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July 12, 1982

Mr. W. T. Fraser
Chairman of the Libertarian Party
601 Branard
Houston, Texas 77006

Election Law Opinion DAB-38
Re: Whether a person on the list of returned voter registration certificates is a qualified voter for the purposes of signing a petition to have the names of new or minor party candidates printed on the general election ballot.

Dear Mr. Fraser:

You have asked for an official legal opinion regarding whether a person whose name appears on the list of returned voter registration certificates is a qualified voter for the purpose of signing a petition to have the names of new or minor party candidates printed on the general election ballot.

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).

The Texas Election Code (the "Code") provides that new or minor political parties may nominate candidates by the convention process and that the nominees may be afforded the opportunity to have their names printed on the general election ballot. *Id.* at art. 13.45, subd. 2(a). In order to qualify for ballot status, the political party must evidence the support of a number of qualified voter totaling at least one percent of the total votes cast for governor at the last preceding general election for that office. *Id.* This evidence can be in the form of the lists of participants in the precinct conventions as signed and

certified by the temporary chairman of each respective precinct. If these lists total less than the one percent required, then additional evidence can be included in the form of petitions signed by a sufficient number of additional qualified voters requesting that the names of the party's nominees be printed on the general election ballot to make a combined total of at least one percent of the total votes cast for governor at the last preceding general election for that office. These additional petitions must list the names, addresses and registration certificate numbers of the qualified voters signing the petition. Id.

In regard to petitions which a political party may submit in order to have the names of its nominees placed on the ballot in the general election, the Code requires:

The following statement shall appear at the head of each page of the petition: "I know the contents of this petition, requesting that the names of the nominees of the _____ Party be printed on the ballot for the next general election. I am a qualified voter at the next general election under the constitution and laws in force, and during the current voting year I have not voted in any primary election or participated in any convention held by any other political party, and I will not vote in a primary election or participate in a convention of any other party during the remainder of this voting year." The petition may be in multiple parts. To each part of the petition shall be attached an affidavit of the person who circulated it, stating that he called each signer's attention to the statement and read it to him before the signer affixed his signature to the petition, and further stating that he witnessed the affixing of each signature, that the correct date of signing is shown on the petition, and that to the best of his knowledge and belief each signature is the genuine signature of the person whose name is signed. A petition so verified is prima facie evidence that the signatures thereon are genuine and the persons signing it are registered voters. The petition may not be circulated for signatures until after the date of the party's precinct conventions. Any signatures obtained on or before that date are void. Id. at art. 13.45, subd. 2(b).

"Qualified voter" is defined as "a person who meets all qualifications and requirements for voting as prescribed in Article 5.02 of this code." Id. at art. 1.01a(46). Article 5.02 provides, in pertinent part, that a "person. . .who is

a citizen of the United States and a resident of this state. . . and who has complied with the registration requirements of this code, is a qualified voter."

Upon receipt of a properly executed application, the registrar shall place the voter's name on the list of registered voters. Id. at art. 5.14a, subd. 2(a). In January of each even numbered year, the registrar shall mail a new voter registration certificate to each registered voter as of the preceding December 31st, for use during the succeeding two voting years. The certificates are not forwardable by the postal authorities, and the names of persons whose certificates are returned to the registrar are placed on a separate list of returned voter registration certificates. Id. at art. 5.14a, subd. 2(b).

Persons on this list of returned voter registration certificates are registered voters for whom new certificates have been issued, but they do not physically possess the new voter registration certificates, and they may not vote without further actions on their part. Article 5.14a, subd. 2(c) of the Code requires that:

"Any person whose registration certificate is returned under the provision of this section shall be required to complete an affidavit of residence on or before August 15, or the registration shall be cancelled on that date. . . . A person whose registration is cancelled under this paragraph must reregister in the same manner as an initial registrant."

The petitions in question may not be circulated until after the date of the party's precinct conventions. Id. at art. 13.45, subd. 2(b). They must be filed with the Secretary of State within 30 days after the date for holding the party's state convention. Id. at subd. 2(a). In the 1982 election year, these dates are May 1, 1982, and July 12, 1982, respectively. Id. at art. 13.47.

It should be noted that the August 15 date of cancellation was only recently adopted by the Legislature in H.B. 2171 (67th Legislature, 1981). Prior to that amendment, the registration of those persons whose new certificates were returned by the postal authorities was cancelled immediately upon receipt of the returned certificate by the registrar. The result of this change was to move the date of cancellation from long before the beginning of the statutory period for new and minor parties to circulate their petitions until well after the deadline for having such petitions completed and filed.

Under present law, consequently, at the time of the statutory period for petition circulation those persons whose names appear either on the list of registered voters or on the list of returned voter registration certificates have complied with the registration requirements of the Election Code for the issuance of new registration certificates. Although those persons whose names appear on the list of returned voter registration certificates will become disqualified by cancellation if they fail to act on or before August 15, or if they fail to reregister after that date and prior to 30 days before the next general election, they are still qualified voters for petition purposes on the date they sign the petition.

To require the petitioning political party to predict whether such persons, after signing the petition, would in fact take some action to extend their registrations beyond August 15 would be no less burdensome than to require it to foresee that each signer whose name appeared on the list of registered voters would not, after signing and prior to the next general election, become statutorily disqualified as a result of such unpredictable events as death, felony conviction, change of residence, or adjudication of mental incompetence. Such would tend to constitute an unreasonable and unwarranted expansion of the scope of inquiry pertaining to petition sufficiency, and also serve to defeat the desired public policy of removing errors from the current lists of registered voters.

Therefore, you are advised that those persons whose names appear on the list of returned voter registration certificates during the statutory period for petition circulation are considered qualified registered voters for the purpose of signing a petition to have the names of candidates of new or minor political parties printed on the ballots for the next general election.

SUMMARY

A person whose name appears on the list of returned voter registration certificates is a qualified voter for the purpose of signing a petition to have the names of new or minor party candidates printed on the general election ballot.

Sincerely,



David A. Dean
Secretary of State

Mr. W. T. Fraser
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