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June 8, 1983

Honorable Doris Shropshire
County Clerk, Travis County
P. O. Box 1748
Austin, Texas 78767

Election Law Opinion JWF-9
Re: Magnetic tapes of voted
punch card ballots.

Dear Ms. Shropshire:

This is in response to your letter of May 23, 1983.

You state that, for security purposes, at the same time as voted punch card ballots are being counted by computer, a magnetic tape is made which contains a mirror image of each ballot. This tape includes all control cards which tell the election program how to count precincts as to each ballot position within that precinct. This tape is a true image of each ballot for the candidates and/or propositions within each precinct.

You ask whether this magnetic tape should be destroyed at the same time as the voted ballots under the provisions of art. 8.32 of the Election Code. I understand this is your current practice. You also ask whether such tapes could be used in a recount or post-election examination of electronic voting materials pursuant to art. 7.15, subd. 23 of the Election Code.

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.

It is the position of the Secretary of State that ballots may be prepared, counted, stored, handled and examined only as expressly authorized by the Election Code. The Election Code provides for the duplication of a ballot for an electronic voting system only when that ballot cannot be counted by the tabulating equipment. V.A.T.S. Election Code art. 7.15, subd. 20(i). No other provision for duplicating a ballot for use with electronic voting systems is made.

In my opinion, the magnetic tape you describe in your letter is a duplication of ballots not authorized by the Election Code. Therefore, such magnetic tapes may not be produced.

If such tapes have been produced in the past, they constitute duplicate ballots and must be treated as ballots in all respects, including the manner of their disposal.

Therefore, in accordance with art. 8.32 of the Election Code, any magnetic tapes which duplicate the voted ballots in any election must be burned or shredded if within 60 days after the election there has been no contest, criminal investigation, or order of the district court that such ballots be preserved.

Article 7.15, subd. 23 of the Election Code permits a candidate or petitioner to request any or all of seven procedures for the post-election examination of electronic voting materials. This constitutes an exhaustive list of procedures authorized for recounts or post-election examinations. Subdivision 23 does not authorize the use of magnetic tapes such as the one you describe. If such tapes have been produced, they may not be used for purposes of recounts or post-election examinations of the electronic voting materials.

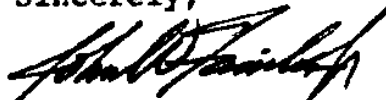
SUMMARY

Magnetic tapes which record the image of each ballot voted in an election are not authorized by the Texas Election Code and may not be produced. If such tapes have been produced, they constitute duplicate ballots and must be treated as ballots in all respects. They must be disposed of in accordance with art. 8.32 of the Election Code. Such tapes

Honorable Doris Shropshire
Page 3

are not authorized for use in a recount or post-election examination of electronic voting materials under art. 7.15, subd. 23 of the Election Code.

Sincerely,



John W. Fainter, Jr.
Secretary of State

Ward A. White
Counsel to the Secretary of State

Prepared by John Steiner
Assistant General Counsel
Elections Division

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