers provisions of the Constitution to have the Governor appoint someone to act as Speaker.

The Craddick Brief takes the inaccurate position that Section 9(b), Article III, Texas Constitution "establishes a two-year term for the speakership". This provision of the Texas Constitution only states that: "The House of Representatives shall, when it first assembles, organize temporarily, and thereupon proceed to the election of a Speaker from its own members." Nowhere in the Constitution does it state a Speaker has a set term of office. This constitutional provision only states that a Speaker shall be elected at the beginning of each regular legislative session of the legislature.

Section 11, Article III, Texas Constitution provides that "each House may determine the rules of its own proceedings". In House Parliamentarian Terry Keel's letter to you dated July 20, 2007, he states: "In adopting its rules for the 80th legislative session, as in previous sessions, the House invoked Article 3, Section 11 of the Texas Constitution in the Statement of Authorization and Precedence in the preamble to the House rules:

Statement of Authorization and Precedence

Pursuant to and under the authority of Section 11, Article III, Texas Constitution, and notwithstanding any provision of statute, the House of Representatives adopts the following rules to govern its operations and procedures. The provisions of these rules shall be deemed the only requirements binding on the House of

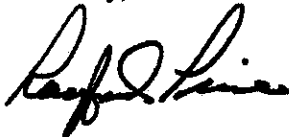
Representatives under Section 11, Article III, Texas Constitution, notwithstanding any other requirements expressed in statute.”

The Speaker as a state officer under Chapter 665, Government Code, is subject to impeachment and removal under that statute. However, impeachment under that statute is not the exclusive means of removing a Speaker as contended in the Craddick Brief. As stated in Terry Keel’s letter, the House Rules take precedence over statutes in the operations and procedures of the House. Therefore, the House may provide a procedure for the removal of the Speaker notwithstanding the provisions of Chapter 665, Government Code.

The present House Rules are silent on the removal and replacement of the Speaker. However, future Houses may and should provide in the House Rules a procedure for the removal and replacement of the Speaker. The Speaker is an officer of the House and serves at the will of the House and may be removed and replaced as may be provided in the House Rules.

If you see fit to respond to the referenced opinion request, I would ask that you find the Speaker of the Texas House of Representatives to be an officer of the House and may be removed by the House as may be provided in the House Rules.

Sincerely,



Rayford Price

Cc: Opinion Committee
Office of the Attorney General

Terry Keel
House Parliamentarian

Gregory S. Coleman
Christian J. Ward
Attorneys for Speaker Tom Craddick

Representative Jim Keffer
Representative Byron Cook
Requestors