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July 16, 1990

**Mr. Robert Parten**  
**Elections Administrator**  
**Tarrant County Courthouse**  
**100 Weatherford Street**  
**Fort Worth, Texas 76196-0136**

**Election Law Opinion GSB-3**

**Re: Whether a political party's executive committee may make a nomination for an office appearing on the general election ballot if no one filed for the office in the party's primary.**

**Dear Mr. Parten:**

By letter of June 13, 1990, you requested my opinion, as chief election officer of the State of Texas, and asked if the executive committees of the Republican and Democratic Parties could name candidates to appear on the general election ballot for the office of judge of the 371st District Court. In your letter, you mentioned that no candidate filed for this office in either party's primary.

The 371st and 372nd District Courts of Tarrant County were created by Senate Bill 1379 of the 71st Legislature, and will become effective September 1, 1990. Act of May 28, 1989, ch. 632, § 2, 1989 Tex. Gen. Laws 2104, 2105.

This office has consistently held that an act that created a court which would come into existence after a primary election would not preclude candidates for the court running in the primary election.



Mr. Robert Parten  
Page: 2

See Anderson v. Penix, 138 Tex. 596, 161 S.W.2d 455 (1942); Popham v. Patterson, 121 Tex. 615, 51 S.W.2d 680 (1932); Op. Tex. Att'y Gen. No. C-198 (1963); Tex. Att'y Gen. LO-89-107 (1989); Sec. of State Elec. Law Op. No. DAD-2 (1981).

Candidates did file in both the Republican and Democratic primaries for the office of judge of the 372nd District Court. One can only speculate as to why no candidates filed in the primary for the 371st District Court. As of this date, my office has received eight declarations of write-in candidacy for that office.

A party's executive committee may name a nominee to appear on the general election ballot by utilizing the provisions of Sections 145.035 and 145.036 of the Texas Election Code. Those sections allow a replacement nomination to be made in the event of a candidate's withdrawal, death, or ineligibility. Those three circumstances have as a condition precedent the fact that a candidate has filed for the office.

Absent a filing, those sections are, therefore, not relevant to your inquiry.

In view of the foregoing, you are advised that neither the Republican nor the Democratic executive committees may name a candidate to appear on the general election ballot for the office of judge of the 371st District Court.

#### SUMMARY

A political party's executive committee may not make a nomination for an office appearing on the general election ballot if no one filed for the office in the party's primary.

Sincerely,



George S. Bayoud, Jr.  
Secretary of State

Pete Wassdorf  
Assistant Secretary of State

Prepared by Austin C. Bray, Jr.  
Assistant General Counsel  
Elections Division

**Mr. Robert Parten**  
**Page: 3**

**APPROVED:**  
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