



SECRETARY OF STATE

John Hannah, Jr.

November 2, 1993

Mr. Mike Higgins
Director of Research and Service
Texas State Association of Fire Fighters
1000 Brazos, Suite 200
Austin, Texas 78701

Election Law Opinion JH-4

Re: Application of the Texas Election Code to article 5154c-1, Vernon's Texas Civil Statutes

Dear Mr. Higgins:

Reference is made to your facsimile letter of October 11, 1993, in which you asked my opinion concerning certain questions relating to article 5154c-1, Vernon's Texas Civil Statutes, styled the Fire and Police Employee Relations Act (the "Act").

This official election law opinion is rendered by me in my capacity as chief election officer of the State of Texas. Tex. Elec. Code Ann. § 31.001(a) (Vernon 1986).

Section 5(b) of the Act provides, in pertinent part, as follows:

Upon receiving a petition signed by the lesser of five percent or 20,000 of the qualified voters voting in the last preceding general election in such city, . . . the governing body of such city . . . shall hold an election within 60 days after said petition has been filed with such governing body.

Tex. Rev. Civ. Stat. Ann. art. 5154c-1, § 5(b) (Vernon 1987) (emphasis added).

You attached with your letter a copy of article II, section 23, of the Charter of the City of Weslaco which provides, in pertinent part, as follows:

Before any ordinance or resolution shall be submitted to the [city] commission for adoption or repeal, it shall be necessary that a petition signed by not less than twenty-five (25) percent of the qualified voters within the City of Weslaco . . . shall be presented to the commission, referring to such ordinance or resolution and requesting its adoption or repeal, as the case may be. (Emphasis added.)

ELECTIONS DIVISION

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You stated that it was the position of the City of Weslaco that the foregoing charter provision, rather than the Act, controls the number of signatures necessary to hold a collective bargaining election for fire fighters under the Act. The Texas Constitution prohibits a home rule city from enforcing any legislation inconsistent with state law or the state constitution. Tex. Const. art. XI, § 5; Dallas Merchant's & Concessionaire's Ass'n v. City of Dallas, 852 S.W.2d 489, 491 (citing City of Brookside Village v. Comeau, 633 S.W.2d 790, 796 (Tex.), cert denied, 459 U.S. 1087 (1982)); Op. Tex. Att'y Gen. No. DM-229 (1993); Op. Tex. Sec'y of State No. JWF-1 (1983). Accordingly, you are advised that the number of signatures required for an election held pursuant to the Act is that set forth in the Act, and not the number required in a conflicting city charter provision or ordinance.

Your first question asked if any amount of signatures greater than 160 constitutes a legally sufficient number of signatures required to call for an election pursuant to the Act. You are advised that the minimum number of signatures required under the Act is five percent of the number of registered voters of the City of Weslaco who voted in the 1992 presidential election.¹ You are further advised that the signatures must comport with the requirements of section 277.002(a) of the Texas Election Code. Tex. Elec. Code Ann. § 277.002(a) (Vernon Supp. 1993). Whether the signatures meet the requirements of section 277.002(a) or the Act is a question of fact that cannot be determined by this office; such a determination is properly vested in the verifier of the petition signatures.

Your second question asked if the City of Weslaco is required to hold an election under the Act if the number of petition signatures is legally sufficient. Your question is answered in the affirmative.

Your third question asked, if an election is mandatory, when must it be held? Section 5(b) of the Act requires an election to be held within 60 days after a valid petition has been filed. Section 5(b) does not expressly provide that an election pursuant to the Act may be held on a non-uniform election date, as authorized by section 41.001(b)(9) of the Texas Election Code. Id. § 41.001(b)(9). Thus, the election must be held on the next feasible uniform election date as prescribed by section 41.004(a) of the Texas Election Code:

If a law outside this code other than the constitution requires a special election subject to Section 41.001(a) to be held within a particular period after

¹In your letter, you stated that a petition containing approximately 175 signatures was filed with the city on August 31, 1993. You further stated that five percent of those voting in the last preceding general election in Weslaco equaled 160. Presumably, you are referring to the votes cast in the Weslaco mayoral election held on May 1, 1993. We would caution you that, under the Act as interpreted by the Attorney General, the city's general election is an incorrect criterion to be utilized in determining the five percent figure. The Attorney General has held that the term "general election" in section 5(b) of the Act refers to the general election for state and county officers held in November of even-numbered years and not the municipal general election. See Op. Tex. Att'y Gen. No. H-182 (1973) (citing Greenwood v. City of El Paso, 186 S.W.2d 1015, 1016 (Tex. Civ. App.--El Paso 1945, no writ)). Accordingly, the correct criterion for the number of signatures required on a petition filed pursuant to the Act would be five percent of the number of registered voters in the City of Weslaco who voted in the presidential election of 1992.

the occurrence of a certain event, the election shall be held on an authorized uniform election date occurring within the period unless no uniform election date within the period affords enough time to hold the election in the manner required by law. In that case, the election shall be held on the first authorized uniform election date occurring after the expiration of the period.

Id. § 41.004(a) (Vernon 1986). The four authorized uniform election dates are set forth in section 41.001(a) of the Texas Election Code. Id. § 41.001(a) (Vernon Supp. 1993).

SUMMARY

The petition signature criteria for an election set forth in article 5154c-1(5)(b), Vernon's Texas Civil Statutes, styled the Fire and Police Employee Relations Act, prevail over any conflicting or inconsistent city charter or ordinance provisions. Such an election must be held on the first authorized uniform election date that affords enough time to hold the election after a petition is filed pursuant to that article.

Sincerely,



John Hannah, Jr.
Secretary of State



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