



OFFICE OF THE SECRETARY OF STATE

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STATE CAPITOL
P.O. Box 12697
AUSTIN, TEXAS 78711

August 10, 1982

Mr. Robert Parten
Tarrant County Chief Deputy
Tarrant County Clerk's Office
Fort Worth, Texas 76102

Election Law Opinion DAD-50
Re: Posting paper absentee
ballots voted by mail on
voting machines used for
voting absentee in
person.

Dear Mr. Parten:

This is in reply to your inquiry of July 16, 1982.

This official election law opinion is rendered by me as
chief election officer of the state in accordance with
V.A.T.S. Election Code art. 1.03, subd. 1.

You asked two questions:

1. When using a special canvassing board, may paper absentee ballots voted by mail be posted on the voting machines used at the county clerk's office and county clerk's branch offices to conduct absentee voting by personal appearance?
2. If the answer to question 1 is yes, then must the voting machines be reset to register 000 votes before posting the paper absentee ballots voted by mail?

In V.A.T.S. Election Code, art. 7.14, § 7a it is provided in relevant part:

In all elections in which voting machines are used for voting at regular polling places, both county-wide and less than county-wide, the authority charged with holding the election may in its discretion determine by proper resolution to have absentee paper ballots counted by a special canvassing board as provided in

Subdivision 6 of Art. 5.05 of this Code. The special canvassing board shall count the absentee paper ballots and make return thereof in the same way as prescribed for county-wide elections in Arts. 5.05 and 5.06 of this Code, and all laws applicable to absentee voting in county-wide elections, including the period for absentee voting by mail, shall apply. (Emphasis added.)

In accordance with art. 7.14, § 7a, you are advised that if a special canvassing board is appointed by the county commissioners to count the absentee ballots, then the procedure specified in art. 5.05, subd. 6, supra, must be complied with.

The provisions of art. 5.05, subd. 6(a) provide that the paper absentee ballots voted by mail should be delivered to the special canvassing board at the time the presiding judge directs but not earlier than the time at which the polls open nor later than the official time at which the polls close. In art. 5.05, subd. 6(d), it is provided:

At such time as the presiding judge shall direct, the election officers whose duty it is to count the ballots shall open the absentee ballot box, remove the ballots from the sealed ballot envelopes, and proceed to count and make out returns of all ballots cast absentee, including the ballots voted by personal appearance, in the same way as is done at a regular polling place. The ballot envelopes for the ballots voted by mail may be discarded or destroyed.

In art. 5.05, subd. 6(g), it states:

After the absentee ballots are counted, the ballot box containing the voted ballots and the returns and other records of the election shall be delivered to the proper officers as provided by law for regular polling places.

V.A.T.S. Election Code, art. 8.32 directs the presiding judge to deliver the returns and counted ballots to the county clerk. Thus, if a special canvassing board is appointed to count the absentee ballots then the procedure outlined in the above-cited art. 5.05, subd. 6, must be followed.

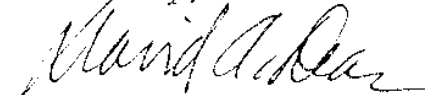
In conformity with the foregoing discussion, it is concluded that if a special canvassing board is appointed to count the paper absentee ballots, then the procedures outlined in V.A.T.S. Election Code art. 5.05, subd. 6, must be followed.

You may not register the paper absentee ballots voted by mail on the voting machines utilized for conducting absentee balloting by personal appearance. This conclusion is also dispositive of your second question concerning whether the voting machines must be reset to register 000 before posting the paper absentee ballots voted by mail.

SUMMARY

When a special canvassing board is appointed to count absentee ballots, the procedures outlined in V.A.T.S. Election Code, art. 5.05, must be followed. Paper absentee ballots voted by mail may not be posted on the voting machines used to conduct absentee balloting by personal appearance.

Sincerely,



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