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MAYES MIDDLETON



STATE REPRESENTATIVE • DISTRICT 23

July 2, 2020

The Honorable Ken Paxton
Texas Attorney General
300 W. 15th Street
Austin, TX 78701

Dear General Paxton:

This letter serves as a formal request of your opinion regarding the filing periods and filing deadlines under the Texas Election Code for elections moved from May to November. Texas statutes specify several dates and deadlines regarding elections. Two such dates can generally be described as (a) the date of the election; and, (b) the dates during which a candidate can file for a place on the ballot (“filing period”). With respect to the date of the election, statutory framework prescribes specific dates for when elections can take place. By contrast, the statutory framework for the filing period is rolling, and ties the first and last day a candidate can file for a place on the ballot to the election day, not a specific fixed date.^{i,ii} It appears that if election day is changed or moved, the filing period rolls forward with it and cannot be left behind or tied to a day that was not in fact election day.^{i,ii}

The Governor, through his emergency orders, allowed certain jurisdictions to move elections with a date set for May to the November uniform date. He was silent in his orders, however, on the filing period. The Secretary of State and several jurisdictions claim that the filing deadline remains closed. However, a plain reading and strict construction of the filing period statutes require the filing period to remain open, or re-open and then close in accordance with a November 3, 2020 election day. Implementation of the filing period deadline must be confined to Texas Election Code statutes.

Therefore, my questions to you are: First, if an eligible candidate seeks a place on the ballot for a May election moved to November, but has not filed previously, are they afforded an opportunity to do so? Second, can a jurisdiction deny them a place on the ballot if they now file within the statutorily prescribed timeframe, but did not previously do so?

I can imagine several candidates would be interested in filing to give voters more choices (especially considering the events that have taken place across this State over the past few months). In fairness to them, and to not give those who previously filed any more of an advantage, I would ask that the response to this request be expedited.

Respectfully,

A handwritten signature in black ink that reads "Mayes Middleton".

Mayes Middleton
Co-Chair of the Joint Committee to
Study a Coastal Barrier System

ⁱTex. Elec. Code Ann. § 143.007

ⁱⁱTex. Elec. Code Ann. § 144.005