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Antonio O. Garza, Jr.
Secretary of State

Office of the Secretary of State

July 18, 1997

The Honorable Debra Danburg
Chair, House Elections Committee
P.O. Box 66602
Houston, Texas 77266

Election Law Opinion AOG-2

Re: Construction of Act of May 31, 1997, 75th Leg., R.S., H.B. 298, § 8(a)-(b)

Dear Representative Danburg:

You have asked us whether subsections (a) and (b) of section 8 of House Bill 298 ("Act") have any force or effect. Tex. H.B. 298, 75th Leg., R.S. (1997).

This opinion is rendered by me in my capacity as chief election officer of the State of Texas and is for the purpose of maintaining uniformity in the application, operation, and interpretation of the Texas Election Code ("Code"). Tex. Elec. Code Ann. §§ 31.001(a), 31.003 (Vernon 1986).

The Act was engrossed on May 14, 1997, enrolled on June 1, 1997, and signed by Governor George W. Bush on June 20, 1997, effective immediately. When the Act passed the House and was engrossed, it contained a section 3 that amended section 41.001(b) of the Code to delete paragraphs (3), (9), and (10). These paragraphs dealt with exceptions to the uniform election dates for bond elections, elections held under statutes which deem the uniform election dates set forth in section 41.001(a) inapplicable, and recall elections. Section 3 of the engrossed version also added new subsections (c) and (d) to section 41.001. The new subsection (c) mandated that a general election of officers of a city, school district, junior college district, or hospital district may not be held on the January or August uniform election dates. The new subsection (d) provided that, generally, an election may not be held either within 30 days before or within 30 days after a primary election or the November general election.

Subsections (a) and (b) of section 8 of the engrossed version of the Act were transition provisions relating to the engrossed version's deletion of paragraphs (3), (9), and (10) of section 41.001(b).

When the Act emerged from conference committee and was enrolled, section 3 had undergone major changes. All of the amendments and additions made to the Code by the engrossed version of the Act were deleted, with the sole exception of the new subsection (c). Thus, enrolled section 3 had the sole effect of prohibiting January or August general elections by cities, school districts, junior college districts, and hospital districts.

Inadvertently, the enrolled version retained *all* of section 8 as it had appeared in the engrossed version. Subsections (a) and (b) of section 8 of the Act refer directly to changes no longer extant, which appeared *only* in the earlier engrossed version of the Act.

In view of the foregoing, you have asked us to advise you how subsections (a) and (b) of section 8 should be construed. The Code Construction Act states as follows concerning severability:

> [I]f any provision of [a] statute or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions . . . of the statute that can be given effect without the invalid provision . . . , and to this end the provisions of the statute are severable.

Tex. Gov't Code Ann. § 311.032(c) (Vernon 1988). It is a general rule of statutory construction that "[i]n interpreting a statute, a court shall diligently attempt to *ascertain legislative intent* and shall consider at all times the old law, the evil, and the remedy." *Id.* § 312.005 (emphasis added). "This is the fundamental canon and the cardinal, primary, and paramount rule of [statutory] construction, which should always be closely observed and to which all other rules must yield." 67 Tex. Jur. 3d *Statutes* § 91, at 657 (1989). The same treatise also observes that

> [A] court will never adopt a construction that will make a statute absurd or ridiculous, or one that will lead to absurd conclusions or consequences . . . . Nor will application be made of any rule of construction that, in the circumstances, will lead to absurdity. [T]he [Texas] [L]egislature is not to be credited with doing or intending a foolish, *useless*, or vain thing, nor with requiring a futile, *impossible*, or *useless* thing to be done.

Id. § 128, at 728-29 (emphasis added).

Underpinning all of the above discussion concerning the apposite rules of statutory construction, we think the words of a Texas court written less than one year ago are particularly appropriate: "The court must be governed by the rules of *common sense* . . . ." *Raines v. Sugg,* 930 S.W.2d 912, 913 (Tex. App.--Fort Worth 1996, no writ) (emphasis added).

Based on the foregoing, you are advised that subsections (a) and (b) of section 8 of the Act are meaningless surplusage. Consequently, you are further advised that these subsections are null, void and of no legal effect whatsoever.

SUMMARY

Subsections (a) and (b) of section 8 of House Bill 298, 75th Leg., R.S., are meaningless surplusage. These subsections are null, void and of no legal effect whatsoever.

Sincerely,

Antonio O. Garza, Jr.
Secretary of State

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