



OFFICE OF THE SECRETARY OF STATE

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STATE CAPITOL  
P.O. Box 12697  
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April 30, 1982

Mr. Chester R. Upham, Jr.  
Chairman  
Republican Party of Texas  
1011 Congress Avenue, Suite 520  
Austin, Texas 78701

Election Law Opinion DAD-19  
Re: Whether Marshall Martin  
is eligible to be a  
candidate for State  
Senate, District 15

Dear Chairman Upham:

This opinion is in response to your inquiry of April 22, 1982.

This official election law opinion is rendered by me as chief election officer of the state in accordance with Tex. Elec. Code Ann. art. 1.03, subd. 1 (Vernon Supp. 1982).

The Secretary of State may not make the determination of whether Marshall Martin is eligible to be a candidate for Senate District 15. This determination, involving issues of fact, must be made by the appropriate Republican Party officials or a court.

In response to your legal questions however, please be advised as follows: pursuant to Article 3, Section 6, of the Texas Constitution, at the time of the general election a Senator must have resided for a year in the district for which he is chosen. If Mr. Martin is not a resident of District 15, he would be ineligible.

Assuming arguendo that Mr. Martin is ineligible, under the provisions of Tex. Elec. Code Ann. art. 8.22(b) (Vernon Supp. 1982) his name must appear on the ballot. The ballots cast for him must be counted and a return made thereof. As Mr. Martin is unopposed, he will receive a majority of


the votes. Under those circumstances, Tex. Elec. Code Ann. art. 13.56(b) (Vernon Supp. 1982) would be followed and the District Executive Committee could choose a substitute nominee to be placed on the general election ballot.

Pursuant to Tex. Elec. Code Ann. art. 13.18a(3) (Vernon Supp. 1982), as District 15 comprises only a part of one county, the District Executive Committee is composed of the precinct chairmen within the District. The Committee's Chairman should previously have been selected at the statutory County Executive Committee meeting.

SUMMARY

Article 3, Section 6, of the Texas Constitution requires that at the time of the general election a Senator must have resided for a year in the district for which he is chosen. If a successful candidate fails to meet the constitutional requirement he is ineligible and the vacancy arising due to his ineligibility may be filled by the District Executive Committee and a substitute nominee's name placed on the general election ballot.

Sincerely,

  
David A. Dean  
Secretary of State

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APPROVED:  
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