

OFFICE OF THE
SECRETARY OF STATE



JOHN W. FAINTER, JR.
SECRETARY OF STATE

September 6, 1983

EXECUTIVE DIVISION
P.O. Box 12697
Austin, Texas 78711
512 475-2015

Publications
P.O. Box 13824
512 475-7886

ELECTIONS DIVISION
P.O. Box 12887
512 475-3091

Appointments, Campaign
and Legislative Filings
P.O. Box 12887
512 475-2015

DATA SERVICES
P.O. Box 12887
512 475-7881

SUPPORT SERVICES
DIVISION

Financial Management
P.O. Box 12887
512 475-0271

Staff Services
P.O. Box 12887
512 475-5905

STATUTORY FILINGS
DIVISION

Corporations
P.O. Box 13697
512 475-3551

Statutory Documents
P.O. Box 12887
512 475-3091

Uniform Commercial Code
P.O. Box 13193
512 475-3457

Business Opportunities
P.O. Box 13563
512 475-1769

Notary Public
P.O. Box 12079
512 475-2703

Trademarks
P.O. Box 12887
512 475-1362

Mr. Charles F. McNabb
Office of the City Attorney
2 Civic Center Plaza
El Paso, Texas 79999

Election Law Opinion JWF-17
Re: Form of the ballot in
city charter elections.

Dear Mr. McNabb:

This opinion is issued in response to your letter of July 7, 1983.

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. 1982-1983).

In your letter, you asked if proposals drafted by the City of El Paso Charter Commission could be presented to the voters in an alternative fashion.

Specifically, you have submitted a format that provides the voters with the option of choosing one of two alternative charter provisions. As proposed, the voters would be given the following instruction:

Voters, please note, you are to make a choice between option A and option B. After reading both options, if you prefer A, vote "Yes."

That will automatically be a vote for A and against B. If you prefer B, vote "No." That will automatically be a vote against A and for B.

Tex. Rev. Civ. Stat. Ann., art. 1167 (Vernon Supp. 1982-1983) states, in part:

The charter so framed by said commission shall be submitted to the qualified voters of said city at an election . . . In preparing the charter the commission shall, as far as practicable, segregate each subject so that the voter may vote "Yes" or "No" on the same.

While the submitted format preserves the formality of voting "Yes" or "No", the reality is that the voters are not accepting or rejecting a charter provision framed by the commission, but are merely choosing one of two alternatives. The submitted format precludes a genuine "No" vote on any provision since voting "No" merely indicates the acceptance of an alternative proposition.

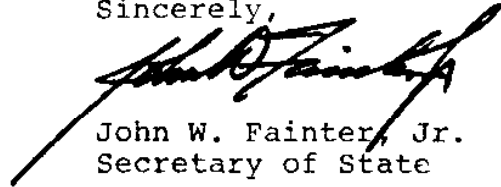
Therefore, I am of the opinion that the submission to the voters of alternative ballot propositions in the format submitted in your letter is impermissible.

Article 1167, in requiring that the voters be permitted to vote "Yes" or "No", indicates that the legislature intended to limit the voters' choice to two alternatives. The inclusion of a genuine "No" or "None of the above" alternative in the submitted format would increase the voters' choice to three alternatives. In addition, Tex. Rev. Civ. Stat. Ann., art. 1169 (Vernon 1963), provides that a proposed charter must be approved by a majority of the voters voting at the election. No provision is made for the possibility that various "Yes" options might in the aggregate receive a majority of the votes cast, but that no single "Yes" option nor the "No" option would receive a majority of the votes cast. The fact that this possibility is not provided for is indicative that the possibility was not within the contemplation of the Legislature. Therefore, it appears that even the inclusion of a true "No" or "None of the above" alternative would not cure the failure of the ballot format in question to comply with the voting scheme contemplated by arts. 1167 and 1169.

SUMMARY

The submission of alternative ballot propositions is not contemplated by Tex. Rev. Civ. Stat. Ann., art. 1167 (Vernon Supp. 1982-1983) and art. 1169 (Vernon 1963).

Sincerely,



John W. Fainter, Jr.
Secretary of State

Ward Allen White III
Counsel to the Secretary of State

Prepared by John Steiner
Assistant General Counsel
Elections Division

APPROVED:
OPINION COMMITTEE

Karen C. Gladney, Chairman
Charles E. Evans
Horace Jennings III
Rebecca L. Payne
Adela Santos
John Steiner
Sharon Talley