



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

Honorable Ernestine V. Glossbrenner
Chairman
Committee on Elections
Texas House of Representatives
P. O. Box 2910
Austin, Texas 78768

Dear Representative Glossbrenner:

Because of the tremendous increase in the volume of requests for opinions and open records decisions, we are responding to your request with the enclosed Letter Opinion or Open Records Ruling. A Letter Opinion or Open Records Ruling has the same force and effect as a formal Attorney General Opinion or Open Records Decision, and represents the opinion of the Attorney General unless and until it is modified or overruled by a subsequent Letter Opinion or Open Records Ruling, a formal Attorney General Opinion or Open Records Decision, or a decision of a court of record.

Very truly yours,

A handwritten signature in cursive script that reads "Jim Mattox".

J I M M A T T O X
Attorney General of Texas

JAM/er
Enclosure



**THE ATTORNEY GENERAL
OF TEXAS**

October 18, 1988

**JIM MATTOX
ATTORNEY GENERAL**

Honorable Ernestine V. Glossbrenner
Chairman
Committee on Elections
Texas House of Representatives
P. O. Box 2910
Austin, Texas 78769

LO-88-119

Dear Representative Glossbrenner:

You ask several questions about the primary election procedures followed in Grimes County in the March 1988 primary election. We will address only the specific legal issues that your questions raise.

You first ask about a candidate whose application lacked the nepotism statement required by Section 141.031 (4) (L) of the Election Code.

The first issue is whether such a candidate is "ineligible." Such a candidate is not "ineligible." Rather, the candidate's application is defective as to form and content. Sec. 141.032 (a). The next issue is whether a candidate whose application is defective should have his name placed on the ballot. The candidate's name should not have been placed on the ballot. Sec. 141.032(e).

The next issue is whether the name of a candidate whose application is insufficient may be left on the ballot if an erroneous determination was made to put the name on the ballot. The Election Code anticipates the possibility that an initial determination of an application being in compliance as to form and content may be followed by a subsequent determination of noncompliance. Sec. 141.032(d). If a determination is made that a candidate's application is defective is made after the ballots have already been printed, section 52.006 prescribes the procedures for correcting the ballots.

The final issue is whether a candidate whose name is left on the ballot despite the insufficiency of the candidate's application may become the nominee of the party.

The Election Code prescribes a period after which an application is no longer subject to challenge as to form and content. Section 141.034 of the code prohibits the challenge of an application as to form and content after the day before the beginning of absentee voting by personal appearance for the election for which the application is made. This restriction indicates an intent on the part of the legislature that all questions as to form be addressed and resolved before actual voting begins. In our opinion, once the voters have cast ballots for a candidate, the insufficiency of the candidate's application is mooted. Unlike an "ineligible" candidate who remains subject to removal, the statutes provide no post-election remedy for the disqualification of a candidate nominated or elected on the basis of an insufficient application.

Very truly yours,



Karen C. Gladney
Assistant Attorney General
Opinion Committee

APPROVED: Sarah Woelk, Chief
Letter Opinion Section

RG/KG/er

Ref.: ID# 4208
RQ-1521