



OFFICE OF THE ATTORNEY GENERAL
STATE OF OKLAHOMA

August 14, 2023

Via Email

The Honorable Charles A. McCall
Speaker, Oklahoma House of Representatives
2300 North Lincoln Boulevard, Room 401
Oklahoma City, OK 73105
Charles.McCall@okhouse.gov

Re: Request for Attorney General Opinion – our internal tracking number Z-25

Dear Speaker McCall:

I am following up with you about your request for an official Attorney General Opinion in which you ask, in effect, the following:

- 1. Is Representative Ryan Martinez eligible to continue serving as member of the Oklahoma House of Representatives following his receipt of a deferred sentence on a plea of guilty.**

To expedite answering your question, I am responding by a letter of counsel and not by means of an official Attorney General Opinion. As such, the views and analysis set forth in this letter are my own and this correspondence should not be construed as an official Attorney General Opinion. Furthermore, please note that the analysis and conclusions reached herein are based on the factual understanding that Representative Martinez's case was resolved through his entering a plea of guilty in exchange for a one-year deferred sentence with unsupervised probation. If that understanding is correct, for the reasons detailed below, it is my opinion that Representative Martinez may continue serving as a member of the House of Representatives.

The Oklahoma Constitution and state statutes, both, contain provisions governing a suspension or forfeiture of elective office.

The relevant constitutional provisions are in article VIII, section 1 and article XV, sections 1 and 2. The former provides in pertinent part that any elected state officer "shall be automatically *suspended* from office *upon their being declared guilty of a felony* by a court of competent jurisdiction" and their pay and other allowances are withheld during the period of suspension. OKLA. CONST., Art. VIII, § 1. (Emphasis added.) Article XV, sections 1 and 2 require all public officers to take a constitutional oath prior to taking office and any such officer "who shall have

been *convicted of* having sworn or affirmed falsely, or *having violated said oath, or affirmation, shall be guilty of perjury, and shall be disqualified from holding any office* of trust or profit within the State.” OKLA. CONST. Art. XV, § 2. (Emphasis added.)

The Oklahoma Constitution, the state’s highest law to which all statutes must yield, must be construed to give effect to the intent of its framers and the people adopting it. *Hendrick v. Walters*, [1993 OK 162](#), ¶ 7, 865 P.2d 1232, 1238. The intent is to be found in the instrument itself; and when the text of a constitutional provision is not ambiguous, searching for meaning beyond the instrument is prohibited. *Draper v. State*, [1980 OK 117](#), ¶ 8, 621 P.2d 1142, 1145–46. In addition, when reviewing a forfeiture provision, it is fundamental that one must be mindful of Oklahoma’s strong policy against forfeitures. *Hendrick*, 1993 OK 162, ¶ 7, 865 P.2d at 1238–39. This fundamental policy requires that one neither search for a construction that will bring about a forfeiture, nor adopt a meaning that would produce such an effect unless the language under construction clearly demonstrates this is the intended outcome. *Id.*, 865 P.2d at 1239. Where there is any doubt whether a forfeiture applies, the doubt must be resolved against forfeiture. *State v. Prairie Oil & Gas*, 1917 OK 450, ¶ 10, 167 P.756, 759.

Concerning Representative Martinez, neither of the relevant constitutional sections prohibit him from continuing to serve his elective term of office. First, article XIII, section 1 provides for a self-executing mandatory suspension from office but it is only triggered upon an officer being “declared guilty of a felony.” Similarly, the pertinent part of the forfeiture provisions in article XV, section 2 require the public officer to have been “convicted.” Oklahoma courts have consistently held that a deferred sentence is not a conviction, even though it may be derived by way of a guilty plea. *White v. State*, [1985 OK CR 84](#), ¶ 10, [702 P.2d 1058](#), 1062. In *Woolen v. Coffman*, the court distinguished between one “convicted” and one “pleading guilty,” noting that “convicted” refers to one who has been “formally pronounced guilty upon a verdict or plea of guilty,” and one “pleading guilty” is one who is “entering a plea of guilty without judgment.” [1984 OK CR 53](#), ¶ 12, [676 P.2d 1375](#), 1378. In a deferred sentence, the trial court retains jurisdiction and a conditional order. *Nguyen v. State*, [1989 OK CR 6](#), ¶5, [772 P.2d 401](#), 403 (*overruled on other grounds by Gonseth v. State*, [1994 OK CR 9](#), [871 P.2d 51](#)). If all the conditions are met at the end of the probation period, the conditional order will be withdrawn and there will be no conviction. [22 O.S.2021, § 991c\(D\)](#). As a result, Representative Martinez’s deferred sentence triggers neither the suspension provisions of article VIII, section 1 nor the forfeiture provisions in article XV, section 2.

The relevant statutory provision relating to suspension or forfeiture of office, title 51, section 24.1, currently provides in pertinent part:

- A. *Any elected* or appointed *state* or county *officer* or employee *who*, during the term for which he or she was elected or appointed, *is, or has been, found guilty by a trial court of a felony* in a state or federal court of competent jurisdiction *shall be automatically suspended from the office* or employment
- E. *In the event any elected* or appointed *state* or county *officer* or employee who, during the term for which he or she was elected or appointed, *pleads guilty* or nolo contendere *to a felony or any offense involving a violation of his or her*

official oath in a state or federal court of competent jurisdiction, ***he or she shall, immediately upon the entry of the plea, forfeit the office*** or employment.

- F. ***Any such officer*** or employee ***upon final conviction of, or pleading guilty*** or nolo contendere ***to, a felony*** in a state or federal court of competent jurisdiction ***shall vacate such office*** or employment and if such felony is for bribery, corruption, forgery or perjury or any other crime related to the duties of his or her office or employment, or related to campaign contributions or campaign financing for that or any other office, shall forfeit all benefits of the office or employment, including, but not limited to, retirement benefits provided by law, however, the forfeiture of retirement benefits shall not occur if any such officer or employee received a deferred sentence, but retirement benefits shall not commence prior to completion of the deferred sentence. The forfeiture of retirement benefits required by this subsection shall not include such officer's or employee's contributions to the retirement system or retirement benefits that are vested on the effective date of this act
- L. Within three (3) days of the ***conviction or plea of guilty*** or nolo contendere of an elected or appointed state officer, the attorney responsible for prosecuting such state officer, shall notify the Governor in writing of the ***suspension, the date of conviction or plea of guilty*** or nolo contendere ***resulting in suspension,*** and the felony committed.

51 O.S.2021, § 24.1. (Emphasis added.)

In construing a statute, the primary goal is to ascertain and to apply the intent of the Legislature that enacted the statute. *Samman v. Multiple Inj. Trust Fund*, 2001 OK 71, ¶ 13, 33 P.3d 302. If the legislative intent cannot be ascertained from the language of a statute, as in the cases of ambiguity, we must apply rules of statutory construction. *YDF, Inc. v. Schlumar, Inc.* 2006 OK 32, ¶ 6, 136 P.3d 656, 658. The test for ambiguity in a statute is whether the statutory language is susceptible to more than one reasonable interpretation. *In re J. L. M.*, 2005 OK 15, ¶ 5, 109 P.3d 336, 338. Where a statute is ambiguous or its meaning uncertain it is to be given a reasonable construction, one that will avoid absurd consequences if this can be done without violating legislative intent. *Wylie v. Chesser*, 2007 OK 81, ¶ 19, 173 P.3d 64, 71. In ascertaining legislative intent, the language of an entire act should be construed with a reasonable and sensible construction. *Udall v. Udall*, 1980 OK 99, ¶ 11, 613 P.2d 742. Statutory construction that would lead to an absurdity must be avoided and a rational construction should be given to a statute if the language fairly permits. *Ledbetter v. Oklahoma Alcoholic Beverage Laws Enforcement Comm'n.*, 1988 OK 117, ¶ 7, 764 P.2d 172, 179.

Since 1981, section 24.1 has provided sanctions for convictions and pleas of guilty. Concerning convictions, the provisions of title 51, section 24.1 are clear. Upon being found guilty by a trial court of a felony, a state officer is automatically suspended from the elected office. 51 O.S.2021, § 24.1(A). In 2008, this office determined that there is not a lawful method—constitutional, statutory or common law—by which a statewide elected official may be suspended from office prior to an *actual* conviction of a crime. [2008 OK AG 6](#). (Emphasis added.) This analysis includes the provisions of title 51, section 24.1 and there is no reason to depart from the conclusion reached in that opinion. Accordingly, Representative Martinez's deferred sentence, which is not a

conviction, does not trigger the suspension provisions in title 51, section 24.1. However, this does not fully answer your question because, as noted above, section 24.1 also contains forfeiture provisions that are effectuated upon a plea of guilty. As such, the crucial question is whether deferred sentences are included in these forfeiture provisions of section 24.1.

A plea of guilty is referenced in three relevant subsections of section 24.1. First, subsection E provides that in the event any elected state officer “pleads guilty” to a felony during the term for which they were elected, the officer “shall, immediately upon the entry of the plea, forfeit the office or employment.” 51 O.S.2021, § 24.1(E). Then, subsection F states that “[a]ny such officer . . . pleading guilty or nolo contendere to, a felony in a state or federal court of competent jurisdiction shall vacate such office . . .” *Id.* at (F).

If deferred sentences are included within the forfeiture provisions of section 24.1(E, F), the outflow of its application results in the following:

1. an officer *without* a conviction forfeits office under subsections E and F; and,
2. an officer who has been formally pronounced guilty with a judgment and sentence receives a suspension under subsection A.¹

51 O.S.2021, § 24.1(A, E, F).

It would be curious indeed for the Legislature to impose a harsher penalty upon an officer who has not been adjudicated guilty and had a final determination of committing an offense than on one who has been formally adjudicated with a conviction of guilt. Doubts abound as to this being the intent of section 24.1. Adding ambiguity, subsection L provides that the prosecuting attorney must notify the Governor of the *suspension* of a state officer within three days of the *conviction or plea*. *Id.* at (L). Additionally, the notice to the Governor must include the date of the “plea of guilty or nolo contendere **resulting in suspension**.” *Id.* As set forth above, a suspension only results from a state officer being declared guilty (i.e., convicted) of a felony by a trial court. 51 O.S.2021, § 24.1. With ambiguity and inconsistencies in the aforementioned provisions, section 24.1 must be construed to make its parts harmonious and a reasonable construction that can avoid absurd consequences. [Ledbetter, 1988 OK 117, ¶ 7, 764 P.2d at 179.](#)

The language in what are now subsections E and F were added to section 24.1 in 1981, following what has been referred to as the Oklahoma County Commissioner scandal. Okla. Sess. Laws ch. 1, § 3. The purpose of section 24.1 is to “ensure that those public officials who **commit** offenses, which are felonies or violate an official oath, are forced from office.” *Nida v. State ex rel. Oklahoma Pub. Emps. Ret. Sys. Bd. of Trs.*, 2004 OK CIV APP 85, 11, 99 P.3d 1224, 1227. (Emphasis added.) The use of “those public officials who commit offenses” is indicative of

¹It should be noted that a suspension turns into a forfeiture upon a final conviction. 51 O.S.2021, § 24.1(F, I) (providing forfeiture upon “final conviction” of a felony and holding a suspension (upon conviction by a trial court) in place until such time as the trial court’s determination is reversed by the highest appellate court to which the officer may appeal). This is consistent with the constitutional provisions concerning the suspension from office. OKLA. CONST., art. VIII, § 1 (providing for the automatic suspension from office upon a conviction and a reinstatement to the office if the “verdict of guilty” is reversed on appeal).

requiring a determination that the misconduct has in fact occurred. In 2007, this office concluded that section 24.1 has always contained language limiting its application to *convictions* that occur while a state officer is in office. This determination also indicates that there has been a pronouncement that the misconduct occurred. 2007 OK AG 16, ¶ 4. Considering *Nida* and the 2007 opinion, the proper reading of section 24.1 requires that it becomes operative upon an adjudication of guilt, which does not occur if one is pleading guilty to a deferred sentence. Rather, as detailed above, one who is “pleading guilty” is entering a plea of guilty without judgment. *Woolen*, [1984 OK CR 53](#), ¶ 12, [676 P.2d at 1378](#). If all conditions are met at the end of the probation period, the conditional order will be withdrawn without a court judgment of guilt and the court orders the plea of guilty to be expunged from the record. [22 O.S.2021, § 991c\(D\)](#).

Moreover, this is the only construction for title 51, section 24.1 which would avoid possible absurd and unintended consequences. As noted above, a literal application of title 51, section 24.1(A, E, F) leads to the imposition of a harsher penalty upon one who has not had pronouncement of guilt for the alleged offense than the sanction to another who has had such a pronouncement. Not only is that an absurd result that could not have been intended, but it is also inconsistent with the principles of our criminal justice system. *Manning v. State*, 1912 OK CR APP 186, 123 P. 1029, 1030 (presumption of innocence is dispelled by conviction); 22 O.S.2021, § 836. Keeping in mind that forfeitures are looked upon with disfavor and where there is any doubt whether forfeiture is the intended outcome, doubt must be resolved against forfeiture. Accordingly, Representative Martinez’s deferred sentence does not trigger the forfeiture provisions in title 51, section 24.1.²

I hope that this information is helpful and answers your question. As a reminder, this letter should not be construed as an official Attorney General Opinion and is advisory only. Please contact me at (405) 522-3082 or Bradley.Clark@oag.ok.gov if you have any follow-up questions.

Respectfully,



Brad Clark

Deputy General Counsel

²Despite my interpretation, I could see a court reaching a different conclusion and finding that deferred sentences are included in the plea of guilty references in section 24.1. After all, a subsection of section 24.1 relating to the forfeiture of retirement benefits does provide that such a forfeiture will not apply to an officer who receives a deferred sentence. Thus, I recommend that the Legislature consider reviewing this section of law and utilize its policymaking powers to make any amendments that it deems appropriate. This is not a statement or recommendation suggesting that the laws should be amended in any particular manner, if at all, but only that a review for possible amendment should be undertaken.