Election Law Opinion JWF-13

Request from Wendall L. White, Deputy Voter Registrar, Jefferson County, regarding microfilming of voter registration applications and therefore destroying the original applications.

SUMMARY

There are no provisions in the Texas Election Code for destroying original voter registration applications as long as they remain active. Applications must be kept in the registrar's office at all times except under the circumstances enumerated in the Election Code and must be available for public inspection. Other administrative procedures required by the Election Code could not be performed if a record of the applications were maintained only on microfilm.

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July 18, 1983

Mr. Wendall L. White, Jr.
Deputy Voter Registrar
Jefferson County
P. O. Box 2112
Beaumont, Texas 77704

Election Law Opinion JWF-13
Re: Microfilming of Voter Registration Applications and therefore destroying the original applications.

Dear Mr. White:

I have received your June 7, 1983 letter asking whether it is permissible to microfilm active voter registration applications to eliminate the need for maintaining the original applications on file in your 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. 1982-1983).

Tex. Elec. Code Ann. art. 5.15a, subd. 1 (Vernon Supp. 1982-1983) reads in part:

> (a) The applications on which registration certificates are issued shall be filed in an active application file and shall remain in that file as long as the registration continues in effect. The active application file shall be maintained in alphabetical order by voter name for the entire county, except that if the registrar regularly obtains a list of registrants in that order through use of electronic data processing

> equipment, he may keep the file in numerical order by certificate number.
> (b) The registrar shall also maintain an inactive application file. The registrar shall place in alphabetical order into this file all applications which are rejected. He shall also transfer to a separate inactive file the application of each voter whose registration is cancelled. The registrar shall enter on the application form the date on which the registration is rejected or the date on which the registration is cancelled before filing an application in the inactive file. The application shall be kept in the inactive file for a period of two years from the date of rejection or cancellation, after which it may be destroyed.

Tex. Elec. Code Ann., art. 5.15a, subd. 3 (Vernon Supp. 1982-1983) reads as follows:

> Applications and duplicate registration certificates may be removed from the registrar's office temporarily, under proper safeguards, for use in preparing registration certificates, lists of registered voters, and other registration papers by electronic data processing methods, but they may not be removed for any other purpose. Except as permitted in the preceding sentence, the applications, and the duplicate registration certificates shall be kept in the registrar's office at all times in a place and in such a manner as to be properly safeguarded. The files shall be open to public inspection at all times during regular office hours of the registrar, subject to reasonable regulations and to proper safeguards against alteration, mutilation, or removal.

In my opinion, nothing in the Election Code prohibits the microfilming of active voter registration applications; however, the applications may not be destroyed after they are microfilmed and must be kept in an active file in the registrar's office. The Election Code provides only for destruction of applications which have been cancelled or rejected, after a two-year period from the date of cancellation or rejection.

It is my opinion that certain administrative functions of the registrar could not be accomplished according to the procedures outlined in the Election Code if microfilm were used exclusively. For example, once an application has been rejected or cancelled, it must be removed from the active

file. While it is possible to make a copy of an application from microfilm and put that copy in an inactive file, the cancelled or rejected application would still appear on the microfilm of active applications. There is no procedure for removing the photographic frame of the application from the microfilm of active applications except to splice the film.

Furthermore, several articles in the Election Code require the registrar to attach information to the original application.

Tex. Elec. Code Ann., art. 5.16a, subd. 6 (Vernon Supp. 1982-1983) states in part:

> If a voter to whom a registration certificate has been issued presents to the registrar his signed statement that the certificate has been lost or destroyed. . . . [the registrar] shall attach the statement to the voter's application.

Tex. Elec. Code Ann., art. 5.18a, subd. 2 (Vernon Supp. 1982-1983) states in part:

> To obtain a transfer of his registration, the voter shall present the registrar with a written, signed request that his registration be transferred . . . . [The registrar] shall attach the request to the registrant's original application.

Tex. Elec. Code Ann., art. 5.18d, subd. 1 (Vernon Supp. 1982-1983) states in part:

> A registered voter who changes his name . . . shall present his registration certificate to the registrar, with a signed request that his name be changed . . . . The registrar shall attach the request to the registrant's original application.

It is further recommended in the current Handbook for Voter Registrars issued by the Secretary of State in September, 1982, that the following documents received by the registrar be attached to the registrant's original application:

1. A registrant's request for a change of information on his voter registration certificate.

2. A voter registration change form.

3. A returned voter registration certificate.

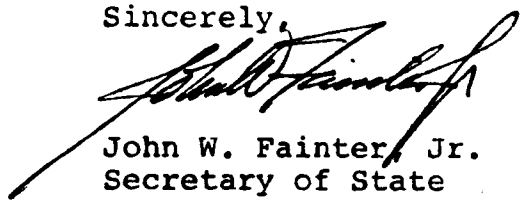
4. An affidavit of residence completed by the voter between March 1 - August 15 of even-numbered years.

If the original applications were maintained on microfilm exclusively, there would be no means available for attaching this information to the original application. Although it may be possible to use an index system to reference all attachments to the original application, it is my opinion that this is not permitted under current law.

SUMMARY

There are no provisions in the Texas Election Code for destroying original voter registration applications as long as they remain active. Applications must be kept in the registrar's office at all times except under the circumstances enumerated in the Election Code and must be available for public inspection. Other administrative procedures required by the Election Code could not be performed if a record of the applications were maintained only on microfilm.

Sincerely,



John W. Fainter, Jr.
Secretary of State

Ward Allen White III
Counsel to the Secretary of State

Prepared by Karen C. Gladney
Director, Elections Division

APPROVED:
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