OFFICE OF THE SECRETARY OF STATE

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May 12, 1982

Mr. F. Jules Lund, Jr.
Haight, Dewees, Maverick, Lund & Spence
1218 Brooklyn Avenue
San Antonio, Texas 78212-4895

Election Law Opinion DAD-20
Re: Persons eligible to sign independent candidate's application for a place on the ballot

Dear Mr. Lund:

Reference is made to your letter to me of April 22, in which you state that you are running as an independent candidate for the Texas House of Representatives in District 115 and inquire as to whether voters in the Republican Party primary are eligible to sign your application for a place on the ballot, inasmuch as the Republican Party did not nominate a candidate for that office.

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).

Tex. Elec. Code Ann. art. 13.50, subd. 4 (Vernon Supp. 1982) provides, in pertinent part, that "No person shall sign such application unless he is a qualified voter, and no person who has voted at the general primary election or the runoff primary election of any party shall sign an application in favor of anyone for an office for which a nomination was made at such primary election. . . ." (Emphasis added.)

Moreover, Tex. Elec. Code Ann. art. 13.51 (Vernon Supp. 1982) requires that "The following statement shall appear at the head of each page of [the independent candidate's] application: 'I know the contents of this application; I have not participated in the . . . primary election . . . of any party which has nominated . . . a candidate for the office for which I desire _____ (here insert the name of the candidate) to be a candidate . . . .'" (Emphasis added.)

As a corollary to your basic question, we also note that Tex. Elec. Code Ann. art. 13.50, subd. 3 (Vernon Supp. 1982) states that the requisite amount of signatures on your application is as follows: "If for a district office composed of only one county or part of one county, the application shall be signed by five per cent of the entire vote cast for Governor in such district at the last preceding gubernatorial general election. . . ." (Emphasis added.)

In view of the foregoing, it is my opinion that persons who voted in the Republican Party primary may sign your application, inasmuch as that Party did not make a nomination for the office of State Representative, District 115.

You are further advised, however, that only Republican Party primary voters who reside within District 115 are eligible to sign your application. While it is true that the Election Code does not expressly require signatories on an independent candidate's application to reside in the district in which the candidate is running, it is my opinion that the Legislature, by requiring that the number of signatures be calculated based on the number of votes cast for Governor in your particular district, intended that only registered voters who reside in your district may sign your petition.

SUMMARY

Pursuant to Article 13.50, Subdivision 4, and Article 13.51, Texas Election Code, a person who has voted in a party primary election may sign the application of an independent