



## Office of the Secretary of State

March 25, 1996

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Claude, Texas 79019

Ms. Nancy Jackson  
City Secretary  
City of Henderson  
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Election Law Opinion AOG-1

Re: Whether a political subdivision may cancel its election where the number of candidates who filed for a place on the ballot equals the number of open positions in the political subdivision which elects members of its governing body at large

Whether an unopposed race within a single-member district may be canceled if others are opposed in a political subdivision which elects some of the members of its governing body from single-member districts and some at large

Whether an unopposed race within a single-member district may be canceled if another at-large race appearing on the same ballot is opposed in a political subdivision which elects some of the members of its governing body from single-member districts and some at large

Dear Ms. Johnston and Ms. Jackson:

Thank you for your letters. Because you have raised issues of general importance, we will address your questions within the context of this election law opinion, which is rendered under my authority to obtain and maintain uniformity in the interpretation of election laws. Tex. Elec. Code Ann. § 31.001(a) (Vernon 1986).

For purposes of this opinion, we assume that the election to be conducted is a general election and not a special election to fill a vacancy.

Your first question is whether an election may be canceled where the number of candidates who filed for a place on the ballot equals the number of open positions in a political subdivision which elects members of its governing body at large. The crux of this question is: Are candidates unopposed for purposes of section 2.051 of the Texas Election Code (the "Code") if the number of persons who have filed for a place on the ballot equals the number of open positions and the offices in question are elected under an at-large scheme. Section 2.051 of the Code provides as follows:

This subchapter applies only to an election for officers of a political subdivision other than a county in which write-in votes may be counted only for names appearing on a list of write-in candidates and in which:

- (1) each candidate whose name is to appear on the ballot is unopposed; and
- (2) no proposition is to appear on the ballot.

Id. § 2.051 (Vernon Supp. 1996) (emphasis added). We believe that candidates are unopposed if the number of candidates who have filed for a place on the ballot equals the number of open positions in an at-large scheme. Therefore, a political subdivision's general election may be canceled pursuant to section 2.051 of the Code.

The ability to cancel a general election in the situation described in the preceding paragraph is supported by the legislative intent, as manifested by the language chosen by the Texas Legislature, to save political subdivisions the costs and the futility of conducting elections where the outcome of the entire election is a foregone conclusion. Id. The parameters within which the option to cancel elections may be exercised, however, reveal an intent to limit the option to cancel elections to certain relatively narrow, circumstances: (1) if a proposition is to appear on the ballot, the election may not be canceled; (2) if write-in votes may be counted without the write-in candidate's name appearing on a list of write-in candidates, the election may not be canceled; (3) if it is an election for county officers, the election may not be canceled; and (4) the election may be canceled only if every candidate whose name appears on the ballot is unopposed.

A further check on the ability to cancel elections and an indication of the Texas Legislature's intent to limit this option to situations where the election is genuinely and entirely uncontested is section 2.054 of the Code. Section 2.054(a) of the Code makes it a crime for a person to influence or attempt to influence, through coercion or intimidation, another person "to not file an application for a place on the ballot or a declaration of write-in candidacy in an election that may be subject to

[subchapter C]." Id. § 2.054(a). Subchapter C attempts to balance, on the one hand, the interest of cost savings and, on the other, the interest of ensuring the public's right to participate and to decide who will represent them.

In your second question you refer to "voting districts." We understand "voting districts" to mean single-member districts ("SMD"). Your second question is whether an unopposed race within a single-member district is cancelable if others are opposed in a political subdivision which elects some of the members of its governing body by single-member districts and others at large.

Section 2.051 of the Code provides, in pertinent part, that subchapter C applies to an election only if "each candidate whose name is to appear on the ballot is unopposed." Id. § 2.051(1) (emphasis added). To determine whether subchapter C applies to an election as described above, we must ask and answer the question: Is the ballot for the SMD with the unopposed candidate considered a separate ballot from the ballot prepared for the SMD with the opposed candidate. It is our opinion that the ballot for the SMD with the unopposed candidate and the ballot for the SMD with the opposed candidate, in fact, comprise a single city election ballot which is printed in different ballot styles. It is also our opinion that, because "each candidate whose name is to appear on the ballot" is not unopposed, subchapter C does not apply and the election may not be canceled. At this point, we reemphasize that the legislative intent was to save political subdivisions the costs and the futility of conducting elections where the outcome of the entire election is a foregone conclusion. The Texas Legislature could easily have authorized the cancellation of unopposed races, but it did not.

Similarly, in response to your third question, in an election where the mayor, who is elected at large, is unopposed, but a candidate for a SMD is opposed, subchapter C does not apply, and the election may not be canceled.

We note that all general-law cities, and many other political subdivisions, elect by SMD pursuant to a court order. These entities should consult local counsel to determine if a conflict exists between subchapter C and the court order. In general, state law will apply when such a court order is silent.

Finally, while not raised by your letter, section 2.053(c) of the Code provides that the certificate of election shall be issued to each candidate in the same manner as provided for a candidate elected at the election. Although it appears that the order or ordinance may declare each unopposed candidate elected to the office upon receipt of the certification, it is our opinion that the certificate of election should not be issued until after the date the canceled election would have taken place. Id. § 2.053(c).

SUMMARY

In a city election where three persons file as candidates for three at-large city council positions to be filled at the city general election and no persons file declarations of write-in candidacy, those candidates are unopposed for purposes of section 2.051 of the Code, and the city's general election may be canceled pursuant to chapter 2, subchapter C of the Code.

In a city where council members are elected from single-member districts and some of the single-member district candidates are unopposed and others are opposed, subchapter C does not apply, and therefore, the election may not be canceled. Similarly, in an election where the mayor, who is elected at large, is unopposed, but a candidate for a single-member district is opposed, subchapter C does not apply, and the election may not be canceled.

Finally, the opposed candidates who are declared elected by order or ordinance should not be issued a certificate of election until after the date the election would have taken place.

Sincerely,



Antonio O. Garza, Jr.  
Secretary of State

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