



STATE OF TEXAS  
OFFICE OF THE SECRETARY OF STATE  
POST OFFICE BOX 12697, CAPITOL STATION  
AUSTIN, TEXAS 78711

March 15, 1982

David A. Dean  
SECRETARY OF STATE

Mr. S. O. Stubblefield, III  
Chairman  
Nueces County Democratic Executive Committee  
Box 3146  
Corpus Christi, Texas 78404

Letter Advisory DAD-11

Dear Mr. Stubblefield:

You have requested my opinion on the following question:  
May an applicant be placed on the ballot when his check to  
cover the filing fee for a place on the primary ballot has  
been returned for insufficient funds after the filing  
deadline?

This official election law interpretation is rendered by me  
as chief election officer of the state in accordance with  
Tex. Elec. Code Ann. art. 1.03, subd. 1 (Vernon Supp. 1982).

The specific facts concerning your inquiry are as follows:  
On February 1, 1982, the last day of the primary filing  
period, a candidate for county commissioner tendered you a  
check in the purported amount of \$600.00, the filing fee  
required by Tex. Elec. Code Ann. art. 13.08(c) (Vernon Supp.  
1982) for that office. On February 19, the check was  
returned to you stamped "NSF", along with a statement from  
your bank that the reason the check was returned was "not  
sufficient funds." On March 6, you informed the candidate  
that his name would not appear on the ballot because the  
check was returned for insufficient funds. The candidate has  
now asked the question of his being placed on the ballot to  
be decided by the full county executive committee.

We believe the case that is dispositive of your query is  
that of Bryant v. Dallas County Democratic Executive Com.,  
451 S.W.2d 803 (Tex. Civ. App.---Dallas 1970, no writ).  
There, a candidate for state representative attempted to pay  
his filing fee with a check for \$300.00. Four days after  
the filing deadline, the candidate was notified that payment  
had been refused and the check was stamped "Not Sufficient

Mr. S. C. Stubblefield, III  
March 15, 1982  
Page 2

Funds." The candidate offered to replace the check with \$300.00 cash immediately, an offer the chairman refused. The reason the check was returned was that monies intended for deposit in the account on which the check was drawn had been inadvertently deposited in a checking account with another bank. In denying the candidate a place on the ballot, the court stated:

"We have carefully studied the facts presented to us in an effort to find, if possible, some legal basis on which Relator's admitted failure to comply literally with the statutes above mentioned could be excused, but have not been able to do so. He does not direct our attention to unfortunate circumstances beyond his control which would make it inequitable to deny him the relief sought, as was true in [citing cases].

". . . [The candidate] does not suggest that the return of the check was due to any fault or misconduct on the part of . . . the banks. The mistake was due to his own negligence. The fault was his alone.

". . . [The candidate] contends that in the absence of fraud or bad faith on his part the statute should be held to be directory and not mandatory. We do not agree. Under the facts presented here we hold that the statutes requiring the fee to be paid at the time of filing the application are mandatory . . ." Id. at 804 (emphasis added).

Thus, the Bryant case squarely holds that if a check is drawn on an account and returned for insufficient funds after the filing deadline, the candidate who tendered the returned check forfeits his place on the ballot.

While there is dictum in Bryant stating that if the candidate had directed the court's "attention to unfortunate circumstances beyond his control" the court might have ruled otherwise, such extenuating circumstances are for a court of law to decide in each particular case.


You are, therefore, advised that a candidate whose check to pay the filing fee for a place on the primary ballot is returned for insufficient funds after the filing deadline is ineligible to be placed on the ballot.

Mr. S. O. Stubblefield, III  
March 15, 1982  
Page 3

SUMMARY

If a candidate tenders a check in payment of a filing fee required by Tex. Elec. Code Ann. art. 13.08(c) (Vernon Supp. 1982), and the check is returned for insufficient funds after the expiration of the filing deadline, the candidate cannot be placed on the ballot.

Sincerely,

  
David A. Dean  
Secretary of State

Willis Whatley  
Counsel to the Secretary of State

Prepared by Austin C. Bray, Jr.  
Senior Staff Attorney

APPROVED:  
OPINION COMMITTEE

M. E. Kosa, Chairman  
Austin C. Bray, Jr.  
Holly Compton