

Election Law Opinion DAD-65

Request from Raymond O. Dennis, County Clerk of Hockley County, regarding whether a person who votes in the runoff primary election of one political party is ineligible to be the nominee of a different political party at the succeeding general election.

SUMMARY

A Republican party nominee who votes in Democratic runoff primary becomes ineligible to be a Republican candidate in the general election. Where facts which would disqualify such candidate are conclusively established by public records for which the certifying officer is the legal custodian, it is the duty of the certifying officer to recognize those facts.



OFFICE OF THE SECRETARY OF STATE

David A. Dean
Secretary of State

October 6, 1982

Elections Division
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Mr. Raymond O. Dennis
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Election Law Opinion DAD-65
Re: Whether a person who
votes in the runoff
primary election of one
political party is
ineligible to be the
nominee of a different
political party at the
succeeding general
election.

Dear Mr. Dennis:

This opinion is in response to your September 27, 1982
letter.

This official election law opinion is rendered by me as
chief election officer of the state in accordance with
V.A.T.S. Election Code, art. 1.03, subd. 1.

You asked whether a person who was nominated for a county
office in the Republican Party's general primary election
became ineligible to run as a Republican candidate in the
general election by voting in the Democratic party runoff
primary election.

V.A.T.S. Election Code, art. 13.11a states, in part:

Any person who has participated as a voter or as a candidate in either the first primary election or the runoff primary election of a political party . . . shall be ineligible to have his name printed on the ballot as the nominee of any other party for any office to be voted on at the general or special election.

The language of this statute is clear. A person who is the nominee of one party becomes ineligible to have his name printed on the general election ballot as that party's nominee if he votes in another party's primary or runoff primary election.

V.A.T.S. Election Code, art. 13.31 places upon the county clerk the duty of "[causing] the names of all the nominees to be printed on the official ballot . . . "

V.A.T.S. Election Code, art 1.05, subd. 4 states, in part, that ". . . no ineligible candidate shall ever have his name placed upon the ballot at any primary, general or special election."

V.A.T.S. Election Code, art. 1.06 proscribes issuance of a certificate of election to any person who is ineligible to hold an office. See: Election Law Opinion DAD-34.

The authority of the officials who certify candidates to determine that a candidate is ineligible has been construed by several courts. In each case, the court has held that the certifying official has no authority to look beyond the facts as they are presented in the application, except where facts that would disqualify the candidate are conclusively established by public records. *Hayes v. Harns County Democratic Executive Committee*, 563 S.W. 2d 884 (Tex. Civ. App. -- Houston [14th District] 1978); *Garcia v. Carpenter*, 525 S.W. 2d 160 (Tex. 1975). *McClelland v. Sharp*, 430 S.W. 2d 518 (Tex. Civ. App. -- Houston [14th Dist.] 1968).

Election documents on file in the county clerk's office are public records. If these records conclusively show that a candidate voted in the Democratic runoff primary after having been nominated by the Republican party in the Republican primary, the candidate would then be ineligible to be placed on the ballot as the Republican nominee.

It is the duty of the county clerk to certify only eligible candidates. You indicate that public records in your office show that the candidate in question violated article 13.11a of the Election Code, and is therefore disqualified. You

Mr. Raymond O. Dennis
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ask whether you are authorized to refrain from putting the ineligible candidate's name on the ballot. It is my opinion that when public records of which you are legal custodian conclusively establish that a candidate is disqualified, you should not certify that candidate.

SUMMARY

A Republican party nominee who votes in the Democratic runoff primary becomes ineligible to be a Republican candidate in the general election. Where facts which would disqualify such candidate are conclusively established by public records for which the certifying officer is the legal custodian, it is the duty of the certifying officer to recognize those facts.

Sincerely,



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