



THE ATTORNEY GENERAL
OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

August 25, 1952

Overruled by S-202
When conflicts

Hon. Alwin E. Pape
County Attorney
Guadalupe County
Seguin, Texas

Opinion No. V-1509

Re: Statements of campaign contributions and expenses required to be filed by independent candidates in general elections.

Dear Sir:

You have requested an opinion as to whether independent candidates whose names are placed on the general election ballot in accordance with Sections 227-230 of the Texas Election Code (V.C.S. Election Code, Arts. 13.50-13.53) must comply with the provisions of Chapter 14 of the Election Code (Secs. 237-246; V.C.S. Election Code, Arts. 14.01-14.10) relating to campaign expenditures. You ask specifically:

"Does each candidate for office in the independent column of the ballot at a general election have to file all the sworn expense accounts and reports of contributions, or file only one, after the general election and within ten days thereafter?"

Chapter 14, Title 50, Revised Civil Statutes of 1925, entitled "Limiting Campaign Expenditures" (Arts. 3168-3173, V.C.S.) applied only to candidates in primary elections. Article 3168 defined a candidate as "any person who has announced to any other person or to the public that he is a candidate for the nomination for any office which the laws of this State require to be determined by a primary election." Article 3172 required "each candidate for nomination in a primary election" to keep a record of moneys received or disbursed for campaign purposes and to file statements of these receipts and disbursements at stated intervals before and after the primary. Other provisions of these statutes make it quite clear that they included only candidates in primary elections and did not extend to campaign expenditures incurred after nomination in a primary. The only requirement placed upon candidates in the general election in regard to campaign expenditures was found in Article 252, Vernon's Penal Code, as follows:

"Any candidate for any public office, whether elected or not, who fails to file with the county judge of his county within ten days after the date of a general election an itemized statement of all money or things of value paid or promised by him before or during his candidacy for such office, including his traveling expenses, hotel bills and money paid to newspapers, and make an affidavit to the correctness of such account, showing to whom paid or promised, shall be fined not less than two hundred nor more than five hundred dollars."

With the adoption of the Election Code the Legislature rewrote the campaign expenditure provisions of Chapter 14, Title 50 so as to make them applicable to general and special elections as well as primary elections. In place of the definition of "candidate" quoted above, Section 237 of the Election Code now provides:

"The word 'candidate' shall mean any person who has announced to any other person or to the public that he is a candidate for the nomination for or the election to any office which the laws of this State require to be determined by an election. . . . The term 'campaign expenditure' as hereinafter used shall include any gift, loan, or payment of money or other valuable thing or promise to give, lend, or pay money or other valuable thing, for the purpose of furthering or opposing the candidacy of any person for nomination for or election to any county, district, or state office."

Changes in the wording of other sections in this chapter conform to the inclusion of general and special elections within its terms. Subdivision (f) of Section 244 (formerly Article 3172) now provides that each candidate must file sworn statements of receipts and expenditures "at intervals of twenty (20) days beginning sixty (60) days next preceding the date of any election in which the candidate's name appears on the ballot . . ." Subdivision (d) provides that "any such statement filed by a candidate in a special or general election must include all items not reported in statements filed in previous elections preceding such special or general election." The affidavit form set

out in subdivision (f) further shows that candidates whose names appear on a general or special election ballot now must file the statements required by this section.

The times at which statements must be filed are set out in subdivisions (b) and (c) of Section 244, as follows:

"(b) Each candidate is hereby required to file sworn statements of all gifts and loans previously received and of all gifts, loans, and payments made and all debts incurred. Such sworn statements shall and must be filed at intervals of twenty (20) days beginning sixty (60) days next preceding the date of any election in which the candidate's name appears on the ballot, provided, however, that a sworn statement shall be filed not more than five (5) nor less than two (2) days prior to the date of the election in which the candidate's name appears on the ballot. Provided, further, that there shall be filed a sworn statement not more than twenty (20) nor less than fifteen (15) days next preceding the second or run-off primary election and there shall be filed a second sworn statement not more than five (5) nor less than two (2) days next preceding the second or run-off primary election in which the candidate's name appears on the ballot. Such sworn statement shall also include an estimate of the additional amount that the candidate will expend or become liable for in behalf of his candidacy from the time of the filing of the sworn statement to and including the day of the election.

"(c) Not less than ten (10) days after the election each candidate must file a sworn supplemental statement of all gifts and loans received prior to the election and of all gifts, loans, and payments made and debts incurred prior to the election not specifically included in the sworn statement filed prior to the election."

The first statement required of an independent candidate in the general election is to be filed 60 days

preceding the date of that election. Under Section 227, the application to have the name of an independent candidate placed on the ballot may be filed within 30 days after the second primary election day, so it is possible that the application will not be filed until some time after the 60th day preceding the election. However, under the definition contained in Section 237, a "candidate" means any person who has announced to any other person or to the public that he is a candidate for the office. Our construction of these statutes is that a person who, on or prior to 60 days before the general election, has announced his intention to seek election as an independent candidate should file this report, even though the application for placing his name on the ballot has not been filed. A person who has not then become a "candidate" as defined in Section 237 obviously is not required to file a statement on that date.

The post-election statement required by subdivision (c) of Section 244 is a supplemental statement of items not reported prior to the election. Under Article 252 of the Penal Code, a candidate in the general election heretofore has been required to file with the county judge within 10 days after the election a statement of all expenses incurred during his candidacy. The extension of Section 244 of the Election Code to general elections raises the question of whether candidates in a general election must still file the statement described in Article 252, V.P.C.

Article 252 of the Penal Code was not expressly repealed by the Election Code. Section 247 of the Election Code repeals "all laws and parts of laws in conflict herewith . . . in so far as such laws are in actual conflict with the provisions of this Code." It cannot be said that Article 252 is in actual conflict with Section 244, for clearly it is not impossible for a candidate to comply fully with both provisions.

Section 2 of the bill by which the Election Code was enacted (H.B. 6, Acts 52nd Leg., 1951, ch. 492) reads:

"That all elections and all laws relating to suffrage and parties, as found in Title 50 of the Revised Civil Statutes of Texas of 1925, and all amendments thereto, be and the same are hereby repealed, provided, however, that nothing in this Act

shall be construed as repealing or in any way affecting the legality of any penal provision of the existing law; and this Act shall be construed to be an independent Act of the Legislature enacted under the caption hereof, and the Sections contained in this Act, as revised, rewritten, changed, combined and codified shall be the governing law of this State."

The extent to which these provisions alter the ordinary rules of statutory construction is not clearly ascertainable. We believe this section means simply that a provision in the Penal Code is not repealed unless some provision of the Election Code, construed as an independent act of the Legislature, would repeal it by implication. It is a recognized rule of statutory construction that where the Legislature has enacted a statute which was intended to embrace the entire subject matter, prior statutes on the same subject are repealed by implication. Motor Inv. Co. v. City of Hamlin, 142 Tex. 486, 179 S.W.2d 278 (1944); Meek v. Wheeler County, 125 S.W.2d 331 (Tex. Civ. App. 1939), affirmed, 135 Tex. 454, 144 S.W.2d 885; 39 Tex. Jur., Statutes, § 80. In view of the completeness with which Section 244 prescribes the statements which a candidate in the general election must file, we are inclined to the view that the Legislature intended Section 244 to be a complete enactment covering the entire field of campaign expense reports. However, because of our uncertainty that this view would be sustained by the courts, it is our advice that candidates, in order to be sure of compliance with statutory requirements, also file the statement described in Article 252 of the Penal Code.

SUMMARY

An independent candidate in the general election nominated in accordance with Sections 227-230, Texas Election Code (V.C.S. Election Code, Arts. 13.50-13.53) must file the statements of campaign receipts and expenditures required by Section 244 of the

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Election Code (V.C.S. Election Code, Art.
14.08).

APPROVED:

Yours very truly,

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