

Election Law Opinion JWF-31

Request from Stuart Lewis, Bryan, Texas, regarding the determination of a majority of the votes cast in an election.

SUMMARY

Neither unpunched ballots, upon which no choice has been indicated, nor over-voted ballots, which do not legally reflect the choice of a voter, are to be computed in determining a majority of the votes cast in an election.

OFFICE OF THE
SECRETARY OF STATE



JOHN W. FAINTER, JR.
SECRETARY OF STATE

March 15, 1984

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Mr. Stuart Lewis
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Election Law Opinion JWF-31
Re: The determination of a
majority of the votes
cast in an election.

Dear Mr. Lewis:

This is in response to your letter of March 14, 1984 concerning the determination of a majority of the votes cast in a special election to fill a vacancy in the legislature. In your letter you asked whether punch card ballots which indicated two punches or ballots which were not punched at all should be included among the total number of votes cast in determining a majority, or for any other purpose.

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).

The question you have presented was considered by a Texas court in the case of Wooley v. Sterrett 387 S.W.2d 734 (Tex. Civ. App.--Dallas 1965).

The court in Wooley v. Sterrett, interpreting statutory language requiring "a majority of such voters, voting at such election" held as follows:

We do not believe that it is, or should be, the law in Texas that blank ballots, or ballots that do not legally register the will of the voter, should be computed in determining a majority. The statutory provision that

a determination of the issue must be by a majority of the "votes cast at the election" surely means the majority of votes "legally" cast and reflecting the free exercise of choice by the voters. . . . Reason and common sense dictate that the verb "vote" carries with it the implication of affirmative choice by action. The word "vote" cannot be equated with total failure of choice. Id. at 740.

The Texas Election Code Annotated art. 4.12, subd. 1 (Vernon Supp. 1984) provides, in part, as follows:

Whenever there is a special election in any representative or senatorial district in this state for the election of any member of the Legislature, a majority vote of the electors participating in the election shall be necessary for election. If no candidate receives a majority of the votes cast at the first election, the Governor shall, within five days after the results of the election are officially declared, call a second election. . . .

Therefore, the statute governing a special election to fill a vacancy in the legislature requires that a candidate receive "a majority vote of the electors participating in the election" and requires a runoff election to be held when no candidate receives "a majority of the votes cast." Apparently, the legislature regarded the two phrases quoted above as synonymous.

The Texas Election Code provides that when punch card ballots are used in an election for officers, the following instruction note shall be printed on each ballot: "Vote for the candidate of your choice in each race by placing a punch hole in the space provided adjacent to the name of that candidate." Tex. Elec. Code Ann. art. 7.15, subd. 11(d)(1) (Vernon Supp. 1984). Therefore, a voter indicates a choice on a punch card ballot by placing a punch hole in the ballot in the proper space.

The Texas Election Code Annotated art. 8.21 (Vernon 1967) provides in part, as follows:

If the names of two (2) or more persons are upon a ballot for the same office, when but one person is to be elected to that office, such ballot shall not be counted for either of such persons.

Mr. Stuart Lewis
Page 3

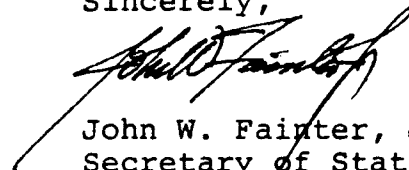
Therefore, a punch card ballot in which punch holes have been placed in the spaces indicated for two candidates for an office, when only one candidate is to be elected to that office, may not be legally counted for either candidate.

Therefore, neither unpunched ballots, upon which no choice has been indicated, nor double voted ballots, which do not legally reflect the choice of a voter, are to be computed in determining a majority of the votes cast in an election.

SUMMARY

Neither unpunched ballots, upon which no choice has been indicated, nor over-voted ballots, which do not legally reflect the choice of a voter, are to be computed in determining a majority of the votes cast in an election.

Sincerely,



John W. Fainter, Jr.
Secretary of State

Ward Allen White III
General Counsel

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