



OFFICE OF THE SECRETARY OF STATE

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STATE CAPITOL
P.O. Box 12697
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August 17, 1982

The Honorable Bill Melton
County Treasurer, Dallas County
303 Records Building
Dallas, Texas 75202

Election Law Opinion DAD-53
Re: Whether a minor party
candidate whose nomi-
nation is certified after
the deadline may have his
name printed on the
ballot for the November
general election

Dear Mr. Melton:

This opinion is in response to your letter of August 1,
1982.

This official election law opinion is rendered by me as
chief election officer of the state in accordance with
V.A.T.S. Election Code, art. 1.03, subd. 1 (referred to as
the code).

In your letter you asked the following questions:

- (1) Is a minor party candidate for the office of County
Treasurer of Dallas County, whose nomination is cer-
tified after the statutory deadline for certification,
eligible to have his name printed on the ballot for the
November 1982 General Election?
- (2) What recourse is available if an elections administra-
tor willfully fails or refuses to perform any duty
imposed on him by law?
- (3) May a vacancy in a nomination for an office which
results from a late certification be filled by ap-
pointment?

In order for a minor party candidate to have his name
printed on the general election ballot, the requirements of

the code must be met. As they pertain to candidates, the provisions of the code are mandatory, not directory. Geiges v. DeBusk, 534 S.W.2d 437 (Tex. Civ. App.--Dallas 1976, no writ).

V.A.T.S. Election Code, art. 13.48, provides, in part:

. . . Nominations by party conventions must be certified to the proper officer within twenty days after the date of the convention at which the nomination was made.

Therefore, for a nomination made by a party convention to be valid, it must be timely certified to the proper officer. When a timely certification is not made, the nomination fails to comply with the mandatory provisions of the code and is invalid.

V.A.T.S. Election Code, art. 6.01, provides, in part:

. . . [The official ballot] shall contain the printed names of all candidates whose nominations for an elective office have been duly made and properly certified. . . . No name shall appear on the official ballot except that of a candidate who was actually nominated (either as a party nominee or as a nonpartisan or independent candidate) in accordance with the provisions of this Code.

. . .

Therefore, the elections administrator is prohibited from ordering the name of a candidate whose nomination has not been made and certified in compliance with the code to be printed on the official ballot.

Any election official who willfully fails to discharge a duty may be fined up to five hundred dollars as provided in art. 15.35 of the code. The remedy to compel performance of an election official's duties is a writ of mandamus under Vernon's Ann. Civ. St., art. 1735a.

A political party is not authorized to nominate a candidate to replace the party's original nominee when the party has failed to comply with the procedural requirements provided for in V.A.T.S. Election Code, art. 13.48, for nominating a candidate for a place on the general election ballot.

SUMMARY

A nomination by a minor party must be certified to the proper authority within the statutory time period established by V.A.T.S. Election Code, art. 13.48, in order for the nominee's name to be placed on the ballot for the general election.

Sincerely,



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