



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

PRICE DANIEL  
ATTORNEY GENERAL

December 15, 1949

Hon. Jep S. Fuller  
Criminal District Attorney  
Jefferson County  
Beaumont, Texas

Opinion No. V-970.

Re: The applicability of  
the "Secret Ballot Law"  
to paper ballots used  
for absentee voting in  
elections employing  
voting machines for  
other balloting.

Dear Mr. Fuller:

Reference is made to your request of recent date which reads in part as follows:

"The Commissioners' Court of Jefferson County has, by order duly passed, adopted voting machines for use in elections in said county. However, the Court proposes to use paper ballots in such elections for the purposes of absentee voting. As a result, the following question has arisen of which we respectfully request the opinion of your office:

"Does the 'Secret Ballot Law' apply when paper ballots are used in absentee voting in elections wherein voting machines are employed for other balloting?"

Section 7, Article 2997a, Vernon's Civil Statutes, provides in part:

"In counties in which voting machines are adopted for use, the authority charged with holding an election shall within its discretion determine by proper resolution and/or order whether or not voting machines shall be used for the casting of absentee votes at such election . . . Should the authority charged with holding an election determine by such resolution as above provided, that absentee votes cast at such election be cast by a paper ballot, then,

and in such event, the authority charged with holding such election shall provide a ballot for the casting of absentee votes as prescribed and provided by the general laws applicable to elections and to absentee voting and those entitled under the law shall cast their vote by such ballot under the laws applicable to absentee voting, . . . ."

We next call your attention to Sections 6 and 7 of House Bill 357, Acts 51st Legislature, 1949, Chapter 329, page 615 (Secret Ballot Law) which read as follows:

"Section 6. The appropriate provisions of this Act shall also apply to absentee voting, in which case the person casting an absentee ballot shall not remove the detachable stub from the ballot. After the ballot has been prepared by the elector, the elector shall affix his signature on the reverse side of the perforated stub and then shall cast the ballot as now provided by law.

"Should the elector be unable to sign his name, he shall place the ballot face down so as not to expose the number of same and shall sign on the back of the perforated stub an 'X.' The attesting officer shall then write the elector's name on the back of the stub.

"The absentee ballot shall then be delivered to the election judge in the proper precinct as is now provided for in this title.

"Before the election judge deposits an absentee ballot as elsewhere provided for in this title, he shall detach from said ballot the perforated stub and place it in the stub box. If the name of the elector does not appear on the reverse side of said perforated stub the election judge shall write the name of the elector on the back of said stub before depositing same in the stub box.

"Sec. 7. The provisions of this Act shall not apply to elections in which voting

machines are used as provided for elsewhere in this title."

There appears to be some conflict between the provisions of the above quoted statutes; however, as stated by the court, in the case of Wood v. State, 133 Tex. 110, 126 S.W.2d 4 (1939):

"It is the settled law that statutes should be construed so as to carry out the legislative intent, and when such intent is once ascertained, it should be given effect, even though the literal meaning of the words used therein is not followed. Also statutes should never be given a construction that leads to uncertainty, injustice or confusion if it is possible to construe them otherwise."

If we should construe Section 7 of House Bill 357 (Secret Ballot Law) to mean that the appropriate provisions of that Act have no application to paper ballots used for all absentee voting in elections employing voting machines for other balloting, then this would lead to confusion and uncertainty. It is definitely provided in Section 7 of Article 2997a (Voting Machine Law) that where paper ballots are used for casting all absentee votes that "the authority charged with holding such elections shall provide a ballot for the casting of absentee votes as prescribed and provided by the general laws applicable to elections and to absentee voting and those entitled under the law shall cast their vote by such ballot under the laws applicable to absentee voting." Moreover, the general laws applicable to absentee voting have been amended by the specific provisions of Section 6 of House Bill 357 (Secret Ballot Law) and the other appropriate provisions of that Act.

After a careful analysis of the foregoing statutes and the above authority, it is our opinion that the appropriate provisions of the "Secret Ballot Law" are applicable to absentee voting in elections where paper ballots are used for all absentee voting, and voting machines are employed for other balloting.

#### SUMMARY

The appropriate provisions of the "Secret Ballot Law" are applicable to absentee voting in elections where paper ballots are

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used for all absentee voting, and voting  
machines are employed for other balloting.  
Sec. 6, H.B. 357, Acts 51st Leg., 1949, ch.  
329, p. 615.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

JCD:bh:mw

By

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