



**THE ATTORNEY GENERAL
OF TEXAS**

**CRAWFORD C. MARTIN
ATTORNEY GENERAL**

AUSTIN, TEXAS 78711

October 11, 1967

Honorable John L. Hill
Secretary of State
State of Texas
Austin, Texas

Opinion No. M-145

Re: Whether under the Texas Election Code a County Tax Assessor-Collector, acting in his capacity as the registrar of voters in his county, is authorized to accept applications for voter registration certificates mailed or delivered to him by someone other than the applicants themselves or the husband, wife, father, mother, son or daughter of an applicant.

Dear Mr. Hill:

In a recent letter to this office you requested our opinion in regard to the above referenced matter. We quote from your letter as follows:

"The Tax Assessor-Collector of Hidalgo County has asked me to request a ruling on whether the Assessor-Collector, as the registrar of voters in his county, is authorized to accept applications for voter registration certificates which are mailed to him in a group, indicating that they were mailed by someone other than the applicants themselves. A second question, which is an extension of the first, is whether the Assessor-Collector is authorized to accept applications which are brought to his office in a group for delivery in person.

"It is my understanding that the pertinent statute, Article 5.13a of the Texas Election Code, has been given different

interpretations by the various Assessor-Collectors of the State. I am requesting a ruling by your office in pursuance of the responsibility placed upon me by the 1967 amendment to Article 1.03 of the Election Code to obtain and maintain uniformity in the application, operation and interpretation of the election laws."

Vernon's Civil Statutes, Election Code, Article 5.13a, provides as follows:

"(1) A person may apply for registration in person or by mail as provided herein. When an applicant for registration applies in person, he shall furnish the registrar the necessary information to enable the registrar to fill out the blanks in the registration certificate, and the registrar shall immediately make out and deliver a registration certificate to the applicant, if he is entitled to register. An application made by mail must be made upon forms prescribed by the registrar and upon which forms the applicant shall supply the information necessary for registration as prescribed in Section 47a of this Code. The application form shall contain the following statement: 'I understand the giving of false information to procure the registration of a voter is a felony.' The application shall be signed by the applicant or his agent.

"When a properly executed application is received by the registrar, the registrar shall make out a registration certificate and shall mail the registration certificate to the voter for whom it is issued at his permanent address; or, if the applicant is temporarily residing outside the county and requests that the certificate be mailed to the temporary address, the registrar shall mail it to the temporary address; or the registrar shall hold the certificate to be delivered to the applicant in person. The application shall be deemed to have been placed in the mail on or before the last day of the registration period, as

shown by the postmark on the envelope, and was delivered to the registrar on or before the fifth day following the close of the registration period. Within the meaning of this Section, the application is delivered when it is actually placed into the possession of the registrar or his duly authorized agent by a post office employee, or is deposited into the registrar's mail box, or is left at the usual place of delivery for the registrar's official mail.

"The registrar shall file and preserve all applications received by mail for a period of two years.

"(2) The husband, wife, father, mother, son, or daughter of a person entitled to register may act as agent for such person in applying for registration, without the necessity of written authorization therefor, may sign for the applicant when application is by mail, and may receive the registration certificate. However, none of the above may act as agent unless he is a qualified elector of the county. No person other than those mentioned in this subsection may act as agent for a person in applying for registration.

"Except as herein permitted, a person who willfully acts as agent for another in applying for registration or in obtaining a registration certificate is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than Fifty Dollars (\$50) nor more than Five Hundred Dollars (\$500).

"(2a) Nothing in this Section shall be construed to prevent the registrar or a deputy from rendering aid to an applicant who is physically unable to complete the application or to an applicant who requires assistance in completing the application by reason of his inability to read and write the English language.

"(3) A registrar of voters who knowingly

issues a registration certificate to a person other than the applicant or his lawful agent, or who knowingly mails or delivers a registration certificate to a person other than the applicant or his lawful agent, is guilty of a misdemeanor and upon conviction shall be immediately removed from office and fined not less than One Hundred Dollars (\$100) nor more than One Thousand Dollars (\$1,000)."

This statute, enacted in 1966 after payment of the poll tax as a requirement for voting had been declared invalid, was an adaptation of the pre-existing statute on modes for payment of the poll tax. As last amended in 1963, that statute (Article 5.11 of the Election Code) read as follows:

"The poll tax must be paid by the taxpayer in person or by a remittance of the amount of the tax through the United States mail to the county tax collector, accompanying the remittance with a statement in writing, signed by the taxpayer, showing all the information necessary to enable the tax collector to fill out the blank form of the poll tax receipt. When payment is made by mail, the tax collector shall mail the receipt to the taxpayer at the taxpayer's permanent address, or, if requested to do so by the taxpayer at such other address as the taxpayer directs, or shall hold the receipt to be delivered to the taxpayer in person. The husband or wife, father, mother, son, or daughter of a taxpayer may pay the tax for the taxpayer in either of the modes herein authorized, and may sign for the taxpayer when payment is by mail, and may receive the poll tax receipt issued to the taxpayer. Except as herein permitted, it shall be unlawful for any person to pay the poll tax of another or to act as agent for another in payment of the tax. It shall be unlawful for the tax collector to mail or deliver a poll tax receipt to any person other than the taxpayer or a person lawfully acting in his behalf in the payment of the tax.

"The tax collector may at such

places as shall in his discretion be necessary or advisable, have a duly authorized and sworn deputy for the purpose of accepting poll taxes and giving receipts therefor, and issuing exemption certificates."

The authorized modes are (1) application in person by the voter or by someone within the classes of relatives permitted to act as the voter's agent, and (2) written application by mail, signed either by the voter or by an authorized relative. Subsection (2) of Article 5.13a, quoted above, makes it a misdemeanor for a person not authorized by the statute to willfully act as the agent for another person in applying for registration or in obtaining a registration certificate. We cannot find any basis in the language of the present statute or of its immediate precursor for sanctioning either personal delivery or delivery by mailing of an application to the registrar by some third person not within the classes of persons who may act as agent. It would be unreasonable to give a construction to the statute which allowed third persons to collect bundles of applications and mail them to the registrar while not allowing them to deliver the bundles in person, since personal delivery by the intermediary would provide more safeguards against fraud and abuse than would mailing. The statute very plainly does not authorize personal delivery by third persons. We think this is a clear indication that the Legislature did not intend to permit an applicant for registration to turn over his application to a third person for mailing to the registrar. The right to vote is a personal right which accrues to a person on an individual basis and, therefore, the act of qualifying to exercise the voting right by registration is logically an act which must be personally and individually performed except as this rule is clearly modified by law. Article 5.13a specifically allows certain members of the immediate family of an applicant for registration to act as the applicant's agent. It is our opinion that the present statute wherein it says, "a person may apply for registration in person or by mail as provided herein" will permit of no construction save that the applicant must personally and individually deliver his application for registration into the hands of the registrar or must personally and individually deliver his application into the custody of the United States mails. The members of the applicant's family enumerated in the statute may perform one of these functions for the applicant. The registrar is under no duty to accept any application, either in single or multiple numbers, which is delivered or mailed to him by a person other than the applicant or a person who is specifically authorized by statute to act as the applicant's agent.

In construing the Texas Election Code, whether or not considered ambiguous, we are at liberty to make use of construction aids as set out in Sec. 3.03 of the Code Construction Act, Acts 60th Legislature 1967, Regular Session, chapter 455, page 1036.

The background history of Article 5.13a, and particularly the change made in the predecessor statute in 1963, sheds light on the legislative intent in regard to application by mail.

Under the Terrell Election Law of 1905, the poll tax of a person not living in a city of 10,000 or more inhabitants could be paid either "by him in person or by someone duly authorized by him in writing to pay the same." The tax of a person living in a city of 10,000 or more had to be paid in person, except that it could be paid "through an agent authorized by him in writing" if he was going to be absent from the county during the entire period for paying the tax (October through January). Neither the taxpayer himself nor his agent could pay the tax through the mail.

In 1921, with the advent of woman suffrage, the law was changed to permit the husband or the wife to pay the poll tax of the other.

In 1929, a provision was added to permit a property taxpayer residing either within or without a city of 10,000 who had a poll tax assessed against him to pay the poll tax by mail along with the property tax if he was paying his property tax by mail. An amendment in 1941 extended the authorization for payment by mail to any person owing the poll tax, whether liable for a property tax or not.

The Election Code in 1951 continued the blanket authorization for payment either in person or by mail for all persons subject to the poll tax, and also extended to residents of cities of 10,000 or more the unconditional authorization for payment through an agent which had theretofore been accorded only to persons not living in cities of 10,000 or more. As enacted in 1951, Article 5.11 of the Election Code read:

"The poll tax must either be paid in person or by someone duly authorized by the taxpayer in writing to pay the same, and to furnish the Collector the information necessary to fill out the blanks in the poll tax receipt. Such authority and information must be signed by the party who owes the poll tax, and must be deposited with the Tax Collector and filed and preserved by him. A taxpayer

may pay his poll tax by a remittance of the amount of the tax through the United States mail to the County Tax Collector, accompanying said remittance with a statement in writing showing all the information necessary to enable the Tax Collector to fill out the blank form of the poll tax receipt, which statement must be signed by the party who owes the poll tax under oath, but the husband may sign for the wife and in like manner the wife may sign for the husband,
. . . ."

The law remained in this form without material change until 1963. Under the authorization for payment of the poll tax through an agent, it became common practice in voter registration drives for persons acting in behalf of civic or political organizations and groups to solicit and obtain applications from numerous voters in bulk quantities. Sometimes the agents delivered the applications to the tax collector in person, and sometimes they mailed them to the tax collector. The method of delivery and the number mailed or delivered at one time were unimportant; the distinctive characteristic of the agency arrangement was that the agent obtained intermediate possession of the application between the voter and the tax collector. In actual practice, the most common form of agency occurred in instances where an individual or a group, acting in a solicitation role, obtained and transmitted multiple numbers of applications to the tax collector at one time.

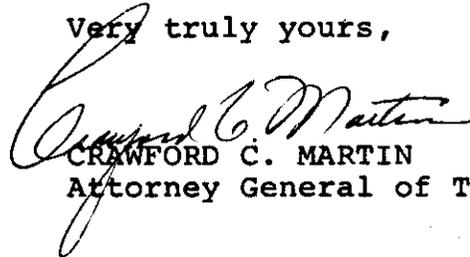
In 1963 the Legislature amended the statute to eliminate registration through an agent, except through a spouse, a parent, or a child of the voter. This change in the law must be taken as legislative disapproval of the agency system, which as we have said, was characterized mainly by a third person's intermediate possession of the voter's application for registration. We believe this was the very thing that the Legislature was seeking to eliminate by the amendment. To construe the amended law as permitting essentially the same arrangement does violence to the apparent legislative intent in making the change. In fact, a system which would permit third persons to take possession of the applications under the present statute would not only continue the features of the former agency system which the Legislature evidently found to be objectionable, but in many instances would remove one of the safeguards of the former system--revelation of the identity of the intermediary.

Honorable John L. Hill, page 8 (M-145)

S U M M A R Y

A County Tax Assessor-Collector is not authorized to accept applications for voter registration certificates mailed or delivered to him by someone other than the applicants themselves or the husband, wife, father, mother, son or daughter of an applicant.

Very truly yours,


CRAWFORD C. MARTIN
Attorney General of Texas

Prepared by Lewis E. Berry Jr.
Assistant Attorney General

APPROVED:
OPINION COMMITTEE

Hawthorne Phillips, Chairman
Kerns Taylor, Co-Chairman
W. V. Geppert
John Grace
John Reeves
Harold Kennedy

A. J. CARUBBI, JR.
Staff Legal Assistant