



OFFICE OF THE SECRETARY OF STATE

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July 19, 1982

Mr. Roy L. Swift
Chairman, Wilson County
Democratic Executive Committee
Rt. 3, Box 51
Floresville, Texas 78114

Election Law Opinion DAD-39
Re: Who bears costs of
counting and canvassing
absentee ballots in
primary election

Dear Mr. Swift:

This opinion is in response to your inquiry of May 20, 1982.

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).

You asked whether Tex. Elec. Code Ann. art. 13.08(g) would require that the county clerk pay for the costs of counting and canvassing the absentee ballots cast in the primary election.

Tex. Elec. Code art. 13.08(g), states:

All expenses of the county clerk in conducting absentee voting in the primary elections. . . shall be paid by the county. A county is not entitled to reimbursement for any expenditure of county funds in connection with absentee voting or any other services by the county clerk in the primary elections.

There are exceptions in art. 13.08(g) that allow the county to be reimbursed for the costs incurred for voting machines and punch card units, but these are the only enumerated exceptions. The issue, therefore, involves resolving the question of whether counting and canvassing of absentee ballots can be considered a part of "absentee voting" as that term is used in art. 13.08(g).

Under Tex. Elec. Code art. 5.05, subd. 6, which governs the counting of absentee ballots in primary elections, it is provided, in pertinent part:

The county clerk shall deliver the ballots to the canvassing board at such hour as the presiding judge shall direct, but not earlier than the hour at which the polls are opened. . . .

Art. 5.05, subd. 6, directs that the clerk is to deliver the ballots on election day in all countywide elections where a special canvassing board has been set up to count paper absentee ballots. In Tex. Elec. Code art. 13.24, it states in pertinent part:

Upon receiving returns from each election precinct in the county, the chairman of the County Executive Committee shall order the members of the County Executive Committee to convene. . . and the returns shall be opened by the committee in executive session and shall be canvassed by them. (Emphasis added.)

The language of arts. 5.05, subd. 6, and 13.24, illustrate the fact that the county clerk's responsibilities, in the absentee voting process for the primary, end with his surrendering the absentee ballots to the county chairman on election day. Both the counting of the absentee ballots and the canvassing of those ballots are party functions with no involvement of the county clerk's office in either process. In addition to the foregoing, it should be noted that the counting of the absentee ballots is performed by the executive committee of the county party organization. The county clerk provides no services or personnel to the county chairman in counting or canvassing the absentee votes. Indeed, both aforementioned functions are, by statute, the responsibility of the county chairman and executive committee.

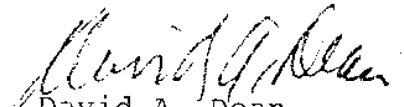
In accordance with the heretofore-cited statutes and in conformity with the foregoing discussion, it is my opinion that the costs of counting and canvassing absentee ballots in primary elections are costs which may be charged by the various county chairmen against the State Primary Finance Fund. This is the logical conclusion since art. 13.08(g) only prohibits state reimbursement to the counties for the costs incurred by their clerks in conducting absentee voting and the counting and canvassing processes may not be viewed as functions of the county clerk's offices.

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SUMMARY

The costs of counting and canvassing absentee ballots cast in a primary election are costs that are to be reimbursed to the county chairmen by the state. The county clerks have no responsibilities in the counting and canvassing procedures and, therefore, art. 13.08(g) would not apply.

Sincerely,


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