



OFFICE OF THE SECRETARY OF STATE

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STATE CAPITOL
P.O. Box 12697
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June 8, 1982

Mr. Robert J. Chavez
Post Office Box 12
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Election Law Opinion DAD-27
Re: Construction of prohibition on
voting by "idiots and
lunatics," as those terms are
used in Article VI, Section 1,
Texas Constitution, and
Article 5.01, Texas Election
Code

Dear Mr. Chavez:

Reference is made to your letter of May 11 in which you requested my interpretation of the prohibition on voting by "idiots and lunatics."

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).

In your letter, you state that a person afflicted with Down's syndrome attempted to vote in the City of Hidalgo municipal election on May 3. The person attempting to vote was, in fact, a registered voter and had also voted in other elections in the same precinct for the past seven years. You also state that the person attempting to vote has never been adjudicated mentally incompetent by a court of law. The presiding judge refused the person the right to vote because, in his view, the person's affliction fell within the "idiots and lunatics" prohibition.

Tex. Const. art. VI, § 1 provides:

"The following classes of persons shall not be allowed to vote in this State, to wit:

". . . .

"Second: Idiots and lunatics. . . ."

Identical language is found in Tex. Elec. Code Ann. art. 5.01 (Vernon Supp. 1982).

In Tex. Att'y Gen. Op. No. 0-6112 (1944), it was held that a person who had been adjudged of unsound mind and committed to an institution for that reason was not entitled to vote.

Tex. Elec. Code Ann. art. 5.18c, subd. 2 (Vernon Supp. 1982) provides as follows:

"[T]he clerk of each county court or probate court in this State shall furnish to the registrar of voters in the county of the persons so adjudged, an abstract of each final judgment adjudging a person over the minimum voting age and resident within this State to be mentally incompetent. . . . Upon receipt of an abstract of an adjudgment of mental incompetence, the registrar shall determine if the person is a registered voter and, if so, shall cancel his registration. . . ."
(Emphasis added.)

The Mentally Retarded Persons Act of 1977 (Tex. Rev. Civ. Stat. Ann. art. 5547-300, § 2[c] [Vernon Supp. 1982]) states the public policy of the State of Texas towards the voting and other rights of the mentally retarded as follows:

"Recognizing that persons have been denied rights solely on the basis of mental retardation, the legislature seeks to educate the general public to the fact that mentally retarded persons who have not been adjudicated incompetent and for whom a guardian has not been appointed by a due process proceeding in a court of law have the same rights and responsibilities enjoyed by all citizens of Texas. The legislature urges all citizens to assist mentally retarded persons in acquiring and maintaining their rights and in participating in community life as fully as possible."
(Emphasis added.)

Moreover, the Secretary of State's office has consistently interpreted the rather archaic language of the "idiots and lunatics" prohibition as requiring an adjudication of unsound mind by a court of competent jurisdiction before a mentally retarded person's right to vote may be denied. In Tex. Admin. Code tit. 1, § 81.76(d) (1980), the Secretary of State's office promulgated a rule which stated that:

"Proceedings whose chief aim is not an inquiry into mental competence should not properly determine

the ability to vote. The constitutional prohibition runs against 'lunatics' and the use of this term must be taken to connote some serious disorder of the mind. Such a condition is not required before letters of guardianship [under the Texas Probate Code] are granted, and therefore, judgments of unsound mind received through this process are not to effect the cancellation of voting certificates."

In view of the foregoing, you are advised that a presiding election judge does not have the authority to deny an otherwise qualified and registered voter the right to vote because he is of the opinion the person seeking to vote falls within the constitutional and statutory prohibitions against "idiots and lunatics" exercising the right to vote. Only those persons who have been adjudicated mentally incompetent by a court of competent jurisdiction may legally be denied the right to vote.

SUMMARY

A person, pursuant to the prohibition on "idiots and lunatics" voting found in Article VI, Section 1, Texas Constitution, and Article 5.01, Texas Election Code, does not forfeit his right to vote unless he has been adjudicated mentally incompetent by a court of competent jurisdiction.

Sincerely,



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APPROVED:
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Election Law Opinion DAD-27

Request from Robert J. Chavez, Hidalgo, concerning right of a person to vote, in light of the prohibition against "idiots and lunatics" voting found in the Texas Constitution and the Texas Election Code.

Summary

A person, pursuant to the prohibition on "idiots and lunatics" voting found in Article VI, Section 1, Texas Constitution, and Article 5.01, Texas Election Code, does not forfeit his right to vote unless he has been adjudicated mentally incompetent by a court of competent jurisdiction.