



## Opinion – Removal from Office

November 7, 2011

This parliamentary opinion addresses the following questions:

1. Can a political party adopt a rule providing for the removal of officers?
2. Has the Republican Party of Texas (RPT) adopted a rule providing for the removal of officers?
3. What is the procedure required under RPT rules for removing an officer of an executive committee?

### Sources:

Texas Secretary of State, Election Law Opinion, May 4, 1994 (see attached).

[Republican Party of Texas General Rules for all Conventions and Meetings](#) (RPT Rules), adopted in convention on June 12, 2010

([http://s3.amazonaws.com/texasgop\\_pre/assets/original/2011RPTRules.pdf](http://s3.amazonaws.com/texasgop_pre/assets/original/2011RPTRules.pdf)).

[Rules of the Democratic Party of Texas](#), current edition

(<http://www.txdemocrats.org/wp-content/uploads/2010/09/TDPRules-2010-2012.pdf>).

[Libertarian Party of Texas State Rules](#), adopted in convention on June 12, 2010

([http://www.lptexas.org/sites/default/files/LPTexas%20Party%20Rules\\_1.pdf](http://www.lptexas.org/sites/default/files/LPTexas%20Party%20Rules_1.pdf)).

[Green Party of Texas Bylaws and Electoral Rules](#), adopted at the state annual meeting on November 21, 2009 (<http://txgreens.org/drupal/node/7>).

*Robert’s Rules of Order Newly Revised*, 11<sup>th</sup> edition (RONR).

This opinion is based on general principles of parliamentary law and *Robert’s Rules of Order Newly Revised*; nothing in this opinion should be construed as interpretation of statutory law, except for those statutes that relate to parliamentary law.

### 1. Can a political party adopt a rule providing for the removal of officers?

The Texas Secretary of State answered this question in an election law opinion issued May 4, 1994. The Texas Election Code:

“neither specifically requires nor prohibits party rules concerning removal of party officers.”

Additional provision for removal of party officers may also be provided in the Texas Business Organizations Code (see Appendix).

In further support of the Secretary of State's opinion is the practice of Texas political parties.

- The Texas Democratic Party has explicit rules for removal of executive committee members:
  - Removal of any officer, including a county chairman, who endorses a candidate of another party, see TDP Rules, Art. 3H ; and
  - Removal of SDEC members in general, see Art. 2D3.
- The Libertarian Party of Texas also has explicit rules:
  - Removal of state executive committee members for absences, see LPT Rules, Art. III, Sec. 1e2;
  - Removal of state executive committee members for cause, see Sec. 1i; and
  - Automatic removal of a county chair, see Art. III, Sec. 2d.
- The Green Party of Texas has explicit rules for replacement of state executive committee members for more than two unexcused absences, see GPT Rules, Art. II, Sec. 1L.

The Texas Democratic Party and the Libertarian Party of Texas have also adopted *Robert's Rules of Order Newly Revised* (RONR) as their parliamentary authority.<sup>1</sup> RONR contains a chapter on disciplinary procedures, which includes procedures for removal of officers for misconduct or dereliction of duty in office.<sup>2</sup> Removal would require following the explicit party rules above, and then following the procedures in RONR, where not in conflict with the explicit party rule.

If it were otherwise, political parties would be placed in the peculiar situation of being the only entities in Texas that would have no recourse for malfeasance in office. Private corporations, profit or not-for-profit, and private associations have the power to remove officers. Statutes establish procedures to remove, impeach, or recall public officers at all levels. If political parties could not remove officers, then the only recourse available would be the primary election – a condition that would allow dereliction of duty, mismanagement, and misconduct to continue intolerably for a period of up to 22 months. It would be absurd to conclude that the Texas legislature, each member of which was nominated on behalf of a political party and has an electoral interest in the health and integrity of that party, intended to strand all political parties without the means of reasonable discipline.

Conclusion: Texas political parties may adopt rules providing for the removal of party officers, and three political parties have adopted explicit procedures for doing so.

## **2. Has the Republican Party of Texas (RPT) adopted a rule providing for the removal of officers?**

The Republican Party of Texas has not adopted an explicit rule for removal of party officers. It has adopted *Robert's Rules of Order Newly Revised* as “the parliamentary authority governing all conventions and meetings . . . from the precinct level through the state level” (RPT Rule 5). This brings RONR Chapter 63 on disciplinary procedures fully into play.<sup>3</sup>

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<sup>1</sup> The Green Party of Texas does not recognize RONR, but uses a system of broad consensus instead.

<sup>2</sup> This chapter is included for good reason. Most organizations do not provide detailed procedures of this nature in their bylaws or organic rules, and find themselves in dire need of it when the rare and difficult occasion for discipline arises.

<sup>3</sup> See RONR page 16, lines 22-26: “When a society or an assembly has adopted a particular parliamentary manual – such as this book – as its authority, the rules contained in that manual are binding upon it in all cases where they are not inconsistent with the bylaws (or constitution) of the body, any of its special rules of order, or any provisions of local, state, or national law applying to the particular type of organization.”

The only powers and duties for executive committees, that are specified in the Texas Election Code, are those for conducting the primary election, organizing biennial conventions, and appointing presidential electors. RPT Rules define additional powers and duties for executive committees in these same matters. No other activities are specified, except that RPT Rule 9, which defines executive committee quorums, allows by implication the conduct of non-statutory business (see part (a) of the rule).

From time immemorial, Texas Republican state and county executive committees have engaged in a wide range of non-statutory activities, from raising and spending moneys for political and other purposes, to adopting budgets, establishing non-members as non-voting officers, adopting resolutions on all subjects, purchasing chattel, hiring staff, and publishing a wide range of materials. None of these duties or powers are specifically authorized by the Texas Election Code or the RPT Rules. Republican executive committees have effectively taken on the functions that would traditionally be exercised by the executive board of a not-for-profit association. To suggest that executive committees cannot also remove officers for cause is to suggest that the other activities long practiced by executive committees should not allowed. Silence in the Election Code or RPT Rules regarding these activities does not preclude their execution.

Texas Republican executive committees should be able to take any legitimate action, especially those inherent to the survival and health of the party and its governance, that is not explicitly prohibited by law or party rule. Since the parliamentary authority adopted by reference includes procedures for removal of officers, these serve as the rules of procedure in this matter.<sup>4</sup>

Conclusion. The only RPT rules governing the removal of party officers are those adopted by reference in the parliamentary authority. Thus, RONR Chapter 63 on disciplinary procedures applies.

### **3. What is the procedure required under RPT rules for removing an officer of an executive committee?**

Removal from office is dependent upon the wording of the term of office (see RONR, pages 653-654) and presents two different conditions:

- A. “If the bylaws provide that officers shall serve ‘for \_\_\_ years *or* until their successors are elected,’ the officer in question can be removed from office by adoption of a motion to do so.” The vote for removal is: a two-thirds vote, a majority vote when previous notice has been given, or a vote of a majority of the entire membership.<sup>5</sup>
- B. “If, however, the bylaws provide that officers shall serve *only* for a fixed term, such as ‘for two years’ . . . or ‘for \_\_\_ years *and* until their successors are elected,’ an officer can be removed from office only for cause – that is, neglect of duty in office or misconduct – in accordance with the procedures in [chapter] 63; that is, an investigating committee must be appointed, charges must be preferred, and a formal trial held.”

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<sup>4</sup> Questions regarding removal of officers in organizations of all styles are frequently posed to parliamentarians. Most organizations do not have explicit rules for removal of officers, though many have adopted *Robert’s Rules of Order Newly Revised*. In such a situation, any professional registered parliamentarian would naturally advise their client to carefully follow the disciplinary procedures in RONR to remove an officer.

<sup>5</sup> The same vote as to rescind/amend something previously adopted (RONR, pages 305-310).

RPT officers fall into three types: non-statutory officers; statutory officer of the State Republican Executive Committee (SREC); and statutory officers of a county executive committee. The procedure for removal for each will be taken up and explained.

### Non-statutory Officers

Executive committees may create a special officer, such as treasurer or secretary, who may or may not be a member of the executive committee. If the person is not a member, he cannot vote or be counted towards quorum. Removal procedures for non-statutory officers could fall under either condition A or condition B. If the bylaws of an executive committee create a unique, non-voting office, and if those bylaws prescribe the term of office with the phrase “or until their successors are elected”, condition A applies and the officer can be removed by a privileged motion with a direct vote – no trial. If the bylaws create such a position using the language for term of office in condition B, the procedure is investigation, preferral of charges, and a trial.

A person, who is a member of the executive committee and is removed from a non-statutory office, still retains membership on the executive committee.

The quorum for removal of a non-statutory officer is “one-fourth (1/4) of the members, excluding vacancies” as defined in RPT Rule No. 9a.

### Statutory Officer of the State Republican Executive Committee (SREC)

The Texas Election Code prescribes a fixed term of office for state executive committees,<sup>6</sup> which runs from election at the party’s biennial state convention until the election of a successor, usually at the next biennial state convention:

#### **“§ 171.002. Committee Composition**

(c) The chair, vice chair, and members representing the senatorial districts are elected at the party's biennial state convention. However, the chair, vice chair, and members may be elected for four-year terms at the state convention held in gubernatorial election years. Each holds office until a successor is elected and assumes office.”

The wording in the statute does not specify the conjunction “or” in stating the term of office in relation to “until a successor is elected.” Therefore, condition B applies and the procedure for removing the chairman, vice chairman, SD committeeman and SD committeewoman on the SREC is by investigation, preferral of charges, and a trial.

The quorum for removal should be the same as that for filling a vacancy on the SREC, which is defined under the Texas Election Code:

#### **“§ 171.003. Filling Vacancy**

(b) A majority of the committee's membership constitutes a quorum for the purpose of filling a vacancy. To be elected, a person must receive a favorable vote of a majority of the members voting.”

While the statute allows a majority vote to fill a vacancy, a two-thirds vote is required to remove from office, because in this case, removal also involves expulsion as a member of the SREC (see RONR, page 668, line 11).

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<sup>6</sup> Term is up to four years by statute, but by RPT Rule 41, the state chairman and vice chairman serve two-year terms, and by RPT Rule 42, the committeeman and committeewoman serve two-year terms.

## Statutory Officer of County Republican Executive Committees

The Texas Election Code prescribes a fixed term of office for county executive committees:

### **“§ 171.022. Committee Composition**

(c) Each committee member serves for a term of two years beginning the 20th day after runoff primary election day.”

The wording in the statute is only for the fixed term and does not provide for “until a successor is elected.”<sup>7</sup> Therefore, condition B applies and the procedure for removing a county chairman or precinct chairman on the county executive committee is by investigation, preferral of charges, and a trial.

The Texas Election Code requires the following for filling any vacancy on a county executive committee:

### **“§ 171.024. Filling Vacancy**

(b) . . . a majority of the committee's membership must participate in filling a vacancy. To be elected, a person must receive a favorable vote of a majority of the members voting.”

The quorum for filling a precinct chairman vacancy is not prescribed, but a majority must participate (does not necessarily mean attendance). The punishment phase of a trial, however, must occur at a meeting in executive session. Thus, the quorum for removal of a precinct chairman defaults to a majority of the committee's membership at a meeting (participation requires attendance, in this case). While the statute allows a majority vote to fill a vacancy, a two-thirds vote is required to remove from office, because removal of a precinct chairman also involves expulsion as a member of the county executive committee.<sup>8</sup>

The quorum for filling a vacancy in county chairman is indirectly prescribed by the Texas Election Code. As in filling any vacancy, a majority of the membership must participate, but in the special case of filling a vacancy in county chairman, the vote must take place at a meeting:

### **“§ 171.025. Procedure for Filling Vacancy in Office of County Chair**

(a) If a vacancy occurs in the office of county chair, the secretary of the county executive committee shall call a meeting for the purpose of filling the vacancy . . .”

While the statute allows a majority vote to fill a vacancy, a two-thirds vote is required to remove from office, because removal of the county chairman also involves expulsion as a member of the county executive committee.<sup>9</sup>

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<sup>7</sup> A resignation or lack of a candidate in the primary election produces a vacancy in office and the previous officeholder does not carry on the duties and responsibilities until a successor is elected.

<sup>8</sup> See RONR, page 668, line 11.

<sup>9</sup> Ibid.

Summary of Procedures for Removal					
Type	Applies to	Term of Office	Procedure	Quorum	Vote
Non-statutory	Non-voting officers established in the bylaws (e.g., secretary, treasurer)	Term is “or until their successors are elected”	Privileged motion	One-fourth, excluding vacancies	Two-thirds, majority with notice, or majority of the membership
		Term is fixed or is “and until their successors are elected”	Investigation, preferral of charges, and trial	One-fourth, excluding vacancies	Two-thirds
Statutory SREC	State chairman, state vice chairman, SD committeeman, SD committeewoman		Investigation, preferral of charges, and trial	Majority of the membership	Two-thirds
Statutory County	County chairman, precinct chairman		Investigation, preferral of charges, and trial	Majority of the membership	Two-thirds

### Investigation, Preferral of Charges, and Trial

#### **WARNING**

Before an executive committee (or any organization) undertakes removal of an officer, it should be fully prepared to endure an arduous process that can cause scarring and lead to factionalism with long term side effects. It should be determined beforehand: whether the problems caused by the officer merit undertaking his removal; and especially whether a two-thirds vote for removal is even attainable, once the trial and process are completed. If there is any doubt to any of these questions, prudence demands that other remedies be sought, or the executive committee should wait it out to the next primary election.

The steps in a fair disciplinary process are:

1. Confidential investigation by a committee;
2. Report of the committee, and preferral of charges if warranted;
3. Formal notification of the accused; and
4. Trial.<sup>10</sup>

Each step is necessary to protect the accused, as well as persons that may provide information or otherwise be involved. The investigation must be done confidentially.<sup>11</sup> The accused should be given every opportunity along the way to present his case, either to the investigating committee or during the trial. Once charges are preferred by vote of the executive committee, the wheels are set in motion so that there can only be three outcomes: the accused resigns; the accused is found guilty of charges and specifications; or the accused is exonerated.

Once guilt has been established, a range of penalties can be imposed from censure, to suspension of certain rights, payment of a fine, or removal from office.

<sup>10</sup> See RONR, page 656, lines 27-30.

<sup>11</sup> In the Republican Party of Texas, confidentiality is very difficult to maintain. RPT Rule 8f allows any member of an executive committee to attend any committee meeting, even when in executive session.

## APPENDIX

This information is provided, so that attorneys interested in the consideration of this matter may conduct the necessary research.

The Texas Business Organizations Code also provides for the removal of officers for those entities which have filed a certificate of formation or similar instrument with the secretary of state:

**“Sec. 3.104. Removal of Officers.**

(a) Unless otherwise provided by the governing documents of a domestic entity, an officer may be removed for or without cause by the governing authority or as provided by the governing documents of the entity . . .”

The Republican Party of Texas is required to file its rules under the Texas Election Code:

**“Sec. 163.005. Filing Rules With Secretary of State.**

(a) The state chair shall file a copy of each rule on electoral affairs with the secretary of state.”

and under RPT Rule No. 1:

“These Rules, having been filed with the Secretary of State of Texas, together with the statutes, rules and bylaws adopted by reference shall constitute the Rules of the Republican Party of Texas . . .”

This is a legal matter that is beyond my expertise as a professional registered parliamentarian. If the Republican Party of Texas is a domestic entity under the Texas Business Organizations Code, then it seems that Sec. 3.104 would come into effect once the RPT Rules are submitted biennially to the secretary of state.

See [Texas Business Organizations Code, Chapter 3. Formation and Governance](#)

(<http://www.statutes.legis.state.tx.us/Docs/BO/htm/BO.3.htm#3.104>).