



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**CRAWFORD C. MARTIN
ATTORNEY GENERAL**

March 4, 1968

Hon. Henry Wade
District Attorney
Dallas County
Dallas County Government
Center
Dallas, Texas 75202

Opinion No. M- 209

Re: (1) Authority of County
Commissioner's Court to
prepare and sell duplicate
copies of magnetic tape of
names of registered voters
of county to private entities
for commercial purposes.

(2) Authority of the Tax
Assessor-Collector acting
individually to sell copies
of the list of registered
voters in Dallas County,
either complete lists or
certain precinct lists.

Dear Mr. Wade:

Your recent letters requesting our opinion relative to the above captioned matters, read, in part, as follows:

"Recently the Dallas County Commissioners Court passed an order accepting the offer of a private entity to purchase a tape of voter registrations for the year 1968, to be delivered when it becomes available. A copy of said order is attached hereto.

"On January 31, 1968, the County Judge asked this Office for an opinion as to the authority of the Commissioners Court to prepare and sell such tape. We replied to such request by furnishing the County Judge a complete copy of Attorney General's Opinion No. C-75 dated May 14, 1963, addressed to Honorable Joe Resweber, County Attorney of Harris County, together with our forwarding letter setting forth the provisions of Article 5.19a of the Election Code, which imposes the duty upon the Registrar to prepare such lists. Said

article also names the individuals and officials to whom the Registrar shall furnish copies of such lists and sets out the fees which he may collect therefor. We further advised the Court that although the Harris County problem involved a different type of record and perhaps a different county official, we felt that the same principles of law were involved and that perhaps said Opinion No. C-75 would sufficiently answer the question involved here. Because of the importance of the question and of the differences of opinion among the various members of the Court, we respectfully submit said question for your opinion and advice.

" . . . "

The Constitution of Texas declares that the Commissioners Court shall exercise such powers and jurisdiction over all county business as is conferred by the Constitution and the laws of the State. Tex.Const., Art. V, Sec. 18.

The jurisdiction of the Commissioners Court over the county's business is not general and all inclusive, but is limited to matters or powers specifically covered by the Constitution and statutes. Anderson v. Wood, 137 Tex. 201, 152 S.W.2d 1084 (1941); 15 Tex.Jur.2d 261, Counties, § 35.

In 15 Tex.Jur.2d 265, Counties, § 37, it is stated:

"The constitution declares that the commissioners courts shall exercise such powers and jurisdiction over all county business as is conferred by the constitution and the laws of this state. Under this provision, the powers of the commissioners court are limited strictly to the county business. The legislature has no authority to enlarge their powers or jurisdiction to other activities, and any attempt to do so is void. . . ."

The Legislature has, by statute, specifically enumerated the powers and duties of the Commissioners Court. Article 2351, Vernon's Civil Statutes; 15 Tex.Jur.2d 262, Counties, § 35.

Since we are unable to find any constitutional or statutory provisions which would authorize the Commissioners Court to prepare

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and sell duplicate copies of magnetic tape containing names of registered voters of the county to private entities to be used for commercial purposes, you are advised that the Commissioner's Court does not have such authority.

The Constitution of Texas, in Section 14 of Article VIII, authorizes the election of a Tax Assessor-Collector for each county and provides that such Tax Assessor-Collector shall perform all duties prescribed by the Legislature. Article 5.09a of the Election Code of Texas provides that the County Tax Assessor-Collector shall be the registrar of voters for the county and that he shall be responsible for the registration of voters, the keeping of records, preparation of lists of registered voters, and such other duties incident to voter registration as are placed upon him by law.

Article 5.19a of the Election Code of Texas provides that the Tax Assessor-Collector shall prepare a certified list of registered voters and shall deliver copies of such list to certain designated persons in accordance with the provisions of said statute.

We do not find any statute authorizing a County Tax Assessor-Collector to furnish unofficial copies of the list of registered voters or prohibiting him from furnishing such a list. However, in Attorney General's Opinion V-14 (1947), this office held that in the absence of a statutory prohibition, a Tax Assessor-Collector, or his deputy, acting in his individual capacity, may retain the fee charged for the preparation of a poll tax list, compiled in off-duty hours, if the same does not interfere with the discharge of those duties imposed upon him by law. The case of Moore v. Sheppard, 144 Tex. 537, 192 S.W.2d 559 (1946), is cited as authority for that opinion. This case involved money held by the Clerks of several Courts of Civil Appeals for furnishing uncertified and unofficial copies of the opinions of their respective courts. The Supreme Court held that a clerk, at his discretion, could furnish others uncertified and unauthenticated carbon copies of court records. In this case the Supreme Court said:

"The clerks of the courts of civil appeals are not entitled to receive extra compensation for services performed within the scope of their official duties prescribed by law. The general principle prohibiting public officials from charging fees for the performance of their official duties does not prohibit them from charging for their services for acts that they are under no obligation, under the law, to perform. . . . (192 S.W.2d 560)

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" . . .

"There being no statutory duty requiring petitioners to furnish uncertified, unofficial copies of opinions of the courts of civil appeals, no statute fixing any fee for such services, and no valid statute requiring that money received therefore be deposited in the State Treasury, there is no debt owing by petitioners to the state. . . ." (192 S.W.2d 562)

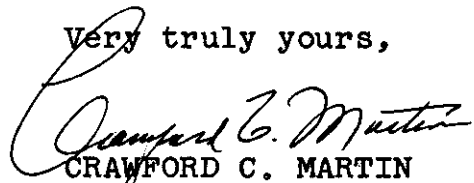
Therefore, you are advised that the Tax Assessor-Collector or his deputies, acting as individuals, may sell unofficial copies of the names of registered voters to individuals or firms.

S U M M A R Y

The Commissioners Court does not have authority to prepare and sell duplicate copies of magnetic tape, containing the names of registered voters of the county to private entities to be used for commercial purposes.

The County Tax Assessor-Collector, or his deputy, acting in his individual capacity, may sell copies of the list of registered voters, either complete lists or certain precinct lists, compiled in off-duty hours, if the same does not interfere with the discharge of those duties imposed upon him by law.

Very truly yours,


CRAWFORD C. MARTIN
Attorney General of Texas

Prepared by Jack Sparks
Assistant Attorney General

APPROVED:
OPINION COMMITTEE

Hawthorne Phillips, Chairman
Kerns Taylor, Co-Chairman
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A. J. CARUBBI, JR.
Executive Assistant