



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable R. E. Schneider, Jr.
County Attorney
Live Oak County
George West, Texas

Dear Sir:

Opinion No. 0-7324

Re: Correction of clerical error in listing candidate's name on ballot for first primary, when said candidate, who will be in run-off, desires that his name be correctly listed on ballot for run-off primary.

We are in receipt of your letter of recent date requesting the opinion of this department on the above stated matter. We quote from your letter as follows:

"The County Chairman has just advised that through an error on the part of the party printing the ballots or on the part of the committee in furnishing a list of names of the candidates to the printer one of the candidates for County Commissioner, Precinct No. 1, was listed on the primary ballot as J. F. Gregory - his correct name is Jeff Gregory.

"There will be a run-off in this race and Jeff Gregory is one of the candidates who will be in the run-off and Mr. Gregory desires that his name appear on the ballot in the second primary as 'Jeff Gregory' as he has no middle initial.

"Will the County Chairman and Committee be authorized to have the name of this candidate printed on the ballot as Jeff Gregory?

"There is no contention that J. F. Gregory and Jeff Gregory is not one and the same person and the only question to be determined is whether the ballot for the second primary may carry the name of 'Jeff Gregory' instead of J. F. Gregory."

We call your attention to the following statutory provisions:

Article 3102, V.A.C.S.

". . . Any political party may hold a second primary election on the fourth Saturday in August to nominate candidates for any county or precinct office, where a majority vote is required to make nomination; but at such second primary, only the two candidates who received the highest number of votes at the general primary for the same office shall have their names placed upon the official ballot. . .";

Article 3113, V.A.C.S.

"Any person desiring to have his name appear on the official ballot for the general primary, as a candidate for the nomination for any office to be filled by the qualified voters of a county or a portion thereof, or for county chairman, shall file with the county chairman of the county of his residence, not later than Saturday before the third Monday in June preceding such primary, a written request for his name to be printed on such official ballot as a candidate for the nomination or position named therein, giving his occupation and post office address, giving street and number of his residence, if within a city or town, such request to be signed and acknowledged by him before some officer authorized to take acknowledgment to deeds. Such request similarly signed and acknowledged by any twenty-five qualified voters resident in the county may be filed on or before said date, requesting that the name of any person named therein may be placed on the official ballot as a candidate for any county or precinct office or chairmanship, with like effect as if such request was filed by the person named as a candidate therein; which request shall be endorsed by the candidate named therein, showing his consent to such candidacy, if nominated.";

Article 3115, V.A.C.S.

"Subject to the approval of the committee, the County Chairman shall appoint a subcommittee of five (5) members to be known as the primary committee, of which he shall be ex-officio chairman. This subcommittee shall meet on the fourth Monday in June and make up the official ballot for such general primary in such county, in accordance with the certificates of the State and District Chairman and the request filed with the County Chairman, and place the names of six candidates for nomination for State, district, county and precinct offices thereon in the order determined by the county executive committee as herein provided.";

Article 3125, V.A.C.S.

" . . . At the meeting of the executive committee after the first primary, if a majority of the votes be required to nominate for county and precinct offices, and in any case no candidate received a majority of the votes, the county executive committee shall determine the two candidates who received the highest number of votes cast for all candidates for the particular office and order their names printed on the ballot for the second primary."

We assume that the candidate's request to have his name placed on the ballot (required by Art. 3113, supra) will reveal that Jeff Gregory was the name submitted to be placed on the official ballot. We understand from your letter that it was through no fault of the candidate that the name was listed on the ballot for the first primary as J. F. Gregory, but that it was through a clerical error or oversight of the county committee or printer that the name of J. F. Gregory was placed on said ballot instead of Jeff Gregory.

In view of the above mentioned circumstances and the above quoted statutes, it is our opinion that the candidate was entitled to have his name printed on the ballot for the first primary in accordance with his request to have his name placed on said ballot. It is our further opinion that when a clerical error of the type mentioned was made in listing the candidate's name on the official ballot for the first primary and the candidate requests that the error be corrected on the ballot for the run-off primary, it is the duty of the county executive committee to make such correction in making up the ballot for the run-off primary.

We trust that the above and foregoing will satisfactorily answer your inquiry.

Yours very truly

ATTORNEY GENERAL OF TEXAS

/s/ J. A. Ellis

By

J. A. Ellis
Assistant

JAE:djm:fb

APPROVED AUG. 1, 1946

/s/ Carlos C. Ashley

FIRST ASSISTANT ATTORNEY GENERAL

Approved, Opinion Committee
By: BWB, Chairman