

## Chapter 72

### STATEMENT AND OATH OF OFFICE... YOU DON'T SAY?

Article 7 of the Texas Constitution provides that State officers must take an oath or affirmation before entering office. Most people know this already. But what many don't know is that before these officers can even take the oath, and before they can enter their duties of office, they are supposed to file a statement with the Secretary of State's office. This process is supposed to ensure that when they perform their official duties, in their official capacities as officers of the State, they are bound to the provisions of the oath they swear. It is also supposed to ensure that when they perform their official duties without first having sworn the oath, that they are then personally liable and open to prosecution for any actions they take outside their official capacity.

But minor details like that never bother lying STATE OF TEXAS agents. From past experience, I'd venture to say that almost any day of the week, in any city in the state, you can find some "official" who's never followed this law. You'd be amazed to discover how many of them have not filed their statements before taking their oaths. And you'd be astonished to discover that some of them have never filed a statement or taken an oath at all! Naturally, this means they are not bonafide STATE officers, and everything they do or have done is illegal and liable for prosecution.

This is particularly true of municipal court judges, who like to hold more than one office of emolument contrary to the Texas Constitution. Since the Constitution has never stopped their illegal misbehavior, it seems to fall on the shoulders of the public at large to make these offending officials toe the line here. And many in this state are already doing just that. Even so, when some of these perpetrators of evil are caught red-handed, they still fail to admit that the statement was required. But a funny thing usually happens. After somebody goes to the trouble of checking on them through the Secretary of State's office, the next time an inquiry is made, a new statement has miraculously appeared in their records.

That may appear to fix the problem on the surface, but what about all those court hearings the "judge" held while not under oath? Wouldn't that make all those "decisions" void, or at the least, reversible on appeal? Absolutely! The statement, followed by the oath - the correct oath down to a T - are not options, they are required, and without them, **the trial and acts done and performed by the judge are null and void!**

The following is an analysis of how the oath has changed since it first appeared in the Constitution of 1845, up to the present day. It's pretty dull reading unless you're a fanatic for this kind of thing. So, if you're really not interested in all the nitty gritty details, just skip to the latter part of this chapter. But if you're keen on the subject, here it is. Have a good read!

In the **Constitution of 1845**, the oath read this way:

SECTION 1. Members of the Legislature and all officers, before they enter upon the duties of their offices, shall take the following oath or affirmation:

"I (A.B.) do solemnly swear (or affirm) that I will faithfully and impartially discharge and perform all the duties incumbent on me as \_\_\_\_\_, according to the best of my skill and ability, agreeably to the Constitution and laws of the United States, and of this State: And I do further solemnly swear (or affirm) that, since the adoption of this Constitution by the Congress of the United States, I, being a citizen of this State, have not fought a duel with deadly weapons, within this State nor out of it, nor have I sent or accepted a challenge to fight a duel with deadly weapons, nor have I acted as second in carrying a challenge, or aided, advised, or assisted any person thus offending - so help me God."

Then along came changes in **1861**. By then, the states were at war with each other, and swearing to uphold the Constitution and laws of the United States was withdrawn. They supported the Confederacy.

By **1866**, everything was once again hunky-dory between Texas and the USA. The war was over and once again oathtakers swear to discharge and perform their duties upholding the laws of the United States. Political correctness plagued lawmakers in **1869**, and the State oath was then changed to acknowledge the newly passed Fourteenth Amendment to the U.S. Constitution. It also placed emphasis on the oathtaker being a qualified elector. Apparently they were not only still fighting duels in the wild west, now they were assaulting each other as well. For the first time we see that public officers now swear to support the Constitution and laws of both Texas and the United States. Now the oath no longer includes "so help me God."

The next changes came along in **1937**, in a House Joint Resolution (H.J.R. No. 20) to amend the Constitution's oath, and they are whoppers. No longer do State officers promise to impartially discharge and perform their duties; no longer do they promise the best of their skill and ability in their duties; now they only promise to execute them. Now another new concept emerges - officials no longer promise to support the Constitutions and laws of Texas and the U.S., but to "preserve, protect, and defend" them. Ah, not nearly the same thing, but then THE STATE OF TEXAS is such a liar!

No longer do they swear they are citizens of the State of Texas. Now, even officers of the State can duel with deadly weapons all they want, and it is politically passe to concern themselves with whether or not they are Fourteenth Amendment citizens, or qualified electors in the State. Now, with impartiality, State citizenship, and oath confirming their election all being things of the past, and an apparent problem with graft and corruption to gain office as a thing of the present, they once again introduce God into the picture.

That one runs along fine until 20 years later, in **1955**, when once again the House Resolved (H.J.R. No. 46) to amend the Constitutional oath. This time, they don't really change the oath, they just decide to separate elected Officials from appointed Officials.

By **1989**, things begin to get interesting for us here in the near-21st century. Once again, the House thought the Oath needed changing, and introduced H.J.R. No. 33 for another Constitutional amendment, this time, separating the oath itself into two pieces. You can find it at **Article 16, Sec. 1 in the Texas Constitution**. They now call the first part of the

oath an "**oath**."; the second part is now called a "**statement**," and here is where the fun starts for us.

Previous content appears in strikeout, and new content appears in bold:

SECTION 1. (a) Members of the Legislature, and all other elected officers, before they enter upon the duties of their offices, shall take the following Oath or Affirmation:

"I, \_\_\_\_\_, do solemnly swear (or affirm) that I will faithfully execute the duties of the office of \_\_\_\_\_ of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, ~~and I furthermore solemnly swear (or affirm), that I have not directly nor indirectly paid, offered, or promised to pay, contributed, nor promised to contribute any money, or valuable thing, or promised any public office or employment, as a reward for the giving or withholding a vote at the election at which I was elected.~~ so help me God."

**(b) Each member of the Legislature and all other elected officers, before taking the Oath or Affirmation of office prescribed by this section and entering upon the duties of office, shall subscribe to the following statement:**

**I, \_\_\_\_\_, do solemnly swear (or affirm), that I have not directly nor indirectly paid, offered, promised to pay, contributed, or promised to contribute any money or thing of value, or promised any public office or employment for the giving or withholding of a vote at the election at which I was elected, so help me God."**

(c) The Secretary of State, and all other appointed officers, before ~~they enter~~ **entering** upon the duties of their offices, shall take the following Oath or Affirmation:

"I, \_\_\_\_\_, do solemnly swear (or affirm) that I will faithfully execute the duties of the office of \_\_\_\_\_ of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, ~~and I furthermore solemnly swear (or affirm), that I have not directly nor indirectly paid, offered, or promised to pay, contributed, nor promised to contribute any money, or valuable thing, or promised any public office or employment, as a reward to secure my appointment or the confirmation thereof.~~ so help me God."

**(d) The Secretary of State, and all other appointed officers, before taking the Oath or Affirmation of office prescribed by this section and entering upon the duties of office, shall subscribe to the following statement:**

**I, \_\_\_\_\_, do solemnly swear (or affirm), that I have not directly nor indirectly paid, offered, or promised to pay, contributed, or promised to contribute any money, or valuable thing, or promised any public office or employment, as a reward to secure my appointment or confirmation thereof, so help me God."**

**(e) Members of the Legislature and all other elected officers shall file the signed statement required by Subsection (b) of this section with the Secretary of State before taking the Oath or Affirmation of office prescribed by Subsection (a) of this section.**

**(f) The Secretary of State and all other appointed officers shall file the signed statement required by Subsection (d) of this section with the Secretary of State before taking the Oath or Affirmation of office prescribed by Subsection (c) of this section.**

So where is the fun? Look closely. In a case cite from 1946, the judge said:

*It is common knowledge that legislators are sworn in a body, that the oath is oral, and that no record is kept of the oath in the office of the Secretary of State. Van Hodge v. State (1946) 149 Cr.R. 64, 191 S.W.2d 24*

Well, this amendment took care of that little problem, and today, ALL statements are to be on file, in writing, in the Secretary's office BEFORE ANYONE, either elected or appointed can take their oral oath OR their office.

The **1992 Municipal Court Judge's Manual** makes it crystal clear. It says

*Upon appointment or election and before assuming the duties of office, all judges and clerks of the court must first file a statement with the Secretary of State... Following the receipt of this signed and sworn statement by the Secretary of State, the following oath of office must be administered... It is imperative that each official sign the statements and take the Oath of Office upon each appointment or election and upon reappointment or reelection... (Emphasis theirs, Chapter 1: Judicial Orientation, Page 38-39)*

Yes. all judges and clerks of the court KNOW how this oath thing is supposed to go. And now you know it, too, which may have a serious impact on YOUR legal proceeding, whatever it is. Take a hint from the following case cites and Attorney General Opinions.

*Under this section [Constitution Art. 16, Sec. 1] it is evident that there is a distinction between the right to an office and the right to enter upon the duties of an office. State v. Cocke (1881) 54 T. 482*

*In criminal case, one assuming to act as a special judge without having first taken oath could not be a "judge de facto."...*

*...Where special judge failed to take oath as prescribed by this section, special judge was without authority to organize and to empanel grand jury, and an indictment returned by grand jury empaneled by such special judge was void, and indictment being void, defendant on motion in arrest of judgment was not under burden of challenging sufficiency thereof in limine. Enloe v. State (1941) 141 Cr.R. 602, 150 S.W.2d 1039.*

*A special judge, though duly elected in accordance with statutes, is without authority to act until he has taken the oath prescribed by Constitution....Where special county judge took oath to discharge and perform the duties of office agreeably to Constitution and laws of the United States and of this state, but his oath did not include obligation to "preserve, protect and defend" such Constitutions and laws, special judge was without authority to act. Brown v. State (1951) 156 Cr.R. 32, 238 S.W.2d 787.*

*Where special judge in prosecution for murder without malice subscribed to oath of office prescribed by constitution prior to adoption of 1938 amendment of this section, rather than to the oath prescribed by such amendment, the trial and acts done and*

**performed by the special judge were null and void.** Garza v. State (1952), 157 Cr.R. 381, 249 S.W.2d 212.

***Where search warrant was issued by one who had not taken oath of office, warrant was void and evidence seized thereunder was not admissible...***

***Without taking of oath prescribed by this section, one cannot become either de jure or de facto judge, and his acts as such are void.*** French v. State (Cr.App. 1977) 572 S.W.2d 934

***Directors of higher education authority are officers required to take constitutional oath of office.*** Op.Atty.Gen. 1980, No. MW-177

***Commissioned law enforcement officers of the Department of Public Safety are "appointed officers" required to take the oath of office prescribed by this section.*** Op.Atty.Gen. 1977, No. H-1027

Sooooo... Are YOU having legal troubles involving the STATE OF TEXAS? With a judge? A notary public? A Ranger?, A commissioned law enforcement officer or peace officer? A Sheriff? Commissioner? Clerk? Could be, you need to check with the Secretary of State to verify whether or not the State official really is a State official. If there's not a statement on file, that one's got a v-e-r-r-y b-a-d problem. Your case or decision may even be reversed because of it!

To mix the water even more, consider this: The Federal government, at **Title 4, Chapter 4, Paragraph 101** says this:

#### **101. Oath by members of legislatures and officers**

***Every member of a State legislature, and every executive and judicial officer of a State, shall, before he proceeds to execute the duties of his office, take an oath in the following form, to wit: "I, A B, do solemnly swear that I will support the Constitution of the United States."***

We've already seen that Texas did away with **supporting** the U.S. Constitution way back in 1937, when they decided to **preserve, protect, and defend** it instead. You may or may not be able to make hay with this little tidbit, but before you go about trying to, remember one thing - THE STATE knows how to get around anything. Take this little nugget from Alabama for example:

***Making assessments, filing liens, and holding administrative hearings are actions of administrative or ministerial nature, and did not amount to exercise a part of State's sovereign power, so as to render individuals exercising such powers "state officers" subject to constitutional oath requirement.*** [Burdette v. State Dept. of Revenue, Ala.Civ.App.1986, 487 So.2d 944]

There you have it! The State is a Liar, and can weasel out of anything. And when you start checking on official Oaths and Statements, you'll prove it to yourself for sure.

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**Author's Note:** For any questions regarding the Statement of Officer or Oath of Office, call the Secretary of State, Statutory Documents Section, 512-463-5654, or write them at P.O. Box 12887, Austin, Texas 78711. Happy dialing.