



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 9, 2015

The Honorable W. Coty Siegert  
Robertson County and District Attorney  
Post Office Box 409  
Franklin, Texas 77856

Opinion No. KP-0009

Re: Qualification for early voting by mail  
under section 82.002 of the Election Code  
(RQ-1221-GA)

Dear Mr. Siegert:

You ask about the disability requirements for voting early by mail pursuant to section 82.002 of the Election Code.<sup>1</sup> Section 82.002 allows qualified voters to cast a mail-in ballot in an election prior to the official election day “if the voter has a sickness or physical condition that prevents the voter from appearing at the polling place on election day without a likelihood of needing personal assistance or of injuring the voter’s health.” TEX. ELEC. CODE ANN. § 82.002(a) (West 2010). You state that “[o]n the application for ballot by mail, there is a box voters can check for ‘Disability’ which allows them to vote early by mail.” Request Letter; *see* TEX. ELEC. CODE ANN. § 84.011(a)(4)(D) (West 2010) (requiring certain information on an early voting ballot application for “an applicant applying on the ground of age or disability”). You question whether the term “disability” as used on the mail-in ballot application means only the “sickness or physical condition” in subsection 82.002(a), or whether it also includes definitions of disability from other statutes. Request Letter.

The Texas Secretary of State (“SOS”) is the entity tasked with administering and applying section 82.002. *See* TEX. ELEC. CODE ANN. § 31.003 (West 2010) (requiring SOS to “obtain and maintain uniformity in the application, operation, and interpretation of” state election laws). In briefing submitted in response to your request, SOS states that “section 82.002 sets out the appropriate standard” for mail-in voting based on a disability, such that “a voter should believe that they have a sickness or condition which prevents them from voting by personal appearance without assistance or without injuring their health.”<sup>2</sup>

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<sup>1</sup>Letter from Honorable W. Coty Siegert, Robertson Cnty. & Dist. Att’y, to Honorable Greg Abbott, Tex. Att’y Gen. (Sept. 11, 2014), <https://www.texasattorneygeneral.gov/opinion/requests-for-opinion-rqs> (“Request Letter”).

<sup>2</sup>Brief from Keith Ingram, Dir. of Elections, Tex. Sec’y of State at 1 (Oct. 1, 2014) (on file with Op. Comm.). A person’s qualification to cast a vote by mail in an election may be subject to challenge. *Tiller*, 974 S.W.2d at 775

The manner and procedure of casting absentee ballots, which includes mail-in ballots, “is mandatory and directed by statutory requirements.” *Tiller v. Martinez*, 974 S.W.2d 769, 775 (Tex. App.—San Antonio 1998, pet. dismissed w.o.j.). When construing a statute, a court will focus on the statute’s plain language, which is the best indicator of legislative intent. *Zanchi v. Lane*, 408 S.W.3d 373, 376 (Tex. 2013). A reviewing court will defer to an agency’s interpretation of a statute only if the statute is ambiguous, provided that the agency’s interpretation is reasonable and does not conflict with the plain language of the statute. *TracFone Wireless, Inc. v. Comm’n on State Emergency Commc’ns*, 397 S.W.3d 173, 182 (Tex. 2013).

The plain language of section 82.002 does not require that a person satisfy any specific definition or standard of “disability” outside of the Election Code in order to qualify to vote by mail. The statute does, however, provide a clarifying but non-limiting example of a condition that satisfies the expressed standard. See TEX. ELEC. CODE ANN. § 82.002(b) (West 2010) (providing that “[e]xpected or likely confinement for childbirth on election day” would qualify one to vote under subsection 82.002(a)).

You refer to definitions of disability used by the Social Security Administration (“SSA”) and the United States Department of Veterans Affairs (“DVA”), two federal agencies that provide services to disabled citizens. Request Letter. SSA and DVA use their own standards for determining a person’s disability for purposes of establishing eligibility for services.<sup>3</sup> Election Code section 82.002 makes no reference to a determination of disability made by any state governmental entity or federal agency. See TEX. ELEC. CODE ANN. § 82.002 (West 2010); cf. 42 U.S.C.A. § 12102 (West 2013) (defining “disability” for purposes of the Americans with Disabilities Act). Nor does it condition or limit eligibility based on any such determination. Further, while the disability standards used by SSA and DVA may differ from the standard described under section 82.002, nothing indicates that the two are mutually exclusive for purposes of mail-in voting eligibility. A person determined to be disabled by SSA, for example, would be eligible to vote in an election by mail if the SSA disability constituted a “sickness or physical condition that prevents the voter from appearing at the polling place on election day” as provided under section 82.002. *Id.* § 82.002(a). In accordance with the plain language of section 82.002, to be eligible for early voting by mail, a qualified voter need only satisfy the disability standard established under section 82.002. Consistent with SOS’s construction of the statute, a determination of disability under a different standard or definition of “disability,” standing alone, is not determinative of a person’s qualification for early mail-in voting under section 82.002.

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(“Votes are void and should not be counted if the evidence shows that procedural statutory requirements were not followed in the casting of absentee ballots[.]”). Consequently, while proof of disability may not be necessary to apply for a mail-in ballot, its production may be compelled if a voter’s qualification for voting by mail is challenged in court.

<sup>3</sup>The SSA uses the following definition of disability: “the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.” 20 C.F.R. § 404.1505 (2014). The DVA, by contrast, uses a specific disability rating schedule governed by 38 C.F.R. §§ 4.1–4.150 (2014).

S U M M A R Y

To be eligible to vote early by mail based on a disability, a qualified voter must satisfy the standard established under section 82.002 of the Election Code. A disability determination under a different standard or definition of "disability," standing alone, is not necessarily determinative of a person's qualification for early mail-in voting under section 82.002.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style.

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