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SECRETARY OF STATE

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Mr. DeWayne Dallas
DeWayne Dallas Company
P. O. Box 140657
921 North Peak
Dallas, Texas 75214

Election Law Opinion JWF-2
Re: Validity of a drawing for
ballot position before
the deadline for filing
for a place on the ballot
and requirements for an
independent candidate's
application for a place
on the ballot in a
municipal election.

Dear Mr. Dallas:

In your letter of March 4, 1983, you asked whether it was proper to have a drawing for ballot position for the April 2, 1983 municipal elections in Dallas, Texas, on February 23, 1983, and whether the City of Dallas may require a filing fee to accompany an application for a place on the ballot signed by 25 qualified voters of the city.

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.

The deadline for filing for a place on the ballot as an independent candidate in a municipal election is midnight of the 31st day before the election. V.A.T.S. Election Code, art. 13.53, Secretary of State Election Law Opinion No. JWF-1 (1983). For the April 2, 1983 municipal elections, the deadline was midnight, March 2, 1983.

V.A.T.S. Election Code, art. 6.05c, subd. 3, provides for the determination of ballot position for independent candidates by means of a drawing. Art. 6.05c provides no limitation on the earliest day for such a drawing except that it must be preceded by a posting of notice at least three days prior to the date on which the drawing is to be held.

The purpose of a drawing for ballot position is to provide that ballot position will be determined in a random manner and each candidate for an office will have an equal chance of having his or her name appear in any given ordinal position on the ballot. In order for each candidate to have a random and equal chance to obtain any ballot position, it is necessary that the drawing include the names of the entire class of candidates involved. There can be no reasonable expectation that a drawing will include the entire class of candidates until that class is closed. Therefore, the earliest time for a valid drawing for ballot position would be after the deadline for applying for a place on the ballot. Until that time the class of candidates is subject to open.

It is my opinion that at least two criteria must be met for a valid drawing for ballot position. These are: (1) the entire class of affected candidates must be included in the drawing; and (2) the drawing must be held after the deadline for applying for a place on the ballot.

The second portion of your question dealt with the requirements for an independent candidate's application for a place on the ballot in a municipal election.

V.A.T.S. Election Code, art. 13.53, provides two methods by which independent candidates in municipal elections may have their names printed on the ballot.

The first method requires an application signed by qualified voters equaling five percent of the entire vote cast for mayor in the previous municipal election or by twenty-five qualified voters, whichever is less. Such application must be accompanied by the written consent of the candidate.

The second method requires a sworn application accompanied by such filing fees as may be required by statute or charter.

These are two separate procedures; a candidate may have his or her name printed on the ballot by complying with either one. A home rule city may not have a charter provision or ordinance which is inconsistent with the general laws of the state. V.A.T.S., art. 1165. Therefore, a city may not

Mr. DeWayne Dallas

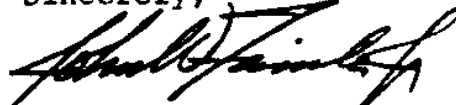
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require a candidate who has filed a sworn application accompanied by a filing fee to provide signatures, nor may a city require a candidate who has provided a letter of consent and an application signed by the requisite number of voters to pay a filing fee.

SUMMARY

A valid drawing to determine the order in which independent candidates' names will be printed on the ballot must (1) include the entire class of affected candidates, and (2) be held after the deadline for applying for a place on the ballot. Article 13.53 of the Election Code provides two separate methods by which an independent candidate in a municipal election may have his or her name printed on the ballot. A candidate may comply with either and may not be required to comply with both.

Sincerely,



John W. Fainter, Jr.
Secretary of State

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