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December 22, 2003

RQ-0159-GA

The Honorable Greg Abbott
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OPINION COMMITTEE

RE: Request for Attorney General's Opinion regarding Local Option Election Petitions issued and submitted for certification prior to September 1, 2003.

Dear General Abbott:

Please accept this letter as one of request for opinion from your office on the following questions:

1. Do local election officials have the discretion not to accept, or count as qualified, the local option election Petition signatures of those voters who have timely demanded the withdrawal of their Petition signatures by affidavits received by an election officer on or before the Petition filing deadline?

Concerning Petitions issued and submitted for certification prior to September 1, 2003, pursuant to Op. Tx. Atty Gen. C-439 (1965) (petition signer may withdraw signature on or before 30-day petition filing deadline) and Tx. Power and Light Co. v. Brownwood Public Service Co., 87 S.W.2d 557 (Tex. Civ. App. -- Austin 1935, n.w.h.) (petitioners' right to withdraw signatures exists up to deadline for petition filing) when a Voter Registrar or Elections Administrator timely receives affidavits (from registered voters who also, are signers of a Local Option Election Petition) whereby Petition signers request withdrawal of their Petition signatures by affidavits that are received on or before the thirty (30) day deadline for submitting Petitions; the Registrar and County Commissioners are put on notice of possible misrepresentation, mistake, or fraud in the soliciting of Petition signatures; and, the Registrar verifies the validity of such affidavit signatures; then it would appear to be wholly within a Registrar's, County Commissioner's or, both officials' reasonable discretion to withdraw these signatures and not count such disputed Petition signatures in certifying the Petitions. See Tex. Alco. Bev. Code § 251.10(b) ("no signature may be counted, either by the registrar or commissioners court, where there is reason to believe" that signatures on petition are not conforming to statute); Prado v. Johnson, 325 S.W. 2d 368, 369 (Tex. Civ. App. -- San Antonio 1981, writ dismiss'd w.o.j.) (specific signature qualifications, petition's contents, and electoral thresholds are intended to prohibit error, fraud, mistake, and corruption).



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2. Does an election official have discretion not to accept as a "proper" petition (including pursuant to Tex. Alco. Bev. Code §251.01) and, not to certify as valid those signatures contained on the backside of such Petition, when such irregular Petition side: (a) fails to provide prospective and actual Petition signers alike, with the statutorily required disclosures, including the mandated Heading, Statement of Intent, and Issue made the subject of the Petition (see, e.g. Tex. Alco. Bev. Code §§ 251.08 and 251.14); and; (b) when these required Petition disclosure notices also fail to appear on the Petition "just ahead of the signatures of the petitioners," as required by law? (Tex. Alco. Bev. Code § 251.08) (emphasis supplied.) See Op. Tx. Atty Gen. MS-149 (1954) (petition lacking statutory requisites is "not a proper Petition" and "would not be a basis for a legal election").

Thank you for your consideration of this request. Your prompt attention to this issue would be greatly appreciated. Please do not hesitate to contact me, or Jason Anderson on my staff, should you have any questions or require additional information.

Yours truly,



Frank Madla

FM/ja