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Mr. Roy Rutland, III
Assistant City Attorney
City of Austin
P. O. Box 1088
Austin, Texas 78767-8828

Election Law Opinion JWF-1
Re: An independent candidate's application for a place on the ballot in a home rule city.

Dear Mr. Rutland:

In your letter of February 24, 1983, you asked if the provisions of V.A.T.S. Election Code, art. 13.53, prevail over conflicting provisions of the city charter of Austin.

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.

Article 13.53 applies to the nomination of independent candidates in municipal elections and provides two methods by which such candidates may have their names printed on the ballot. Article 13.53, by its terms, applies to all cities and does not distinguish between non-partisan elections and elections where some candidates are party nominees.

The first method provided by art. 13.53 requires an application signed by qualified voters equalling five percent of the entire vote cast for mayor in the previous municipal election or by 25 qualified voters whichever is less. Such application must be accompanied by the written consent of the candidate.

A city charter or ordinance may not contain any provision which is inconsistent with the general laws of the state. Vernon's Ann. Tex. Const. Art XI, §5, V.A.T.S. art. 1165.

It is the opinion of this office that V.A.T.S. Election Code, art. 13.53, prevails over any provision of the city charter of Austin or any ordinance of the City of Austin to the extent of any conflict. Therefore, the City of Austin may not require more than 25 signatures on such an application.

The second method provided by art. 13.53 requires a candidate to file a sworn application accompanied by such filing fees as may be required by statute or charter.

Any candidate wishing to have his or her name printed on the ballot has the option of following either of these two procedures. I note in passing that, in either case, the application must be filed with the mayor at least 30 days prior to the election. Thus, 30 full days must elapse between the day of filing the application and the day of the election. (See Tex. Atty. Gen. Op. No. M-1118, 1972.) Therefore, the last day for filing an application is the 31st day before the election. Any candidate who files a proper application with the mayor before midnight of the 31st day before the election has complied with the statute.

SUMMARY

V.A.T.S. Election Code, art. 13.53, provides two methods by which an independent candidate may have his or her name placed on the ballot in a municipal election. Art. 13.53 prevails over the provisions of any city charter or city ordinance to the extent they conflict with art. 13.53.

Sincerely,



John W. Fainter, Jr.
Secretary of State

Prepared by John Steiner
Assistant General Counsel for Elections

APPROVED:
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