

RENE GUERRA

August 3, 2010

RE: Letter Opinion regarding Special Election for Commissioner Precinct One to be held November 2, 2010

Dear Judge and Commissioners of Hidalgo County, Texas

Please consider this as my opinion on the appropriate procedure to fill the remainder of the unexpired term of the office of Hidalgo County Commissioner for Precinct One (1).

As you may already know, Commissioner Sylvia Handy's resignation on March 9, 2010, mandates that the office of Hidalgo Commissioner Precinct One (1) must be placed on the ballot for election. Several questions are automatically raised when an elected office is suddenly and unexpectedly vacated by either death, resignation or by judicial order. Nobody questions the fact that vacancies in state offices are filled by the Governor according to state law. Vacancies in political subdivisions of the state such as counties, municipalities, and other governmental entities are filled by the appropriate authority under state law mandated procedures under Section 87.042 of the Texas Local Government Code.

It is undisputed that the office previously held by Mrs. Handy must be placed up for election. *See* Tex. Elec. Code §201.002. What is disputed is the kind of election that must be held. I am of the opinion that the County Judge must order a special election to be held simultaneously with the general election, based on our legal research.

The Governor of Texas must order and proclaim the November general election at least 36 days prior to November 2, 2010. *See* §3.003 Tex. Elec. Code. Under Section 3.004(a) of the Texas Election Code, the County Judge shall order an election for offices of the county government and Section 3.005(a) mandates the ordering of the election not later than 70 days before the general election. As stated in Section 201.051 (a), (b) of the Texas Election Code, the time for ordering the filling of a vacancy for state and county office as a special election to be held at the general election is not later than the 70th day before Election Day.

Why is this vacancy of Hidalgo County Commissioner Precinct One (1) not filled by certified nominees of any political party? The Texas Secretary of State and I are in agreement that this position was not up for re-election and not on the primary ballot. Where we disagree is on how we fill the vacancy. Since Mrs. Handy resigned after the 62nd day before that primary, that office could not be opened to qualified citizens of that precinct to place their names on the respective parties' ballots in a general primary election under Section 202.004. *See* §202.004 Tex. Elec. Code. Section 202.002 of the Texas Election Code also mandates that vacancies be filled at the general election in the next-to-last, even-numbered year of a term of office. If that occurs after the 74th day, the appointee continues in office until the next general election. *See id.* The Secretary of State has also recommended that the procedure to be followed is under Sections 202.006 and 145.036 of the Texas Election Code. However, given the date on which Mrs.

Handy resigned, Section 202.006 is not applicable to our situation and the procedures as set out in Section 145.036 cannot be made applicable as she was not a candidate who withdrew, died, or became ineligible. *See* §202.006, §145.036 Texas Election Code. Therefore, I request that the Judge of Hidalgo County, Texas call the November 2, 2010, general election and order that a special election be held for the office of Hidalgo County Commissioner Precinct One (1) on the same date. It is further requested that the special election order set a filing deadline on the 67th day before election day.

Respectfully yours,

A handwritten signature in cursive script that reads "Rene Guerra". The signature is written in black ink and is positioned above the printed name.

RENE GUERRA
Criminal District Attorney
Hidalgo County, Texas