

January 2004 Legal Q&A
Scott Houston

Q: What is the current state of cancellation of elections for cities?

The law for cancellation of city elections did not change during any of the four sessions of the Seventy-Eighth Legislature. Thus, elections may only be cancelled if: (1) each candidate whose name is to appear on the ballot is unopposed, and (2) no proposition is to appear on the ballot. TEX. ELEC. CODE § 2.051(a).

A city that elects candidates at-large may cancel an election so long as the number of candidates is equal to or less than the number of positions up for election. If a city with single-member districts has a contested, at-large mayoral race or a proposition on the ballot, uncontested single member district elections may not be cancelled. *Id.* at § 2.051(b).

Please contact the TML Legal Services Department at 512-231-7400 or legal@tml.org for more information or the forms to cancel an election.

Q: Did legislation from any of the Seventy-Eighth Legislative Sessions change the ability of a city to cancel an election?

A: No. H.B. 1344 was the only city-related cancellation of elections bill introduced in 2003. H.B. 1344 was passed by the legislature, but the bill was vetoed by the Governor and did not become law.

The bill would have added a new § 2.056 to the Election Code. The new § 2.056 would have allowed a city council to, in its discretion, declare a candidate elected to office if: (1) the candidate is the only person who has qualified to appear on the ballot for that office, and (2) no write-in candidates have submitted their names to be placed on the list for write-in candidates. In other words, H.B. 1344 would have allowed a city council to cancel an election for an unopposed single-member district even if an opposed, at-large mayoral race or proposition was on the ballot.

Further adding to the confusion were two Constitutional amendments, H.J.R. 59 and H.J.R. 62, which were required to implement non-city-related election bills. The amendments were approved by the voters in September 2003 and are now in effect. However, the passage of the amendments was not required to, and did not, expand city authority.

Q: What is “coercion against candidacy?”

A: The Election Code prohibits a person from intimidating or coercing another person to not file an application for a place on the ballot. TEX. ELEC. CODE § 2.054. A person commits the crime of “coercion against candidacy” if he or she threatens, among other things, bodily harm or to bring about hatred, contempt, or ridicule to a potential candidate. *Id.*; TEX. PENAL CODE § 1.07.

Q: When must a city order the general election for city officers?

A: Chapter 3 of the Election Code was amended during the Seventy-Eighth Regular Session to provide that a city shall order an election not later than the 62nd day (rather than the 45th day) before election day. TEX. ELEC. CODE § 3.005(a). The new provisions relating to the time period for ordering an election supercede city charter provisions to the extent of any conflict. *Id.*

Q: May a candidate in a municipal election assist a personal appearance early voter?

A: No. Under the Texas Election Code, a voter who is unable to prepare his or her ballot because of a physical disability or an inability to read may receive assistance from a person of the voter's choice. TEX. ELEC. CODE §§ 64.031, 64.032(c). The Code also provides that an election officer may assist an early voter. *Id.* at § 85.035.

The person assisting must take the following oath:

I swear (or affirm) that I will not suggest, by word, sign, or gesture, how the voter should vote; I will confine my assistance to answering the voter's questions, to stating propositions on the ballot, and to naming candidates and, if listed, their political parties; and I will prepare the voter's ballot as the voter directs.

Id. at § 64.034. Section 64 does not expressly prohibit a candidate from assisting an early voter. However, the presence of a candidate at a polling place for any purpose other than voting or official business in the building is prohibited unless the candidate is not within plain view or hearing of the voting area and is not engaged in campaign activity. *Id.* at §§ 61.001(a), 61.001(b).

Thus, while Chapter 64 does not expressly prohibit a candidate from assisting a personal appearance early voter, the effect of Chapter 61 is to prohibit such assistance.

Q: May a city hold early voting on a Saturday or Sunday?

A: Yes. The Texas Election Code expressly provides that the city secretary, whom the Code designates as the early voting clerk in a city election, may order early voting by personal appearance on one or more Saturdays or Sundays during the early voting period. TEX. ELEC. CODE § 85.006(a). The early voting period for personal appearance begins on the 17th day before the election and continues through the fourth day before election day. *Id.* at § 85.001(a). The city secretary determines the early voting hours and is required to post 72 hours notice for the main branch, or five days notice for temporary branch locations. *Id.* at §§ 85.007(c), 85.067(c).

Q: Must a city hold early voting on a Saturday or Sunday?

A: Under only one circumstance. A city must hold early voting on a Saturday or Sunday upon receipt of a written request signed by at least 15 registered voters of the territory covered

by the election. The request must be submitted in time for the city secretary to give timely notice of the fact that voting on Saturday or Sunday is ordered. TEX. ELEC. CODE § 85.006(d).

Q: Is such early voting required to be on the Saturday or Sunday requested in the petition?

A: No. The authority ordering an election is not required to order that the voting take place on a particular date specified in the request, but must order that the voting take place on at least one Saturday if a Saturday is requested and on at least one Sunday if a Sunday is requested. TEX. ELEC. CODE §85.006(d).