Honorable Doyle Willis  
Chair  
Select Committee on Military and Veterans Affairs  
P.O. Box 2910  
Austin, Texas 78768-2910  

Letter Opinion No. 95-050  
Re: Whether a member of the Texas Historical Commission, during the term for which he was appointed, is eligible to serve in the Texas Legislature (ID# 33711)

Dear Representative Willis:

You have requested our opinion regarding the eligibility of a member of the Texas Historical Commission (the “commission”) to become a member of the legislature during the pendency of his current term on the commission. Section 19 of article III of the Texas Constitution provides:

No judge of any court, Secretary of State, Attorney General, clerk of any court of record, or any person holding a lucrative office under the United States, or this State, or any foreign government shall during the term for which he is elected or appointed, be eligible to the Legislature. [Emphasis added.]

A member of the commission serves a six-year term, “with the terms of one-third of the members expiring February 1 of each odd-numbered year.” Gov’t Code § 442.002(c). Under the constitutional prohibition, a member of the commission may not become a legislative candidate at any time during the term “for which he [wa]s appointed” if membership on the commission constitutes a “lucrative office.”

The enabling statute of the commission, codified as chapter 442 of the Government Code, declares that “[a] member of the commission serves without pay but shall be reimbursed for actual expenses incurred in attending a meeting of the commission.” Id. § 442.002(j). In Willis v. Potts, 377 S.W.2d 622 (Tex. 1964), the supreme court held that a city council member who “drew the sum of $10 per day for attending each regular meeting of the city council . . . and in addition received all necessary expenses,” Whitehead v. Julian, 476 S.W.2d 844, 845 (Tex. 1972), thereby held a “lucrative office.” Willis, 377 S.W.2d at 627. In a subsequent case, Whitehead v. Julian, the supreme court found that a mayor who received no compensation other than “a monthly expense account allowance of $50 per month for secretarial work, etc.” did not, as a result, hold a “lucrative office.” Whitehead, 476 S.W.2d at 845.
Section 442.002(j) specifically provides that a member of the commission “serves without pay,” and that he may be reimbursed only “for actual expenses incurred in attending [commission meetings].” Consequently, under the test set forth by the supreme court in *Willis*, 377 S.W.2d at 626-27, and *Whitehead*, 476 S.W.2d at 845, a commission member does not hold a “lucrative office.” Thus, article III, section 19, does not bar such an individual from serving in the legislature during the term for which he was appointed to the commission.

**SUMMARY**

A member of the Texas Historical Commission is not prohibited by article III, section 19, of the Texas Constitution from becoming a member of the Texas Legislature during the pendency of the term for which he was appointed to the commission.

Yours very truly,

Rick Gilpin, Deputy Chief
Opinion Committee