



THE ATTORNEY GENERAL
OF TEXAS

AUSTIN 11, TEXAS

WAGGONER CARR
ATTORNEY GENERAL

May 21, 1965

Honorable James E. Barlow
Criminal District Attorney
Bexar County
San Antonio, Texas

Opinion No. C-445

Re: Whether the failure of a candidate for office to file the expense reports required by the Election Code constitutes a criminal offense.

Dear Mr. Barlow:

In your letter requesting an opinion of this office, you ask the following question:

"Does the total failure of a candidate to file the expense reports required by the Election Code constitute a criminal offense?"

Article 14.08 of the Election Code, Vernon's Civil Statutes, requires that candidates file sworn statements with regard to their gifts, loans, expenses, debts, etc.; and Section (g) of that Article provides:

"(g) If any candidate fails to file such sworn statement at the time provided herein or swears falsely therein, he shall be subject upon conviction to a fine not less than One Hundred Dollars (\$100) nor more than Five Thousand Dollars (\$5,000), or be imprisoned in the penitentiary not less than one (1) nor more than five (5) years, or be both so fined and imprisoned."

The caption of the legislation enacting the Election Code reads:

"AN ACT to adopt and establish an election code for the State of Texas, to revise and recodify Title 50 of the Revised Civil Statutes of 1925 of Texas, and all amendments thereto, to repeal all Acts in conflict herewith, 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 further provided that nothing in this Act shall in any

wise alter, amend, or repeal House Bill No. 43, Acts, Regular Session, Fifty-second Legislature; providing a saving clause; providing an appropriation; providing the effective date; and declaring an emergency."

In Ex Parte Meyer, 357 S.W.2d 754 (Tex.Crim. 1962), the above penal provision of the Election Code was declared invalid due to the fact that the caption gave no notice that penal provisions were to be found in the Act. The Court cites Article 3, Section 35 of the Texas Constitution which prohibits the inclusion in a bill of any subject not expressed in the title.

We are unable to find any other statutory authority whereby the failure of a candidate to file expense reports would constitute a criminal offense, as Articles 252 and 262-269, Vernon's Penal Code were repealed by the Acts of 1959, 34, Chapter 22, Section 1.

SUMMARY

The total failure of a candidate to file the expense reports required by the Election Code does not constitute a criminal offense. Ex Parte Meyer, 357 S.W.2d 754 (Tex.Crim. 1962).

Yours very truly,

WAGGONER CARR
Attorney General of Texas

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BSC/lh
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