



OFFICE OF THE SECRETARY OF STATE

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SECRETARY OF STATE

STATE CAPITOL
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AUSTIN, TEXAS 78711

May 12, 1982

Mr. Robert K. Roach
Gibson, Darden, and Hotchkiss
912 City National Building
Wichita Falls, Texas 76301

Election Law Opinion DAD-21
Re: Responsibility of
Secretary of State to
render advisory opinions
concerning Chapter 14
investigations,
litigation, or
prosecutions

Dear Mr. Roach:

This letter is in response to your opinion request of February 10, 1982, in which I have been asked to rule as to whether certain printed material is political advertising as defined and regulated by Chapter 14 of the Texas Election Code.

This official election law opinion is rendered by me as chief election officer of the state in accordance with Tex. Elec. Code Ann. art. 1.03, subd. 1 (Vernon Supp. 1982).

This matter raises a fundamental issue of first impression as to the authority of the Secretary of State to issue interpretative opinions concerning events which are ripe for civil litigation and/or criminal prosecution, especially when such opinions could potentially be construed as official Secretary of State comment on the wider issues of guilt or innocence in a criminal matter and/or the weight of certain evidence involved in civil litigation.

Tex. Elec. Code Ann. art. 1.03, subd. 1 (Vernon Supp. 1982) designates the Secretary of State as the chief election officer of the State and authorizes me "to obtain and maintain uniformity in the application, operation and interpretation of the election laws." Tex. Elec. Code Ann. art. 14.13(G)(4) (Vernon Supp. 1982) further provides that the authority granted in Article 1.03 be exercised in making interpretations and administrative rulings pertaining to Chapter 14 of the Election Code available to any person upon request.

Within Article 14.13, however, the Legislature has prescribed a formal complaint procedure pertaining to events which have already occurred and upon which civil litigation and/or criminal prosecution may be based. In accordance with Article 14.13(F), any citizen may file a complaint directly with a prosecuting attorney and/or the Attorney General. Article 14.13(A), (B), (C), and (D) further provides that certain complaints may be filed with the Secretary of State, who, in turn, shall forward the matter to a prosecuting attorney and/or the Attorney General if the complaint is in proper form, contains a proper allegation and "if it appears that the person accused in the complaint may have failed to comply with the relevant provisions of law. . . ." (Emphasis added.)

Therefore, it must be concluded that it would be improper for this office to issue an opinion containing certain findings of fact which could directly affect civil litigation and/or criminal prosecution. This would constitute an unwarranted interference with prosecutorial discretion as well as with the fact-finding responsibilities of the courts.

SUMMARY

Once a criminal investigation is proceeding, charges have been filed, or situations are ripe for civil litigation or criminal prosecution, alleging violations of Chapter 14 of the Texas Election Code, the Secretary of State should not render advisory opinions or interpretations on Chapter 14 inquiries related to specific findings of fact pertaining to such investigations, litigation, or prosecutions. The decision on whether, in fact, a violation of Chapter 14 has occurred, should be left to the local prosecutor, Attorney

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General, court of law, jury, or other legal trier of fact. If a formal complaint is filed with the Secretary of State, he will process it pursuant to the provisions of Article 14.13, Texas Election Code.

Sincerely,



David A. Dean
Secretary of State

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Counsel to the Secretary of State

Charles C. Bailey
Acting Director, Elections Division

Prepared by Charles E. Evans
Staff Attorney

APPROVED:
OPINION COMMITTEE

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