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August 24, 2000

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Honorable John Cornyn
Texas Attorney General
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RECEIVED

AUG 29 2000

OPINION COMM.

RQ-0276-JC
FILE # ML-41599-00
I.D. # 41599

Re: Opinion Request regarding Appointment of Election Judge

Dear Attorney General Cornyn:

The San Jacinto County Criminal District Attorney requests guidance from your office on the interpretation of Section 32.054 of the Texas Election Code and whether such statute prohibits the wife of the current Chairman of the San Jacinto County Republican party from serving as a judge on the Early Voting Ballot Board. A memorandum containing a more detailed recitation of the facts and the applicable law regarding the issues is contained below.

Memorandum

A. Underlying Facts

The current chairman of the San Jacinto County Republican Party is Mr. Bill Shaw. Mr. Shaw is married to Ms. Marcella Shaw.

During the primary elections earlier this year, the San Jacinto County Criminal District Attorney received a complaint that Ms. Marcella Shaw had been appointed as a judge to the Early Voting Ballot Board of San Jacinto County in violation of Section 32.054 of the Texas Election Code.

This office promptly conducted an investigation into the facts of the case and a review of the law. In an effort to interpret the statute in question a call was placed to Ms. Caroline Webster, an attorney with the Election Division of the Texas Secretary of State's Office, on February 24, 2000. Ms. Webster verbally advised this office that Ms. Shaw, being related within the second degree of consanguinity or affinity with the person holding the party office of the county

chair, did not meet the eligibility requirements. That same day, this office sent a letter to Ms. Shaw advising her that a complaint had been received and investigated. Furthermore, the letter stated that our interpretation of the statute rendered her ineligible to serve as a judge on the Early Voting Ballot Board and asked her to resign that position immediately. A copy of such letter is attached as Exhibit "A."

Following receipt of that letter, Ms. Shaw contacted the office of the Secretary of State. On March 7, 2000, Ms. Ann McGeehan, the Director of Elections for the Office of the Secretary of State, faxed a letter to our office reversing the opinion rendered by Ms. Caroline Webster and stating that the wife of the person holding the party office of county chair was eligible to serve as a judge on the Early Voting Ballot Board. In reaching her decision, Ms. McGeehan stated that the phrase "opposed candidate" applied to both a candidate for public office and a candidate for the party office of county chair. A copy of such letter is attached as Exhibit "B."

Following the receipt of Ms. McGeehan's letter, and due to the quickly approaching elections, no further action was taken at that time and Ms. Shaw proceeded to serve as a judge on the Early Voting Ballot Board.

On August 22, 2000, the office of the San Jacinto County Criminal District Attorney received a letter from Ms. Shaw advising that she would be appointed as a judge to the Early Voting Ballot Board. A copy of such letter is attached as Exhibit "C." Ms. Shaw's letter spurs this inquiry to your office.

B. Issue Presented

Does Texas law permit the spouse of the county chair for the Republican party to serve as a judge on the Early Voting Ballot Board?

C. Applicable Law

1. The Texas Election Code

The Texas Election Code establishes an Early Voting Ballot Board (hereinafter "EVBB") for each county within the State of Texas. TEX. ELEC. CODE ANN. § 87.001. By law, the EVBB consists of a presiding judge and at least two other members. *Id.* at § 87.002(a). The presiding judge of the EVBB is selected from a list submitted to the County Election Board by the political party whose nominee for governor received the most votes in the county in the most recent gubernatorial election. *Id.* at 87.002(d).

To be eligible for membership to the EVBB, a person must meet the requirements for eligibility for service as a presiding election judge, except that

the appointee must be a qualified voter of the territory served by the early voting clerk and is not required to be a qualified voter of any other particular territory. TEX. ELEC. CODE ANN. § 87.003.

The eligibility requirements to be a presiding election judge are contained in Section 32.001 *et seq.* of the Texas Election Code. Under Texas law, the following persons are explicitly ineligible to serve:

“A person is ineligible to serve as an election judge or clerk in an election if the person is employed by or related within the second degree by consanguinity or affinity, as determined under Chapter 573, Government Code, to an opposed candidate for a public office or the party office of county chair in the election.”

TEX. ELEC. CODE ANN. § 32.054(a)(emphasis added).

2. Case Law on Section 32.054 of the Texas Election Code

The office of the San Jacinto Criminal District Attorney was unable to find any case law interpreting Section 32.054 of the Texas Election Code as it relates to the issue at hand.

3. Statutory Construction

In construing statutes, Texas courts have repeatedly stated that the cardinal rule of statutory construction is to discern and give effect to the intent of the enacting body. *Sorokolit v. Rhodes*, 889 S.W.2d 239, 241 (Tex. 1994). In doing so, a party must first seek to discern the intent from the plain language of the statute or ordinance. *Id.* However, the obligation to enforce the plain intent of the statute does not require a “bloodless literalism in which text is viewed as if it had no context.” *West Anderson Plaza v. Feyznia*, 876 S.W.2d 528, 532 (Tex. App.—Austin, no writ). Instead, the interpreting party should consider the context of the statute and the consequences that would follow from a particular interpretation. *Sharp v. Houston of Lloyd, Inc.*, 815 S.W.2d 245, 249 (Tex. 1991).

The Texas Legislature has generally concurred with the approach taken by Texas courts in interpreting statutes and, in fact, has provided its own road map in construing statutes in Section 311.023 of the Texas Government Code which states that:

“In construing a statute, whether or not the statute is considered ambiguous on its face, a court may consider among other matters the:

1. object sought to be obtained;

2. circumstances under which the statute was enacted;
3. legislative history;
4. common law or former statutory provisions, including laws on the same or similar subjects;
5. consequences of a particular construction;
6. administrative construction of the statute; and
7. title (caption), preamble and emergency provision.

TEX. GOV'T. CODE ANN. 311.023.

D. Application of Law to Facts at Hand

The emphasis of Texas court, to discern and give effect to the intent of the enacting legislative body, meshes with the first four factors provide in Section 311.023 of the Texas Government Code.

1. The Statute on its Face

On its face, the statute in question appears to unambiguously declare as ineligible a person related within the second degree of consanguinity or affinity to either: (1) an opposed candidate for public office; or (2) the party office of county chair.

This office recognizes that opinions differ in the interpretation of this statute. In fact, the Office of the Secretary of State interprets the statute as making ineligible a person related within the second degree of consanguinity or affinity to: (1) an opposed candidate for public office; or (2) an opposed candidate for the party office of county chair. For reasons set forth below, this office disagrees with such interpretation.

2. The Purpose of the Statute

Although not clearly stated, the clear purpose of this statute appears to be the avoidance of impropriety, or the appearance of impropriety, in the handling of an election. To that end, the statute disqualifies certain relatives of an opposed candidate from working as an election judge. Such a person might be seen to have an interest that would cause their impartiality to be questioned.

Similarly, this office views the statute as disqualifying certain relatives of the person holding the party office of county chair from being judges at an election. Such persons might similarly be seen to have an agenda, the election of candidates from their own party, which would call their impartiality into question.

3. Legislative History

This office was unable to obtain any legislative history on Section 32.054 of the Texas Election Code.

4. Prior Provisions

This office was unable to locate any common law or former statutory provisions on this or similar subjects.

5. Consequences of a Particular Construction

The construction urged by this office, disqualifying certain relatives of both an opposed candidate for public office and the party office of county chair, serves the intent of the statute. Furthermore, the construction given by this office gives meaning to the statute in both primary elections and general elections.

The construction urged by the Office of the Secretary of State directly conflicts with the statutory intent. It allows the closest relatives of the person holding the party office of county chair to work as judges in either primary elections (if the candidate for party office of county chair is unopposed) or general elections. As stated above, this leaves room to question the impartiality of such persons and the election process. Secondly, such a construction (applying the modifier "opposed candidate" to both a candidate for public office and the party office of county chair) results in surplusage when applied to a general election. Obviously, by the time a general election is held the party office of county chair has long since been decided. As this office knows, any interpretation that would produce absurd results or render other language as surplusage must be avoided. *City of Amarillo v. Martin*, 971 S.W.2d 426, 430 (Tex. 1998).

6. Other Factors

The other factors set out in Section 311.023 of the Texas Government Code do not favor either interpretation of the statute at issue.

E. Conclusion

A plain reading of Section 32.054 of the Texas Election Code, which governs eligibility requirements for members of the EVBB, unambiguously prevents a relative within the second degree of consanguinity or affinity from serving as a member of a EVBB. This office believes such an interpretation fully comports with the apparent intent of the statute, to avoid impropriety or the appearance of impropriety during elections. Interpreting the statute in this matter also results in the statute being fully applicable during both a primary election and the general

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election. The interpretation provided by the Office of the Secretary of State results in the closest relatives of the party office of county chair being able to serve as judges as elections, thereby creating an appearance of impropriety. Such interpretation also results in a portion of the statute being mere surplusage during a general election as the party office of county chair has been decided during the primary election (or any necessary run-off election).

We respectfully ask that your office make a determination on the issue set out in this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert S. DuBoise". The signature is stylized with a large, looping initial "R" and a long horizontal flourish extending to the right.

Robert S. DuBoise
Assistant Criminal District Attorney
San Jacinto County, Texas