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April 4, 1983

Hon. Doris Shropshire
County Clerk, Travis County
Courthouse
Austin, Texas 78767

Election Law Opinion JWF-4
Re: Straight party voting
with a mark-sense voting
system.

Dear Ms. Shropshire:

This letter is in response to your opinion request of March 10, 1983.

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.

You have asked if the Election Code permits the use of multiple ballots with a "mark-sense" optical scanner voting system in elections in which straight party voting is permitted.

V.A.T.S. Election Code, art. 7.15, subd. 4, reads, in pertinent part, as follows:

- (a) Any electronic voting system approved by the Secretary of State must meet the following requirements: . . .
- (2) It shall permit each voter: . . .
- (F) to vote, by means of a single mark or punch, for all candidates of one party or to vote a split ticket as he desires.

The mark-sense voting system was certified by the Secretary of State on May 16, 1977, as the Gyrex MTB-1 Vote Tally System. This certification was based, in part, on the finding that the system would provide for single mark straight party voting. The certification signed by the Secretary of State states, in pertinent part:

Since the card reader has the capability to read both sides of the ballot card, there is no question that a single ballot card can accommodate a general election. Accordingly, a voter can vote a straight ticket by means of a single mark or punch, or, may vote a split ticket, as he desires.

The Secretary of State's directive on optical scanner voting systems, adopted by administrative rule 1 T.A.C. §81.9, states, in pertinent part:

Provisions shall be made at the head of the mark-sense ballot for marking a straight party ticket vote and only one such mark shall be provided for the whole mark-sense ballot.

In a letter dated February 22, 1982, the Elections Division of the Secretary of State, in response to a request from the Elections Administrator of Dallas County expressed the opinion that any ballot requiring more than one mark by a voter who desires to vote a straight ticket was in violation of the Election Code. Subsequent to a request for reconsideration, former Secretary of State Dean issued an advisory opinion expressing the view that a single mark on each of multiple pages was in compliance with the Election Code (Secretary of State Letter Advisory No. 1982-4).

It is my opinion that the letter of February 22, 1982 correctly stated the law and is consistent with the original certification of the mark-sense system and the Secretary of State's optical scanner system directive. Therefore, Secretary of State Letter Advisory No. 1982-4 is hereby overruled.

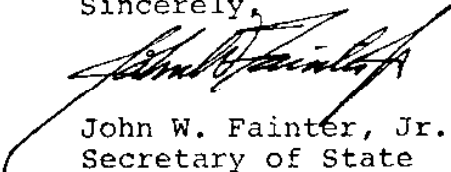
It is my opinion that for a mark-sense optical scanner voting system to be in compliance with the requirement of V.A.T.S. Election Code, art. 7.15, subd. 4(a)(2)(F), it must provide for a single ballot card capable of containing all the candidates in an election in which candidates run by

party, or, alternatively, be programmed to permit straight party voting by means of a single mark regardless of the number of ballot cards utilized. A system providing for straight party voting by means of a single mark on each of two or more separate ballot cards is not in compliance with V.A.T.S. Election Code, art. 7.15, subd. 4(a)(2)(F).

SUMMARY

For a mark-sense optical scanner voting system to be in compliance with the requirement of V.A.T.S. Election Code, art. 7.15, subd. 4(a)(2)(F), it must provide for a single ballot card capable of containing all the candidates in an election in which candidates run by party, or, alternatively, be programmed to permit straight party voting by means of a single mark regardless of the number of ballot cards utilized. A system providing for straight party voting by means of a single mark on each of two or more separate ballot cards is not in compliance with V.A.T.S. Election Code, art. 7.15, subd. 4(a)(2)(F).

Sincerely,



John W. Fainter, Jr.
Secretary of State

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APPROVED:
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