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Ms. Conny Drake
Elections Administrator
Dallas County
500 Main Street
Dallas, Texas 75202

Election Law Opinion JWF-19
Re: Authority of Dallas
County to charge political
parties for certain
punch-card system related
equipment and services to
be provided by the county
for use in party pri-
maries.

Dear Ms. Drake:

This is in answer to your letter of July 12, 1983 in which you asked several questions concerning the authority of Dallas County to charge political parties for certain punch-card related equipment and services provided to political parties for use during their primaries.

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).

Specifically, you asked the following:

1. Is it permissible for Dallas County to charge the political parties a lease fee for precinct ballot counters (PBCs) which tabulate the vote at the precinct level?

2. May programming charges for the PBCs (a cost which fluctuates between \$15-\$25 per PBC depending on the length of the ballot) be passed on to the political parties? PBC programming is a distinctively separated function from PBC preparation (which involves a pre and post-testing of the equipment to assure accurate count) and equipment maintenance, which the county will provide at no charge as per Article 13.08 (f).
3. May expenses of operating the central counting station (i.e. personnel overtime, part-time help hired solely to work at the central counting station and cost of supplies) be charged to the political parties?
4. May any of the expenses of absentee voting (ballots, printing, postage for absentee mail ballots, and/or part-time help) for absentee voting be charged to the political parties?

In your first question, you asked whether Dallas County may charge a lease fee to political parties for use of precinct ballot counters which tabulate the punch card ballots at the precinct level. Tex. Elec. Code Ann. art. 13.08 (f) (Vernon Supp. 1982-1983), as amended by House Bill 1293, 68th Leg. (1983), provides in pertinent part:

In each county in which voting machines or an electronic voting system has been adopted, the county commissioners court shall permit the county-owned voting machines or voting equipment to be used for the primary elections, including the conduct of absentee voting for the elections, at a charge for use at each election not exceeding \$16 per unit for voting machines adopted under Art. 7.14, and not exceeding \$5 per unit for voting equipment adopted under Art. 7.15; provided, however, that the county commissioners court shall not be required to provide voting machines or equipment for use in any election precinct in which fewer than 100 votes were cast in the preceding first or general primary or runoff primary election. The maximum amount fixed in this subsection includes the lease price for the use of the unit, and also the charge for its preparation and maintenance if the county provides these services. (Emphasis added).

Although precinct ballot counters have been certified for use in the State of Texas pursuant to the provisions of Tex. Elec. Code Ann. art. 7.17a (Vernon Supp. 1982-1983) rather

than under art. 7.15, Dallas County has adopted the use of precinct ballot counters in conjunction with the use of punch-card ballot voting devices at the precinct level. It is my opinion that once precinct ballot counters have been adopted for use with punch-card ballot voting devices, a precinct ballot counter constitutes an integral part of the punch-card voting device adopted under art. 7.15 and, thus, both are to be viewed as one unit for purposes of art. 13.08 (f). Accordingly, Dallas County may not charge political parties a separate lease fee for use of the precinct ballot counters during the primaries, but may only charge a single five dollar (\$5) leasing fee for use of each punch-card voting device since each device, with the precinct ballot counter, constitutes one unit of voting equipment. This is true even though one precinct ballot counter may be used in conjunction with several punch-card voting devices.

You asked, in your second question, whether Dallas County may assess the programming charges for the precinct ballot counters against the political parties. Article 13.08(f), as amended, provides that the five dollar (\$5) charge which may be assessed to political parties for each voting unit provided to them includes the cost of preparation of the voting devices. Programming the precinct ballot counters would appear to be an activity that is necessary before each election in which the devices will be used, given the fact that the format of the punch-card ballot changes at each election. Thus, it is a necessary part of the preparation of the punch-card ballot voting unit for the precinct ballot counters to be programmed to accommodate the change in punch-card ballot format for an upcoming election. Programming, therefore, is an expense that may not be charged to the political parties since the programming function is an essential part of the preparation of the punch-card ballot voting unit.

Additionally, you asked whether the costs incurred by the county to operate the central counting station during primaries (i.e. personnel overtime, part-time help hired to work at the counting station and supplies) may be charged to the political parties. Article 13.08(f) further provides, in relevant part:

Where voting is by an electronic voting system, the county may not charge for use of county-owned automatic tabulating equipment at the central counting station; but all actual expenditures incidental and necessary to operation of the central counting station in counting the ballots are payable out of the primary fund. (Emphasis added.)

The costs incurred by the county in paying the central counting station personnel, hiring part-time personnel and paying for the supplies to be used at the central counting station are the types of costs that may be assessed to the political parties during primaries as incidental and necessary costs for the operation of the central counting station. Concurrently, the county chairman of the political parties may request reimbursement from the Primary Fund for the above-mentioned costs pursuant to art. 13.08 (f). Dallas County may, therefore, receive reimbursement for the costs incident to the employment of personnel and the acquisition of supplies for the central counting station during the primaries.

Your final question asked whether any of the expenses incurred in conducting absentee voting during the primaries are the responsibility of the political parties. Tex. Elec. Code Ann. art. 13.08(g) provides:

All expenses of the county clerk in conducting absentee voting in the primary elections, including the employment of additional deputies where necessary, shall be paid by the county. A county is not entitled to reimbursement for any expenditure of county funds in connection with absentee voting or any other services rendered by the county clerk in the primary elections, except for voting machines and/or punch card units used in conducting the absentee voting or any other services for which reimbursement is specifically authorized by law. (Emphasis added.)

Tex. Elec. Code Ann. art. 5.05, subd. 2b provides in pertinent part:

Before the beginning of the period for absentee voting, the authority charged with the duty of furnishing the supplies for the election shall furnish to the clerk a supply of official ballots for use in absentee voting. . . . (Emphasis added.)

Tex. Elec. Code Ann. art. 13.19 provides, in relevant part:

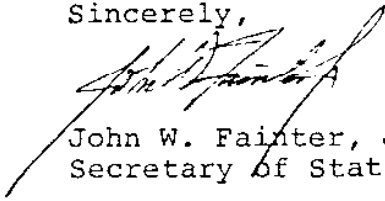
The executive committee shall have a general supervision of the primary in such county and shall be charged with the full responsibility for the distribution to the presiding judge of all supplies . . .

Thus, under art. 13.19 the executive committee of a political party holding a primary has responsibility to furnish supplies for the election. Pursuant to art. 5.05, subd. 2b, therefore, the executive committee must furnish ballots to the absentee voting clerk. Accordingly, if the county furnishes the ballots for absentee voting, the requirement in art. 13.08(g) is met that there be specific authorization in the law before the county clerk/elections administrator may be reimbursed for any cost incurred in conducting absentee voting during the primary. The costs of furnishing absentee ballots for the primaries may, therefore, be charged to the executive committee of the political party in accordance with the specific authorization found in art. 5.05, subd. 2b. All other costs incidental to the conduct of absentee voting during the primaries must be borne by the county.

SUMMARY

1. A county may not charge political parties a lease fee for the use of precinct ballot counters during the primary.
2. A county may not assess a fee to political parties for the costs of programming precinct ballot counters to be used during the primaries.
3. A county may charge political parties for the costs incurred in employing personnel and acquiring supplies for the central counting station during the primaries.
4. The executive committee of a political party holding a primary election has a responsibility to furnish supplies for the election, including ballots for absentee voting. Accordingly, a county may charge political parties for the costs incurred in printing absentee ballots for use during the primaries, however, all other costs incidental to the conduct of absentee voting must be borne by the county.

Sincerely,



John W. Fainter, Jr.
Secretary of State

Ward Allen White III
Counsel to the Secretary of State

Ms. Conny Drake
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