

FILED
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JAN 07 2011
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NO. 10-1428-C26

Lisa David
District Clerk, Williamson Co., TX.

THE STATE OF TEXAS
Ex rel. JANA DUTY,
COUNTY ATTORNEY OF
WILLIAMSON COUNTY, TEXAS

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IN THE DISTRICT COURT

v.

WILLIAMSON COUNTY, TEXAS

DAN A. GATTIS, COUNTY
JUDGE OF WILLIAMSON COUNTY,
TEXAS

26TH DISTRICT COURT

**WILLIAMSON COUNTY JUDGE DAN A. GATTIS' REPLY TO
PLAINTIFF'S RESPONSE MEMORANDUM FILED JANUARY 6, 2011**

TO THE HONORABLE JUDGE RICK MORRIS:

COMES NOW, Dan A. Gattis, County Judge of Williamson Country, Texas and files this reply memorandum to County Attorney Jana Duty response memorandum file January 6, 2011, and in support thereof, would show as follows:

I.

Pursuant to the Texas Local Government Code §87.001, "An officer may not be removed under this chapter for an act the officer committed before election to office." Texas Local Government Code §87.001 is applicable to a civil removal proceeding. *In re Bazan*, 251 S.W.3d 39, 44 (Tex. 2008).

Ms. Duty alleges a county official may be removed from office predicated upon misconduct during a previous term if such misconduct was unknown to the public and that it is the burden of the public official to establish that the electorate knew of the alleged acts to avoid such removal. Ms. Duty relies upon *State v. McClinnis*, 586 S.W.2d 890 (Tex. Civ. App--- Corpus Christi 1979, aff'd 603 S.W.2d 179 (Tex. 1980) for this proposition, cites significant language from the appellate court decision to support her contention, and insinuates that the Texas

Supreme Court affirmed the appellate court's language and reasoning. This is an incorrect statement of the law.

In *McInnis*, the Texas Supreme Court, on motion for rehearing, concluded that Article 5986 (now codified in Texas Local Government Code §87.001) which provides "No officer in this State shall be removed from office for any act he may have committed prior to his election to office," did not apply to the proceeding because the removal action was predicated upon a special statute specifically drafted to remove prosecuting attorneys from office. *Id* at 183.

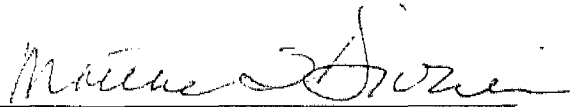
The Texas Supreme Court's first *McInnis* opinion determined that Article 5986 prevents removal if the alleged acts of misconduct occurred before election in essence rejecting one of the State's arguments and the appellate court's reasoning, cited by Ms. Duty, that the acts must have been known by the electorate. *Id* at 184. The Supreme Court initially determined dismissal of the proceedings was correct as the trial court ruled. The Supreme Court then withdrew its first opinion to consider whether Article 5986 was applicable to the proceedings at all, which the Court then concluded it was not. Since Article 5986 was not applicable, the case was remanded for trial which produced the same result as the appellate court but with inapposite reasoning. It is disingenuous, at best, to rely upon *McInnis* for the proposition Ms. Duty asserts to this Court.

Ms. Duty also relies upon *In re Laughlin*, 153 Tex. 183, 265 S.W.2d 805 (1954), *In re Brown*, 512 S.W.2d 317 (Tex.1974), *Matter of Carrillo*, 542 S.W.2d 105 (Tex.1976), and *In Matter of Bates*, 555 S.W.2d 420 (Tex.1977) for the same proposition. Reliance on this line of cases is not only misplaced but has been specifically held to not apply to a removal action under Article 5986 in the only appellate opinion directly on point to the issue before this Court. *State of Texas ex. Rel. Hugh Russell v. Knorpp*, 575 S.W.2d 401 (Tex. Civ. App. - Amarillo 1978, writ ref. n.r.e.). *Knorpp* was a proceeding similar to the case at bar initiated under the same statutory

scheme and against a county attorney. The *Knorpp* court specifically held the elements of the "forgiveness doctrine" as defined in the *Laughlin* line of cases, requiring knowledge of the electorate, are not engrafted upon Article 5986. *Id* at 404.

Therefore, Texas Local Government Code §87.001 bars the removal of officers for acts of alleged official misconduct committed during a previous term in office. *State of Texas ex. Rel. Hugh Russell v. Knorpp*, 575 S.W.2d 401, 405 (Tex. Civ. App. - Amarillo 1978, writ ref. n.r.e.); *In re Bazan*, 251 S.W.3d 39, 44 (Tex. 2008). Each allegation against Judge Dan A. Gattis occurred during his previous term and prior to his election on November 2, 2010. Therefore, the original petition fails as a matter of law and this Court should refuse to issue the order for citation and dismiss the case at the cost of Jana Duty.

Respectfully submitted,



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ATTORNEYS FOR DAN A. GATTIS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been sent via telecopy to counsel of record, listed below, on this the 7th day of January, 2011.

Jana Duty
Williamson County Attorney
405 Martin Luther King #7
Georgetown, Texas 78626
Via Telecopy No. 943-1120

A handwritten signature in cursive script, appearing to read "Martha Dickie", written over a horizontal line.

Martha Dickie