

RECEIVED
MAY 01 2003
OPEN RECORDS DIVISION



BRUCE ISAACKS
CRIMINAL DISTRICT ATTORNEY

CIVIL DIVISION

Carmen Rivera-Worley, *Chief*
Robert Schell
David L. Finney
Hugh Coleman
John Feldt
Brody Shanklin

1450 East McKinney, Suite 3100
P. O. Box 2850
Denton, Texas 76202
(940) 349-2750
Fax (940) 349-2751

RQ-0051-GA

April 28, 2003

CERTIFIED MAIL: 7000 0520 0024 6296 4072

Honorable Greg Abbott
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

Re: Request for Attorney General Opinion

Dear General Abbott:

Denton County is seeking guidance from your office regarding the Denton County Election Administrator's access to information contained on a Texas Driver's License, hereinafter called, ("license"), in an electronically readable form. The dissemination of this information is governed by Texas Transportation Code § 521.126 which states, "[t]he department shall take necessary steps to ensure that the information is used only for law enforcement or governmental purposes". *Id.* at (b). The issue submitted to you for your consideration is whether the Denton County Elections Administrator¹ is allowed to access a voter's electronic license information during the County's early voting period.

The Denton County Elections Administrator desires to implement the use of equipment that could "swipe" a voter's license to obtain identification information in a quicker, more efficient manner during the early voting process. Currently, when a voter uses a license to identify himself or herself for the purpose of early voting, the clerk/election officer has to enter the voter's information contained on the license into the computer manually. Once the

¹ Right to access also includes Election Officials, Clerks and any employees working under the authority of the Denton County Elections Administrator.

RECEIVED
MAY 02 2003
OPINION COMMITTEE

FILE # ML-43088-03
I.D. # 43088

information is entered, the computer matches the information entered with the correct voting ballot for that individual. The implementation of a license “swiping” procedure would eliminate the need for a clerk to manually enter the information, thereby creating a more efficient system by reducing the chance for error while at the same time speeding up the process. This procedure would only be implemented during the “early voting” phase of an election. The primary and general elections would not require a swipe of the voter’s license.

Although several Attorney General Opinions have addressed § 521.126 of the Transportation Code, none appear to answer the question at hand. In Op. Tex. Att’y Gen. No. JC-0337 (2001), the question was, “if law enforcement or governmental purposes’ restricts utilization of the electronically readable information on the back of a driver’s license or identification card to only law enforcement and governmental agency personnel acting in their official capacity?” *Id.* at 2. In answering that question, General Cornyn concluded that, “magnetic strip information contained on a driver’s license or identification card issued by the Department of Public Safety may be utilized only by law enforcement and other governmental agency personnel acting in their official capacities”. *Id.* at 5. Following the guidelines set by JC-0337, the Denton County Elections Administrator and employees would be authorized to utilize the magnetic strip information contained on a driver’s license or identification card during early voting, as they are all governmental agency personnel acting in their official capacities.

Op. Tex. Att’y Gen. No. JC-0423 (2001) and Op. Tex. Att’y Gen. No. JC-0499 (2002), address the disclosure of magnetic strip information in conjunction with the Federal Driver’s Privacy Protection Act of 1994, 18 U.S.C. §§ 2721-2725 (2000), and the Texas Alcoholic Beverage Code. Additionally, Op. Tex. Att’y Gen. No. JC-0540 (2002) discusses access of electronic driver’s information by financial institutions in relation to the USA Patriot Act of 2001. While these opinions contain relevant information to our inquiry, they do not provide an answer to our question.

A plain reading of the statute and JC-0337, directs that governmental agency personnel acting in their official capacities can have access to, and use the electronic information contained on the back of a driver’s license or identification card. Although the authority is clear on what types of personnel can have access to the electronic information, it does not specify who qualifies as governmental agency personnel. Thus, the question remains: is the county election staff² considered governmental agency personnel acting within the scope of their duties during an election period? When considering whether election staff is considered governmental personnel, please see Chapter 31 and 32 of the Texas Election Code. The Texas Election Code directs the appointment and payment of employees during election periods. Accordingly, it would seem consistent with statutory intent to consider election staff governmental agency personnel within the context of Texas Transportation Code § 521.126 (b).

In summary, may Denton County election staff obtain and use the electronic information contained in the magnetic strip on the back of a Texas Driver’s License or Identification Card during the county early voting process?

² Staff includes – Election Administrator, Election Judges, Election Officers, and Election Clerks, and any other person appointed to work during an election by the Administrator.

Thank you for your time and consideration in this matter. If you need any additional information to make a determination in this case, please do not hesitate to call.

Respectfully Submitted,

Bruce Isaacks
Criminal District Attorney
Denton County, Texas

A handwritten signature in black ink, appearing to read "Brody Shanklin", written over a horizontal line.

Brody Shanklin
Assistant District Attorney

cc: Commissioners Court
Hon. Bruce Isaacks, Criminal District Attorney
Carmen Rivera-Worley, Assistant District Attorney
Don Alexander, Denton County Elections Administrator