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**Via E-file**

Blake A. Hawthorne, Clerk of the Court  
Supreme Court of Texas  
201 W. 14th St. Rm. 104  
Austin, Texas 78701

**Re: *In re Richard Vega*, No. 26-0464**

Dear Mr. Hawthorne:

I write to offer the views of the Office of the Attorney General on several aspects of the petition.<sup>1</sup> A petition for writ of quo warranto is not required before seeking mandamus relief to enforce any ministerial duty arising if an officer automatically vacates an office by accepting an incompatible second office, and the invalidity of the second office does not prevent the automatic vacatur of the first office.

“A writ of quo warranto is an extraordinary remedy available to determine disputed questions about the proper person entitled to hold a public office and exercise its functions.” *State ex rel. Angelini v. Hardberger*, 932 S.W.2d 489, 490 (Tex. 1996) (citing *State ex rel. R.C. Jennett v. Owens*, 63 Tex. 261, 270 (1885)). A constitutional amendment adopted in 1891 permitted the Legislature to confer original jurisdiction on this Court to issue writs of quo warranto. Tex. Const. art. V, § 3(a). And a statute passed in 1879 allows quo warranto actions to be brought in a district court. Tex. Civ. Prac. & Rem. Code § 66.001, *et. seq.*; *see also In re Abbott*, No. 25-0674, 2026 WL 1354754, at \*4 (Tex. May 15, 2026) (Sullivan, J., concurring) (noting this history); *Paxton v. Annunciation House, Inc.*, 719 S.W.3d 555, 566 (Tex. 2025) (same).

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<sup>1</sup> No party participated in, and no fee has been or will be paid for, the preparation of this letter brief.

An influential contemporaneous treatise, Floyd R. Mechem, *A Treatise on the Law of Public Offices and Officers* (Chi., Callaghan & Co. 1890), discusses three issues regarding the writ of quo warranto relevant to the issues before this Court.

First, “[i]t is a well settled rule of the common law that he who, while occupying one office, accepts another incompatible with the first, *ipso facto* absolutely vacates the first office[.]” *Id.* § 420. “It is contrary to the policy of the law that the same individual should undertake to perform inconsistent and incompatible duties.” *Id.* § 419; *see also Pruitt v. Glen Rose Indep. Sch. Dist. No. 1*, 84 S.W.2d 1004, 1006 (Tex. [Comm’n App.] 1935) (citing Mechem, *supra*, § 429).

Texas has recognized various forms of incompatibility, including the prohibition against holding offices with conflicting loyalties and the prohibition against self-appointment. *See* Tex. Att’y Gen. Op. No. JC-0564 (2002) (describing the origin of these doctrines); *see also Ehlinger v. Clark*, 8 S.W.2d 666, 674 (Tex. 1928) (noting “the obvious incompatibility of being both a member of a body making the appointment and an appointee of that body”); *Thomas v. Abernathy Cnty. Line Indep. Sch. Dist.*, 290 S.W. 152, 153 (Tex. [Comm’n App.] 1927) (noting the dangers of conflicting duties and conflicting control). Both doctrines may be implicated when a self-appointment is made to an office that has conflicting duties.

Second, because acceptance of the second, incompatible office automatically vacates the first office, the first office may be filled without judicial determination: “[T]itle is thereby terminated without any other act or proceeding.” Mechem, *supra*, § 420. “No proceeding, therefore, by *quo warranto* or otherwise, is necessary in order to declare or complete the vacation of the first office, but it may be at once filled again either by appointment or election as the law provides.” *Id.* § 425; *see also State ex rel. Kingsbury v. Brinkerhoff*, 17 S.W. 109, 110 (Tex. 1886) (explaining that acceptance of a second office “operated an abandonment of the former office”). To the extent that Garcia accepted an appointment to an office incompatible with the office of commissioner, the office of commissioner could immediately be filled as the law provides, without any prior judicial proceeding by quo warranto.

Third, it is irrelevant that title to the second office fails: “[E]ven though the title to the second office fail, as where the election was void, the rule is still the same[.]” Mechem, *supra*, § 420; *see Rex. v. Hughes*, 5 Richard Vaughan Barnewall & Cresswell

Cresswell, Reports of Cases Argued and Determined in The Court of the King's Bench 886 (1826), *available at* <https://tinyurl.com/4h8ktsnh>.

Enforcing this rule provides important clarity to the public: “The public has a right to know which [office] is held and which is surrendered. It should not be left to chance, or to the uncertain and fluctuating whim of the office-holder to determine.” *Stubbs v. Lee*, 64 Me. 195, 198 (1874), *quoted in* Mechem, *supra*, § 425.

One of the Attorney General's opinions reached the opposite conclusion, declaring without explanation that “it follows” that if acceptance of a second office is void because of the prohibition against self-appointment, then there is no resignation of the first office. Tex. Att’y Gen. Op. JC-0455A (2002). This advisory opinion did not consider the common law rule articulated by Mechem. Nor did it take into account facts similar to those of this case, in which Garcia allegedly filled a conflicting second office for a substantial time but now characterizes that appointment as void to prevent the loss of the first office. The facts of this case—in which Garcia executed the oath of office as a board member of the Gulf Coast Protection District, participated in public meetings, and voted as a board member, Pet. 18—illustrate the wisdom of the common law rule. Treating acceptance of an incompatible office as a resignation of an incompatible existing office is “indispensable for the protection of the public.” *Stubbs*, 64 Me. at 198.

Respectfully submitted.

/s/ William R. Peterson  
WILLIAM R. PETERSON  
Solicitor General

cc: All counsel of record

**CERTIFICATE OF COMPLIANCE**

Microsoft Word reports that this document contains 895 words, excluding the parts exempted by Texas Rule of Appellate Procedure 9.4(i)(1).

/s/ William R. Peterson  
WILLIAM R. PETERSON

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