



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable Roland Boyd  
County Attorney  
Collin County  
McKinney, Texas

Dear Sir:

Opinion No. O-3507  
Re: Does Article 242, Penal Code,  
apply to the facts submitted,  
or was it only intended to  
cover taking a paper with the  
names of candidates written  
thereon to the polls?

From your letter requesting our opinion, we quote  
the following:

" . . . On April 5th, 1941, the Celina Independent School District was holding their annual trustee election. A party who was not a candidate went to the home of a voter and left with him a small slip of paper which had written on it the last names of three candidates for trustees. These three candidates were running against three of the incumbents who were up for re-election. Some statement was made relative to those three candidates being the ones that he wanted to be elected. Later on that day before the man who received the paper had come to the polls, the president of the school board saw him and also the paper, and after a statement was made that to have such a paper was a violation of the law, the party who had received the same destroyed it.

"The question is, 'Does article 242 of the Penal Code apply to this set of facts or was it only intended to cover taking such a paper to the polls?' . . ."

Article 242, Penal Code reads as follows:

"Any judge may require a citizen to answer under oath before he secures an official ballot

Honorable Roland Boyd, Page 2

whether he has been furnished with any paper or ballot on which is marked the names of any one for whom he has agreed to vote, or for whom he has been requested to vote, or has such paper or marked ballot in his possession, and he shall not be furnished with an official ballot until he has delivered to the judge such marked paper or ballot, if he has one. Any person who gives, receives or secures or is interested in giving or receiving an official ballot or any paper whatever, on which is marked, printed or written the name of any person for whom he has agreed to vote, or for whom he has been requested to vote, or has such paper marked, written or printed in his possession as a guide by which he could make out his ticket, shall be fined not less than one hundred nor more than five hundred dollars, and be confined in jail thirty days. Sec. 70, p. 536, Acts 1905."

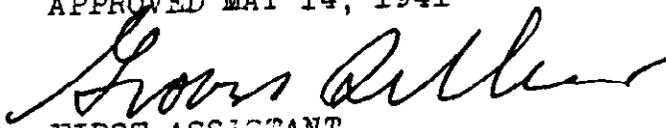
We think it obvious that the above statute was not violated under the state of facts you submit. It is apparent to us that the restriction imposed goes only to the use of dummy ballots or papers at the polls. Any other construction would be violative of the Constitution of Texas, Article 1, Section 8, reading in part as follows:

"Every person shall be at liberty to speak, write or publish his opinions on any subject, being responsible for the abuse of that privilege; and no law shall ever be passed curtailing the liberty of speech or of the press. . . ."

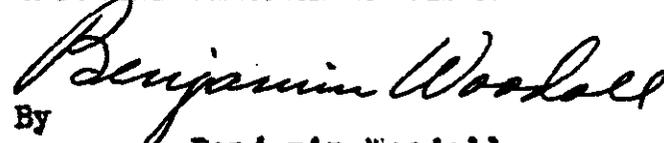
Trusting the above satisfactorily answers your inquiry, we are

Yours very truly

APPROVED MAY 14, 1941

  
FIRST ASSISTANT  
ATTORNEY GENERAL

ATTORNEY GENERAL OF TEXAS

  
By  
Benjamin Woodall  
Assistant

BW:mp

