



OFFICE OF THE SECRETARY OF STATE

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STATE CAPITOL  
P.O. Box 12697  
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July 30, 1982

The Honorable Gene Seaman  
Chairman, Nueces County  
Republican Party  
P. O. Box 455  
Corpus Christi, Texas 78403

Election Law Opinion DAD-44  
Re: Qualifications for  
running as an independent  
or party nominee at a  
general election to fill  
a vacancy.

Dear Mr. Seaman:

This opinion is in response to your inquiry of July 22, 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.

In your letter, you asked the following questions:

1. May a duly qualified resident and voter who voted in the primary election run as an independent candidate at the November general election to fill a vacancy in the office of Nueces County sheriff, if that office was not on the primary election ballot.
2. Can a duly qualified resident and voter who voted in the Nueces County Democratic Party general election or the run-off primary election accept the Nueces County Republican Party's nomination as a candidate at the November general election to fill a vacancy in an office which did not appear on any party's primary ballot?

In V.A.T.S. Election Code, art. 13.12a provision is made for filling vacancies in county offices where the unexpired term extends beyond the first day of January following the general election and which are not to be filled by special election. Vernon's Ann. Civ. St. art. 2355 empowers the county commissioner's court to fill vacancies in the office of sheriff by appointment "until the next general election." Thus, a vacancy in the office of county sheriff is not an office to be filled by "special election," and a vacancy in that office must be filled pursuant to Article 13.12a, supra, if the unexpired term extends beyond January 1 following the general election.

Article 13.12a, subd. (e), supra, states, in pertinent part:

. . . If the vacancy occurs after the second primary election day, and on or before the 45th day before the day of the general election, independent or nonpartisan candidates may file applications in the manner provided in Article 13.50, except that the application shall be filed not later than the 40th day before the day of the general election. .

V.A.T.S. Election Code, art. 13.11a states:

Any person who has participated as a voter or as a candidate in either the first primary election or the runoff primary election of a political party shall be ineligible to have his name printed on the ballot at the succeeding general or special election as an independent candidate for any office for which a nomination was made by such party at either such primary election, and shall be ineligible to have his name printed on the ballot as the nominee of any other party for any office to be voted on at the general or special election.

Thus, under art. 13.12a, subd. (e), supra, if a vacancy occurs after the second primary election day and on or before the 45th day before the general election an individual may file as an independent candidate to fill the vacancy, however, under art. 13.11a that individual could not have participated as a voter or candidate in the primary of a party for which a nomination was made for such office.

Under the facts as you presented them in your first question it may be assumed that no political party had a nominee for the office of county sheriff at their primary election and that the vacancy in that office did not arise until after

the second (or run-off) primary election day. Accordingly, an otherwise qualified individual could run as an independent candidate for the vacant office of county sheriff pursuant to art. 13.12a, subd. (e), supra, notwithstanding the fact that he participated as a voter in the primary election of a political party. This conclusion is in conformity with the requirements of art. 13.11a, supra, which only bars an individual from running as an independent candidate if he participated as a voter or candidate in the primary election of a party at which a nomination for that office was made.

In your second question you asked whether an individual who voted in the Nueces County Democratic Party's General primary or run-off primary election could accept the Nueces County Republican Executive Committee nomination to fill the vacancy in an office which did not appear on either parties' primary ballot?

V.A.T.S. Election Code, art 13.12a, subd. (b) (3) provides in relevant part:

If the vacancy occurs after the 45th day preceding the day of the general primary and on or before the 45th day before the day of the general election, the state executive committee in the case of state offices, the appropriate district executive committee in the case of district offices, the county executive committee in the case of county offices, and the appropriate precinct committee in the case of precinct offices, shall have the power to name a nominee for such office. . .

Article 13.11a, supra, also provides that an individual who has participated in the primary election of a party as a voter or candidate is ineligible to "have his name printed on the ballot as the nominee of any other party for any office to be voted on at the general or special election." In accordance with the foregoing an individual who voted in the Nueces County Democratic Party's general primary or run-off primary would be ineligible to appear on the general election ballot as the Nueces County Republican Party Executive Committee's nominee to fill a vacancy in the office of county sheriff, notwithstanding the fact that the office was not on the primary ballot of either party. Art. 13.11a prohibits the name of an individual who participated in the primary of a party from appearing on the ballot as a candidate of another party for any office.

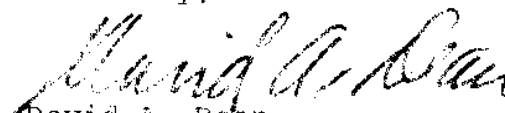
#### SUMMARY

(1) An individual who participated as a voter in the primary of a party, who is otherwise qualified, may run as an

independent candidate to fill a vacancy in an office for which the party made no nomination at the primary election.

(2) An individual may not accept the nomination of a political party as a candidate at the general election to fill a vacancy in an office if he participated in the primary of another party as a voter or candidate.

Sincerely,

  
David A. Dean  
Secretary of State

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APPROVED:  
OPINION COMMITTEE

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Election Law Opinion DAD-44

Request from Gene Seaman, Corpus Christi Concerning eligibility of individual to run as independent or party nominee at the general to fill a vacancy.

SUMMARY

(1) An individual who participated as a voter in the primary of a party, who is otherwise qualified, may run as an independent candidate to fill a vacancy in an office for which the party made no nomination at the primary election.

(2) An individual may not accept the nomination of a political party as a candidate at the general election to fill a vacancy in an office if he participated in the primary of another party as a voter or candidate.