

CAUSE NO. 10-1428-c26

THE STATE OF TEXAS	§	IN THE DISTRICT COURT
Ex rel. JANA DUTY	§	
COUNTY ATTORNEY OF	§	
WILLIAMSON COUNTY, TEXAS	§	
VS.	§	WILLIAMSON COUNTY,
	§	TEXAS
DAN A GATTIS, COUNTY JUDGE	§	
OF WILLIAMSON COUNTY, TEXAS	§	26TH JUDICIAL DISTRICT

PLAINTIFF’S RESPONSE TO DEFENDANT’S MOTION TO DISMISS

Comes now The State of Texas Ex rel. Jana Duty, County Attorney of Williamson County, Texas, Plaintiff, and files this response to the Defendant’s Motion to Dismiss and would show the Court as follows:

Since 1879, county officers have been protected from removal from office for incompetency and official misconduct. TEX. REV. CIV. STAT. art. 3390 (1879). Also since 1879, county officers have been protected from removal for office for incompetency and official misconduct that occurred during prior terms. *Id.* art. 3415; TEX. LOC. GOV’T CODE § 87.001. And since 1954, our State’s highest court has carved out an exception to this so called “forgiveness doctrine,” declaring that removal may not “be predicated upon acts antedating election . . . when such acts were a matter of public record or otherwise known to the electors and were sanctioned and approved or forgiven by them at the election.” *In re Laughlin*, 265 S.W.2d 805, 808 (Tex. 1954). “This language has come to mean that removal may be predicated upon misconduct during a prior term if such misconduct was . . . unknown to the public. *State v. McInnis*, 586 S.W.2d 890, 895 (Tex. Civ. App.—Corpus Christi 1979, *aff’d*, 603 S.W.2d 179 (Tex. 1980)) (citing *In re Bates*, 555 S.W.2d 420 (Tex. 1977); *In re Carillo*, 542 S.W.2d 105

(Tex. 1976); and *In re Brown*, 512 S.W.2d 317 (Tex. 1974). Most importantly, where the public official seeks to hide beneath the penumbra of the forgiveness doctrine, the burden lies on him to establish that the electorate, when voting the official into office, knew that such acts had been in fact committed by him. *See McInnis*, 586 S.W.2d at 896.

Dan Gattis concealed the hiring and payment of Potts & Reilly, L.L.P. in 2007. This misconduct was first made known to the public on December 29, 2010 in an article published by the Austin-American Statesman. Dan Gattis concealed the unlawful payment of legal expenses on behalf of County Court at Law Judge Don Higginbotham. The unlawful payments were made between December 2009 and May 2010. This misconduct was first made known to the public on November 10, 2010 in an article published by the Williamson County Sun. Dan Gattis concealed the hiring and payment of Dietz & Jarrard in 2010. This misconduct was first made known to the public on December 29, 2010 in an article published by the Austin-American Statesman on December 29, 2010. Dan Gattis was re-elected on November 2, before Dan Gattis's misconduct was made known to the public. Absent evidence otherwise, Dan Gattis's motion to dismiss must be denied.

Wherefore, Plaintiff requests that the Court, deny Defendant's Motion to Dismiss and for such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

Certificate of Service

This is to certify that on January 6, 2010, a true and correct copy of the above and foregoing was forwarded by facsimile to Martha Dickie at (512)478-7151.

Jana Duty