



Office of the
SECRETARY OF STATE

John Hannah, Jr.
SECRETARY OF STATE

EXECUTIVE DIVISION
P.O. Box 12697
Austin, Texas 78711-2697
(512) 463-5701

ELECTIONS DIVISION
P.O. Box 12060
Austin, Texas 78711-2060
(512) 463-5650

Disclosure Filings
P.O. Box 12070
Austin, Texas 78711-2070
(512) 463-5704

DATA SERVICES
DIVISION
P.O. Box 12887
Austin, Texas 78711-2887
(512) 463-5609

SUPPORT SERVICES
DIVISION
Financial Management
P.O. Box 12887
Austin, Texas 78711-2887
(512) 463-5600

Staff Services
P.O. Box 12887
Austin, Texas 78711-2887
(512) 463-5600

STATUTORY FILINGS
DIVISION
Corporations
P.O. Box 13697
Austin, Texas 78711-3697
(512) 463-5555

Statutory Documents
P.O. Box 12887
Austin, Texas 78711-2887
(512) 463-5654

Texas Register
P.O. Box 13824
Austin, Texas 78711-3824
(512) 463-5561

Uniform Commercial Code
P.O. Box 13193
Austin, Texas 78711-3193
(512) 475-2705

November 20, 1991

The Honorable Travis S. Ware
Criminal District Attorney
Lubbock County Courthouse
P.O. Box 10536
Lubbock, Texas 79408-3526

Election Law Opinion JH-2

RE: Whether a watcher may use a tape recorder or audiovisual camera to record information at a central counting station, and whether a counting station manager has authority to control the manner and method of poll watching.

Dear Mr. Ware:

This is in response to your letter in which you asked whether poll watchers could use a tape recorder or audiovisual camera to record information at a central counting station. You also asked whether a counting station manager can control the manner and method of poll watching.

This official election law opinion is rendered by me as chief election officer of the state in accordance with Tex. Elec. Code Ann. § 31.001 (Vernon 1986).

The Election Code specifically entitles watchers at any location to record observations by written notes. *Id.* § 33.056. In a 1984 opinion, our office stated that the law did not sanction the use of a tape recorder by a watcher at a polling place. Tex. Sec'y of State Op. No. MAM-2 (1984). We confirm that opinion, and we conclude that a watcher may not use a recording device for audio, visual, or audiovisual recording at any location of service, including a central counting station.

In section 33.056(a), the Election Code provides general regulations for "the location at which the watcher is serving," and in section 33.056(d), the law specifically allows "written notes." As you have noted, most questions concerning a watcher's service have focused on the polling area, and include concerns about voter intimidation, which are generally not issues at a central counting station. However, in section 33.056, the legislature set out one rule for all locations of a watcher's service, and we think that the recording methods allowed watchers should, therefore, be uniformly applied to all locations of service.

This view of prohibiting mechanical or electronic recording devices at a central counting station is consistent with the reading of other laws governing polling areas and counting locations. Only persons authorized by law may be present. Tex. Elec. Code Ann. § 61.001 (Vernon 1986). Only authorized balloting materials may be used. Id. § 52.001; Wright v. Graves, 671 S.W.2d 586 (Tex. App.—Beaumont 1984, no writ). Only prescribed signs are permitted. Tex. Elec. Code Ann. § 62.013 (Vernon 1986). Voters may carry in materials where preferences are marked in the voter's handwriting. Id. § 63.011.

We think the law should be construed as strictly for materials allowed watchers as it is construed for election officials and voters, and we conclude that watchers should be allowed only those recording materials specified by the legislature at any location of service.

In addition, especially where the device can record pictures, there is the possibility of recording information concerning the voter's ballot, e.g., handwriting, which is not available in making written notes, and which could jeopardize the secrecy of the ballot. And, such photography could be construed as illegally copying the ballot, at a time when the ballot is clearly not yet a public record available for copying or public inspection. Id. § 66.058; see also Tex. Att'y Gen. ORD-505 (1988).

For the above reasons, we conclude that consistent legal interpretation, as well as public policy, supports a strict reading of the recording methods allowed watchers. We confirm MAM-2, and conclude that the interpretation concerning recording devices should be uniformly and consistently applied to all locations served by watchers.


You also asked whether the counting station manager has the authority to control the manner and method of poll watching at the central counting station. The Election Code places the manager in charge of overall administration and supervision of personnel at the central counting station. Tex. Elec. Code Ann. § 127.002 (Vernon Supp. 1991). However, the authority to control watchers is more properly exercised by the presiding judge of the central counting station, who has the authority of the election judge at a polling place on election day. Id. § 127.005(c) (Vernon 1986). The election judge has

the duty to maintain order and prevent violations of the Election Code in the polling place. Id. § 32.075. Accordingly, the judge must allow the watchers their rights under the law, but has the authority to limit any activity which is excessive or disruptive. If necessary, the judge may exercise the authority of a district judge to enforce order and preserve the peace. Id. §§ 32.071, 32.075, 127.005(c).

SUMMARY

1. A watcher may not use a mechanical or electronic device for audio, visual, or audiovisual recording at any location of service, including a central counting station.
2. The election judge at a central counting station must allow watchers their rights under the Election Code, but has authority to limit excessive or disruptive activity.

Sincerely,



John Hannah, Jr.
Secretary of State

Audrey Selden
Assistant Secretary of State

Prepared by Melanie Best
Assistant General Counsel
Elections Division

APPROVED:
OPINION COMMITTEE
Tom Harrison, Chair
Austin C. Bray, Jr.
Elizabeth Hanshaw
Fortunato Paredes