

CAUSE NO. \_\_\_\_\_

**BILL ALESHIRE**

**Plaintiff**

**V.**

**THE HONORABLE SUSAN COMBS,  
COMPTROLLER**

**Defendant**

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**IN THE DISTRICT COURT OF**

**TRAVIS COUNTY**

\_\_\_\_\_ **JUDICIAL DISTRICT**

### **PLAINTIFF'S ORIGINAL PETITION**

TO THE HONORABLE JUDGE PRESIDING:

NOW COMES Bill Aleshire and files this Original Petition and would show the Court as follows:

#### **Nature of the Case**

Plaintiff, as a taxpaying citizen of the State of Texas, brings this case to enjoin the use of his and other people's taxes from being used to pay the salary of a state official who has openly violated the Texas Constitution and has no legal authority to discharge the duties of her former office.

#### **Discovery Level**

This cause is designated as a Level 2 pursuant to the Texas Rules of Civil Procedure.

#### **Parties**

Plaintiff, Bill Aleshire, is a resident of Travis County, a duly-licensed attorney in the State of Texas and a state taxpayer.

Defendant, The Honorable Susan Combs, is sued in her official capacity as Texas Comptroller of Public Accounts, and she can be served at The Lyndon B. Johnson Building, 111 E. 17<sup>th</sup> Street, Austin, Texas 78701.

### **Jurisdiction and Venue**

This Court has jurisdiction of this cause pursuant to article V, § 8 of the Texas Constitution and section 24.007 of the Texas Government Code. Venue is appropriate in Travis County under section 15.002(a) of the Texas Civil Practices and Remedies Code as Defendant is a resident of Travis County. Plaintiff has standing as a taxpayer to bring this injunction action. *Williams v. Lara*, 52 S.W.3d 171, 179 (Tex. 2000) (“Taxpayers in Texas have standing to enjoin the illegal expenditure of public funds, and need not demonstrate a particularized injury.”).

### **Background**

Article IV, section 23 of the Texas Constitution provides in relevant part that:

The Comptroller of Public Accounts, the Commissioner of the General Land Office, the Attorney General, and any statutory State officer who is elected by the electorate of Texas at large, unless a term of office is otherwise specifically provided in this Constitution, shall each hold office for the term of four years. Each shall receive an annual salary in an amount to be fixed by the Legislature; reside at the Capital of the State during his continuance in office, and perform such duties as are or may be required by law.

Prior to 1972, this provision applied only to officers specifically named in the Constitution and provided for two-year terms. This provision was amended in that year in order to move all the specified officers to four-year terms and to include within

the section's purview "any statutory State officer who is elected by the electorate of Texas at large." Then, as now, the only statutory state officers elected statewide are the Commissioner of Agriculture and Railroad Commissioners.

This section of the Constitution is not difficult to understand. The Attorney General long ago determined that "[s]ection 23 of Article IV of the Constitution . . . provides that the persons who hold those offices reside in Austin, the capital of the State." Op. Tex Att'y Gen. No. WW-17 (1957). Additionally, it is also undisputed that the office of Railroad Commissioner is a statutory office. The Texas Supreme Court held over 80 years ago with respect to the Commission that the "framers of the Constitution . . . took pains not to create a constitutional office, but left the office subject to the will and judgment of the Legislature, where it had already been reposed." *City of Denison v. Municipal Gas Co.*, 117 Tex. 291, 297, 3 S.W.2d 794, 796 (1928). Finally, the courts have determined that when the Constitution requires a public official to reside in a certain location, a "residence is established by personal presence in a fixed and permanent abode with intention of remaining there." *Harrison v. Chesshir*, 316 S.W.2d 909, 915 (Tex. Civ. App. – Amarillo 1958), *rev'd on other grounds*, 159 Tex. 359, 320 S.W.2d 814 (1959).

Elizabeth Ames Jones was appointed by Governor Rick Perry to the Texas Railroad Commission in 2005 and qualified as a commissioner on March 2, 2005. On March 29, 2005, she signed and submitted a voter registration application stating that she was a resident of Travis County and listing her residence address as being in Austin, a true and correct copy of which is attached as Exhibit A. In so doing, Ms. Jones

affirmed that her Austin address was her "home and fixed place of habitation to which [she] intends to return after any temporary absence." TEX. ELEC. CODE § 1.015(a) (defining "residence" for purposes of voter registration and candidate applications). She served as an appointed commissioner until she was elected to serve a six-year term on the Commission in November 2006.

However, on November 1, 2011, Ms. Jones signed and submitted a new voter registration application stating that her residence address is now in San Antonio, a true and correct copy of which is attached as Exhibit B. On December 8, 2011, Ms. Jones signed and submitted an application to be on the Republican primary ballot for State Senate District 25, a true and correct copy of which is attached as Exhibit C. In this application she stated that her address was at the same San Antonio residence listed in her recent voter registration application. In her candidate application, Ms. Jones swore under oath that her permanent residence address was in San Antonio and that she had maintained a continuous residence there for one month. As Ms. Jones has sworn under oath that her residence in San Antonio is her fixed place of habitation to which she intends to return after any temporary absence, it is clear that there can be no residence in Austin that is her fixed place of abode at which she intends to remain. The facts are not in dispute, Ms. Jones no longer resides in Austin in contravention of the Constitutional requirement that she reside there so long as she continues in her office.

As the Attorney General has repeatedly recognized, "when a person no longer meets the qualifications for a position . . . , it must be held that he loses his right to serve and the position is vacated." Op. Tex. Att'y Gen. No. H-1065 (1977) (quoting Op. Tex.

Att’y Gen. No. H-578 (1975)). Not only has Ms. Jones vacated her office by violating the constitutional residence requirement applicable to her office, but she is prohibited from discharging the duties of her office as either a hold over or as a *de facto* officer. Although article XVI, section 17 of the Constitution requires most officials who have vacated their offices to perform the duties of the office until a successor is qualified, that section does not apply to “vacancies in . . . classes of cases or for causes provided for in other sections of the constitution.” TEX. CONST. art XVI, § 17 interp. commentary; accord Op. Tex. Att’y Gen. No. JC-293 (2000) (“In general, [article XVI, § 17] ‘does not apply to vacancies created by operation of the constitution.’”). When an officer is prohibited by the Constitution from discharging the duties of her office, her term in office has fully and finally ended, she cannot be a *de facto* officer and is nothing more than an interloper.

Currently, Ms. Jones is being paid a salary of \$115,200 for duties she is constitutionally prohibited from discharging. Defendant is the official charged with the “payment of all money required by law to be paid from the treasury,” TEX. GOV’T CODE § 403.011(a)(17), which includes the duty to pay state officers their salaries each month. *Id.* §§ 659.081-.083. Plaintiff, as a licensed attorney, pays taxes to the State in the form of an occupation tax on attorneys. *See* TEX. TAX CODE §§ 191.142; .145. As such, he has a legally protectable interest in seeing that his tax funds are not spent illegally. Without a court order, Defendant will continue to pay Ms. Jones a monthly salary in contravention of the Constitution.

## Permanent Injunction

A taxpayer is entitled to an injunction against a public official's expenditures that violate the law. The facts in this case show that on or before November 1, 2011, Ms. Jones' term as a Railroad Commissioner permanently ended when she started residing in San Antonio in violation of article IV, § 23 of the Texas Constitution. See *Pruitt v. Glen Rose Indep. Sch. Dist. No 1*, 126 Tex. 45, 84 S.W.2d 1004 (1935) (where school district tax collector became county tax collector in violation of constitutional dual-office provision, he was no longer the legal or *de facto* school district collector and his "term of office as [school] district collector ended automatically on January 1, 1929, when [his] term as county tax collector began"). "It is a clear principle of law that an officer's compensation ends when his term of office ends." *Graves v. Bullen*, 53 Tex. Civ. App. 261, 263, 115 S.W. 1177, 1178 (1909).

As Ms. Jones is now only a private individual, rather than a legal or *de facto* Railroad Commissioner, payment to her of the compensation reserved for Commissioners would violate article III, § 51 of the Constitution. TEX. CONST. art. III, § 51 ("The Legislature shall have no power to make any grant or authorize the making of any grant of public moneys to any individual . . ."); see *State v. City of Austin*, 160 Tex. 348, 354, 331 S.W.2d 737, 742 (1960) ("Moreover, the use of public money to pay a claim predicated on facts which generate no state liability constitutes a gift or donation in violation of our Constitution."). In order to prevent the violation of this constitutional provision, Plaintiff is entitled to a judgment permanently enjoining Defendant from

paying any additional monies to Ms. Jones as salary for the discharge of any duties as a Railroad Commissioner.

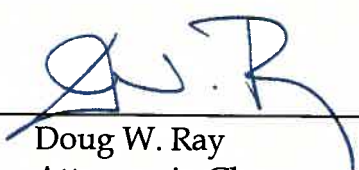
### Temporary Injunction

Plaintiff requires temporary injunctive relief to prevent Defendant from continuing to violate the Constitution by illegally paying Ms. Jones public monies that she is not legally entitled to receive. Plaintiff has alleged a cause of action against Defendant and has shown a probable right of recovery. Additionally, Plaintiff can show probable harm in that he will suffer imminent harm and irreparable injury, and has no adequate remedy at law. If these illegal expenditures continue during the pendency of this proceeding, Plaintiff has no legal recourse to recover such sums and such monies may very well be permanently lost to the state fisc. Accordingly, Plaintiff requests a temporary injunction restraining Defendant from paying any additional monies to Ms. Jones as salary for the discharge of any duties as a Railroad Commissioner during the pendency of this proceeding.

Respectfully submitted,

RAY & WOOD

By: \_\_\_\_\_

  
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**ATTORNEYS FOR PLAINTIFF**  
**BILL ALESHIRE**

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Texas Voter Registration Application

For Official Use Only

Forwarded by the Office of the Secretary of State

12 04 07AM:11-94

00297098

Handwritten initials

Complete These Questions Before Processing

Check one  New  Change  Replacement

Are you a United States Citizen?  Yes  No

Will you be 18 years of age on or before election day?  Yes  No

If you checked 'no' in response to either of these questions, do not complete this form.

Have you ever voted in this county for a federal office?  Yes  No

If you answered "no" to this question, be sure to see special instructions regarding identification requirements on the reverse side of the application.

Continue below to complete application.

RECEIVED  
APR 4 2005  
BY:

Handwritten initials

Last Name: Jones | First Name: Elizabeth | Middle Name (if any): AMES | Former Name:

Residence Address: 1221 S. Congress Ave #1321 Austin, TX 78704

Mailing Address: 11

Date of Birth: 10-29-56 | Gender:  Male  Female

TX Driver's License No. or Personal I.D. No. (If none, give last 4 digits of your Social Security Number)

I understand that giving false information to procure a voter registration is perjury, and a crime under state and federal law.

I affirm that I

- am a resident of this county;
have not been finally convicted of a felony or if a felon I have completed all of my punishment including any term of incarceration, parole, supervision, period of probation, or I have been pardoned; and
have not been declared mentally incompetent by final judgment of a court of law.

Check  driver's license, or personal identification number

Telephone Number: Include Area Code

City and County of former residence in Texas

San Antonio, Bexar

Signature of Applicant or Agent and Relationship to Applicant or Printed Name of Applicant if Signed by Witness and Date.

Handwritten signature: Elizabeth Jones

5-29-05 Date

Qualifications

- You must register to vote in the county in which you reside.
You must be a citizen of the United States.
You must be at least 17 years and 10 months old to register, and you must be 18 years of age by election day.
You must not be finally convicted of a felony, or if you are a felon, you must have completed all of your punishment, including any term of incarceration, parole, supervision, period of probation, or you must have received a pardon.

General Information

- Your voter registration will become effective 30 days after it is received or on your 18th birthday, whichever is later.
If you move to another county, you must re-register in the county of your new residence.
If you decline to register to vote, the fact that you have declined to register will remain confidential and will be used only for registration purposes.
You must provide your driver's license or personal identification number. If you do not have a driver's license or personal identification, then give the last four digits of your social security number.

Identification Requirement

If you are submitting this form by mail and you are registering for the first time in this county, enclose a copy of one of the following with your application: a copy of a current and valid ID; a copy of a current utility bill; bank statement; government check; paycheck; or other government document that shows your name and address.

Please complete sections by printing legibly. If you have any questions about how to fill out this application, please call the Secretary of State's Office toll free at 1-800-252-VOTE(8683), TDD 1-800-735-2989.

Este formulario está disponible en Español. Favor de llamar sin cargo a la oficina del Secretario de Estado al 1-800-252-8683 para conseguir una versión en Español.



Texas Voter Registration Application VR17.08E13	For Official Use Only
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Please mail this application to:

REGISTRAR OF VOTERS  
203 W. NUEVA, SUITE 3.61  
SAN ANTONIO, TX 78207-4045

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Application Type: Change

Are you a United States Citizen? .....

Are you interested in serving as an election worker? .....

FILED  
 JACQUELINE L. GIBSON  
 CLERK  
 2011 NOV - 1 PM 3:44  
 BEKAH COUNTY

Continue below to complete application

Last Name	First Name	Middle Name (if Any)	Former Name
Jones	Elizabeth	Ames	

<b>Residence Address:</b> Street Address and Apartment Number. If none, describe where you live. (Do not include P.O. Box, Rural Rt. or Business Address)	<b>City</b>	<b>State</b>	<b>Zip Code</b>
20 Campden Circle	San Antonio	TX	78218

<b>Mailing Address:</b> Street Address and Apartment Number (If mail cannot be delivered to your residence address)	<b>City</b>	<b>State</b>	<b>Zip Code</b>

<b>Date of Birth:</b> (mm/dd/yyyy)	<b>Gender</b> (Optional)	<b>Telephone Number, include Area Code</b> (Optional)
10/29/1956	Female	(210) 822-7759

**TX Driver's License No. or Texas Personal I.D. No. If no TX Driver's License or Personal Identification, give last four digits of your Social Security Number**

I have not been issued a TX Driver's License/Personal Identification Number or Social Security Number.

**I understand that giving false information to procure a voter registration is perjury, and a crime under state and federal law. Conviction of this crime may result in imprisonment up to 180 days, a fine up to \$2,000, or both.**

I affirm that I

- am a resident of this county and U.S. Citizen;
- have not been finally convicted of a felony or if a felon I have completed all of my punishment including any term of incarceration, parole, supervision, period of probation, or I have been pardoned; and
- have not been determined by a final judgment of a court exercising probate jurisdiction to be totally mentally incapacitated or partially mentally incapacitated without the right to vote.

Elizabeth Ames Jones      NOV. 1, 2011  
 Signature of Applicant or Agent and Relationship to Applicant or Printed Name of Applicant if Signed by Witness and Date.      Date

Signature of Applicant or Agent and Relationship to Applicant or Printed Name of Applicant if Signed by Witness and Date.

