

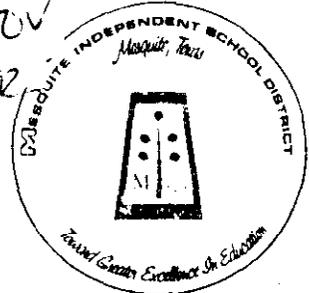
**MESQUITE INDEPENDENT SCHOOL DISTRICT**  
405 East Davis, Mesquite, Texas 75149

**JOHN HORN, Ed.D.**  
Superintendent of Schools

April 20, 1992

Ms. Madeleine Johnson  
Chief of The Opinion Committee  
P. O. Box 12548  
Austin, Texas 78711-2548

ID # 15800  
JH-CTV  
P.m. 4/20/92



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Opinion Committee

Re: Request for Opinion of Attorney General with regard to whether Sections 61.007(a)(3) and 81.002 Texas Election Code Prohibit Disclosure of Absentee Voting Roster in Response to Request For Disclosure of Such Information Under Art. 6252-17a V.A.T.S.

Dear Ms. Johnson:

Mesquite Independent School District (M.I.S.D.) hereby requests your opinion as to whether absentee voting rosters are deemed confidential by law under Art. 6252-17a, Section 3(a)(1) Vernon's Annotated Texas Statutes until the polls have closed or the last voter has voted, whichever is later.

History

M.I.S.D. is presently in the process of conducting absentee voting for its school trustee election to be held May 2, 1992.

Request For Information

Anna Foster, one of the candidates for the position of school trustee, has made a request under Art. 6252-17a Revised Civil Statutes of Texas to inspect and copy the roster of persons who have voted absentee to date.

Comments Concerning Why M.I.S.D. Believes the Roster of Persons Who Have Voted Absentee to Date is Confidential

1. Art. 6252-17a, Sec. 3(a)(1) Vernon's Annotated Texas Statutes excludes from public information available to the public information deemed confidential by law.
2. Art. 6252-17a, Sec. 10 Vernon's Annotated Texas Statutes makes disclosure of information deemed confidential under the act a crime.

CONFIDENTIAL

Ms. Madeleine Johnson  
April 20, 1992  
Page Two

3. Section 81.002 Texas Election Code provides that the other titles of the Election Code apply to early voting except provisions which are inconsistent with the title concerning early voting or that cannot feasibly be applied to early voting.
4. Title 6 of the Election Code deals with "Conduct of Elections." Chapter 61 of Title 6 of the Election Code deals with "Conduct of Voting Generally."

Specifically, Sec. 61.007 Texas Election Code states:

- (a) An election officer, watcher, or other person serving at a polling place in an official capacity commits an offense if, before the polls close or the last voter has voted, whichever is later, the officer, watcher, or other person reveals:
  - (4) the names of persons who have or have not voted in the election.

Section 61.007(b) makes disclosure of the names of the persons who have or have not voted in the election a Class C misdemeanor.

5. Section 1.003 Texas Election Code provides that the Texas Code Construction Act (Section 311.001 et. seq. Texas Code Construction Act) applies to the construction of each provision of the Election Code.
6. Section 311.021 Texas Code Construction Act provides that in enacting a statute, it is presumed that: the entire statute is intended to be effective; a just and reasonable result is intended; and, public interest is favored over any private interest.
7. The provisions of Section 61.007 Texas Election Code do not appear to be inconsistent with the provisions of the Code regarding early voting.
8. Section 311.021(3) Texas Code Construction Act declares that it is presumed that a just and reasonable result is intended. If it is improper to disclose the names of persons who have or have not voted on election day, it would appear unjust and unreasonable to allow disclosure

Madeleine Johnson  
April 20, 1992  
Page Three

of the names of persons who have or have not voted merely because they have availed themselves of the early voting provisions of the Election Code. The drawing of such a distinction would especially seem ill-advised in light of the relaxation of eligibility criteria for early voting. To allow disclosure of the early voting roster prior to cessation of early voting will permit candidates to "chase the voter to his home." This type of invasion of privacy will have a chilling effect upon the public's willingness to exercise their right to avail themselves of the early voting provisions of the Election Code; and, will counteract the purpose of changing the early voting provisions of the Election Code -- i.e. to make it easier for and encourage citizens to exercise their Constitutional Right to vote.

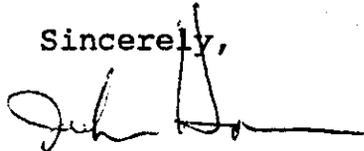
9. Sections 61.007 and 81.002 Texas Election Code appear to create a right of privacy in favor of persons voting in an election until conclusion of the election.

Enclosure of Requested Documents

Enclosed with the request in a sealed envelope are the rosters of persons voting absentee in the election through the time of mailing this request for opinion.

Thank you for your prompt reply to this request.

Sincerely,



Dr. John Horn, Superintendent  
Mesquite Independent School District

JH:ns

Enclosure