

By: Hopper

H.B. No. 209

A BILL TO BE ENTITLED

AN ACT

relating to the prosecution of certain election offenses.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 2A.104, Code of Criminal Procedure, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b) Except as provided by Subsection (b-1), if ~~if~~ an attorney representing the state is disqualified to act in any case or proceeding, is absent from the county or district, or is otherwise unable to perform the duties of the attorney's office, or if there is no attorney representing the state, the judge of the court in which the attorney represents the state may appoint to perform the duties of the attorney's office during the attorney's absence or disqualification:

(1) an attorney representing the state from any county or district; or

(2) an assistant attorney general.

(b-1) If an attorney representing the state is disqualified to act under Article 2A.105(d) or 2A.1051, the judge of the court in which the attorney represents the state shall appoint an assistant attorney general to perform the duties of the attorney's office during the attorney's disqualification. The duties of the assistant attorney general appointed under this subsection are additional duties of the office of the attorney general, and the

1 office of the attorney general is not entitled to additional
2 compensation for performing those duties.

3 SECTION 2. Article 2A.105, Code of Criminal Procedure, is
4 amended by adding Subsection (d) to read as follows:

5 (d) A judge of a court in which a district or county attorney
6 represents the state shall declare the attorney disqualified for
7 purposes of Article 2A.104(b-1) with respect to a criminal case or
8 proceeding involving the election laws of this state, on a showing
9 that the attorney has adopted a policy or practice, or is following
10 or enforcing a policy or practice, under which the attorney
11 consistently refuses or declines to prosecute a violation of the
12 election laws of this state.

13 SECTION 3. Subchapter C, Chapter 2A, Code of Criminal
14 Procedure, is amended by adding Article 2A.1051 to read as follows:

15 Art. 2A.1051. PETITION TO DISQUALIFY IN CERTAIN CASES. (a)
16 A person who has resided in the same county of this state for at
17 least six months may file, in any district or county court for that
18 county, a petition seeking the disqualification of a district or
19 county attorney who serves that county or an adjacent county if:

20 (1) the district or county attorney filed a criminal
21 case or proceeding involving the election laws of this state in a
22 court for the county in which the person resides or for a county
23 adjacent to the county in which the person resides; and

24 (2) the person has reason to believe the district or
25 county attorney has adopted a policy or practice, or is following or
26 enforcing a policy or practice, under which the attorney
27 consistently refuses or declines to prosecute a violation of the

1 election laws of this state.

2 **(b) The judge of the court in which a petition is filed under**
3 **Subsection (a) shall declare the attorney against whom the petition**
4 **is filed disqualified for purposes of Article 2A.104(b-1) on the**
5 **petitioner showing that the attorney has adopted or is following or**
6 **enforcing a policy or practice described by Subsection (a)(2). If**
7 **the judge disqualifies an attorney under this subsection, the judge**
8 **shall send notice to the judge of the court in which the case**
9 **described by Subsection (a)(1) is pending that the attorney is**
10 **disqualified and an appointment under Article 2A.104(b-1) is**
11 **required.**

12 **(c) Before a charging instrument in a criminal case is**
13 **filed, with respect to a violation of the election laws of this**
14 **state that a person has reason to believe occurred in the county in**
15 **which the person resides, a person described by Subsection (a) may**
16 **file a petition seeking to refer the investigation and prosecution**
17 **of the violation to the office of the attorney general with a court**
18 **described by that subsection in the same manner as if the violation**
19 **had been filed as a case or proceeding described by Subsection**
20 **(a)(1). A judge of a court in which a petition is filed under this**
21 **subsection shall refer the case to the office of the attorney**
22 **general if the petitioner makes the showing required by Subsection**
23 **(b) with respect to the district or county attorney serving the**
24 **petitioner's county of residence.**

25 SECTION 4. Section 273.021, Election Code, is amended by
26 adding Subsection (d) to read as follows:

27 **(d) In accordance with an appointment made under Article**

1 2A.104(b-1), Code of Criminal Procedure, the attorney general may
2 prosecute a criminal offense prescribed by the election laws of
3 this state on the disqualification of a district or county attorney
4 under Article 2A.105(d) or 2A.1051, Code of Criminal Procedure, or
5 on the referral of the case under Article 2A.1051(c), Code of
6 Criminal Procedure.

7 SECTION 5. The changes in law made by this Act apply only to
8 the prosecution of an offense committed on or after the effective
9 date of this Act. The prosecution of an offense committed before
10 the effective date of this Act is governed by the law in effect on
11 the date the offense was committed, and the former law is continued
12 in effect for that purpose. For purposes of this section, an
13 offense was committed before the effective date of this Act if any
14 element of the offense occurred before that date.

15 SECTION 6. This Act takes effect on the 91st day after the
16 last day of the legislative session.