



## Office of the Secretary of State

April 8, 1998

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Election Law Opinion ARG-1

Dear Mr. Vandiver:

This is in response to your questions about section 2.051 of the Texas Election Code (the "Code"), providing for not conducting ("cancelling") elections. Because you have raised issues of general importance, I shall address your question within the context of this election law opinion, which is rendered under my authority to obtain and maintain uniformity in the interpretation of election laws. *Tex. Elec. Code Ann. § 31.001(a)* (Vernon 1986).

**Question:** Must all single-member district races be unopposed in order to remove an at-large race from the ballot ("cancel the election") for purposes of section 2.051, Election Code?

**Short Answer:** No. Section 2.051 requires that all at-large races must be unopposed to remove any or all scheduled races from the ballot. However, section 2.051 does not require that all single-member district races be unopposed in order to remove at-large races from the ballot.

Section 2.051, as amended in 1997, now provides:

**(a)** This subchapter applies only to an election for officers of a political subdivision other than a county in which write-in votes may be counted only for names appearing on a list of write-in candidates and in which:

**(1)** each candidate whose name is to appear on the ballot is unopposed, *except as provided by Subsection (b)*; and

**(2)** no proposition is to appear on the ballot.

*(b) In the case of an election in which any members of the political subdivision's governing body are elected from single-member districts, this subchapter applies to the election in a particular single-member district if:*

*(1) each candidate whose name is to appear on the ballot is unopposed; and*

*(2) the requirements prescribed by Subsection (a) are otherwise met.*

*Id.* § 2.051 (Vernon Supp. 1998) (emphasis added to reflect 1997 amendment). The City of Lubbock has both at-large and single-member district (“SMD”) seats. Specifically, you are concerned that one possible reading of Section 2.051 is that the election may be cancelled only if *all* SMD candidates are unopposed.

In 1996, our office indeed opined in a formal opinion, among other issues, that under a strict reading of “each candidate . . . on the ballot,” *all* offices up for election had to be unopposed in order to use section 2.051 to cancel an election. Op. Tex. Sec’y State No. AOG-1 (1996). In its 75th Session, the Texas Legislature partially overruled AOG-1 by amending section 2.051 to provide express authorization for cancelling elections in a particular SMD, in order to avoid additional expense for no practical purpose, i.e., to avoid the costs of conducting an election when the result is considered a foregone conclusion.

Unfortunately, the amended language does not directly contemplate cancelling an *unopposed at-large* election when certain *single-member district* races are still *opposed*. Both (a) and (b) continue to require that “*each candidate ... on the ballot is unopposed.*” For example, even one opposed single-member district race arguably would trigger the conducting of an at-large election, since the ballot in that district has failed the “each candidate . . . on the ballot is unopposed” test. An at-large election cannot be conducted in only one SMD or only part of a political subdivision in any meaningful sense. The at-large election is either held or not held, everywhere. Once an election is conducted at-large, there is relatively little practical benefit in removing any other races from the ballot. Thus, the question is how to harmonize the “each candidate” test with the recent legislative intent to allow cancellation within “particular single-member district(s)” to conserve election costs.

Generally, under the Code Construction Act, words and phrases are to be construed “according to the rules of grammar and common usage.” Tex. Gov’t Code Ann. § 311.011 (Vernon 1988). The word “each” is synonymous with “all.” Black’s Law Dictionary 507 (6th ed. 1990). In particular, “each candidate” on the ballot in the context of a single-member district implies more than one race, i.e., the district race and the at-large races, if any.

However, in construing a statute, a court may also consider “the object sought to be attained” and the “circumstances under which the statute was enacted.” Tex. Gov’t Code § 311.023 (Vernon 1988). And, “[w]here necessary to avoid irrationality or inconsistency, and where, as here, *the legislative intent may be inferred from other parts of the statute*, and where the omission is apparently the result of a mistake, the rules of statutory construction support reading words into a statute.” Op. Tex. Att’y Gen. No. DM-53 (1991) (emphasis added) (citing 2A, SUTHERLAND STATUTORY CONSTRUCTION § 47.38 (4th ed. 1986)).

In our opinion, the unopposed status of *all at-large* races is and remains a condition precedent for cancelling in a single-member district under (a) and (b). However, the new language at subsection (b) does not require that *all* single-member district elections be unopposed. Rather, the (b) test is to be applied separately to “a particular district,” i.e., to one of several districts. This implies that one or more *remaining opposed* single-member district elections (if any) could be conducted absent the at-large election.

Because of the history of the statute and the implied results of subsection (b), we are satisfied that the Texas Legislature did not intend for the 1997 amendment to require that *all* single-member district races be unopposed in order to cancel at-large elections. Rather, we interpret the tests at (a) and (b) to require that if any at-large race is still opposed and the election is to be conducted at the people’s expense throughout the city, the single-member district race or races will be put on the ballot before the voters in the traditional manner, as they would if an at-large proposition were on the ballot on the same day.

Also, we add that we would read this statute and this interpretation to apply to double-member districts in Type A municipalities, despite the use of the phrase “single-member district.” We also remind the affected cities that a special election to fill a vacancy does not require a declaration of write-in candidacy, and so such a special election cannot be cancelled. Tex. Elec. Code Ann. § 146.051 (Vernon Supp. 1998).

## CONCLUSION

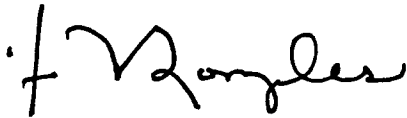
1. If a proposition election is scheduled for the same election date, *or*, if any one or more scheduled at-large races are opposed and are to be placed on the ballot, all other offices scheduled for election that year, at-large or single-member district, must be placed on the ballot, regardless of the number of candidates who have filed.

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2. If there is no proposition, *and all* at-large races are unopposed, the unopposed at-large races may be cancelled and removed from the ballot, leaving any opposed single-member district race election(s) to be conducted as usual in the affected single-member district(s).

Sincerely,



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