

*Texas Municipal League*

*The Fifteenth Annual Riley Fletcher Basic Municipal Law Seminar*

*February 20-21, 2014*

*Texas Municipal Center ~ Austin*

## Election Law



**Presented By: C. Robert Heath**

**Bickerstaff Heath Delgado Acosta LLP**

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## The Voting Rights Act

- **Enacted in 1965**
- **Two Primary Provisions of the Act**
  - A. Section 2**
    - Applies to the entire county
    - Prohibits discrimination in voting
  - B. Section 5**
    - Applied only to certain areas, including Texas after November 1, 1972
    - Prohibited retrogression in changes to voting procedures and standards
    - Election changes had to be precleared by a D.C. District Court or by the Department of Justice before they could be implemented



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## The Historical Context of the Passage of the Voting Rights Act of 1965

- From the end of Reconstruction until 1965, African-Americans were often prevented from registering and voting in the deep South.
- In Lowdes County, Alabama, blacks constituted a majority of the population, but not a single African-American was registered to vote.
- In that county, it had been 60 years since a black had been on the registration rolls and 20 years since one had attempted to register.

## Literacy Tests Were a Favored Way of Controlling Who Registered

- Example of a Louisiana literacy test
  - The test had 30 questions
  - One wrong answer would result in failure
  - The decision of the registrar as to whether an individual passed was final



The State of Louisiana

Literacy Test (This test may be given to anyone who cannot prove a fifth grade education.)

Directions:

Do what you are told to do in each statement, nothing more, nothing less. Be careful, as one wrong answer denotes failure of the test. You have ten (10) minutes to complete the test.

20. Spell backwards, forwards.

- What's the correct answer?
- A. "backwards, forwards"
- B. "backwards"
- C. "sdrawrof"

## Example of a Mississippi Voter Registration Application

[By reason of the provisions of Section 244 of the Constitution of

[By reason of the provisions of Section 244 of the Constitution of Mississippi and House Bill No. 95, approved March 24, 1955, the applicant for registration, if not physically disabled, is required to fill in this form in his own handwriting in the presence of the registrar and without assistance or suggestion of any other person or memorandum.]

7. ARE YOU A CITIZEN OF THE UNITED STATES AND AN INHABITANT OF MISSISSIPPI? \_\_\_\_\_

8. FOR HOW LONG HAVE YOU RESIDED IN MISSISSIPPI? \_\_\_\_\_

18. WRITE AND COPY IN THE SPACE BELOW SECTION \_\_\_\_\_ OF THE CONSTITUTION OF MISSISSIPPI [Instruction to registrar: You will designate the section of the Constitution and point out same to applicant]:

2. Minister \_\_\_\_\_ 4. If under 21 years at present but 21 years by date of general election \_\_\_\_\_

19. WRITE IN THE SPACE BELOW A REASONABLE INTERPRETATION (THE MEANING) OF THE SECTION OF THE CONSTITUTION OF MISSISSIPPI WHICH YOU HAVE JUST COPIED:

ON THE REPLY OF SUCH A MINISTER

17. IF YOUR ANSWER TO QUESTION 18 IS YES, STATE THE LENGTH OF YOUR RESIDENCE IN THE ELECTION DISTRICT \_\_\_\_\_

18. WRITE AND COPY IN THE SPACE BELOW SECTION \_\_\_\_\_ OF THE CONSTITUTION OF MISSISSIPPI [Instruction to registrar: You will designate the section of the Constitution and point out same to applicant]:

County Registrar \_\_\_\_\_

## Example of a Section of the Mississippi Constitution That Might Be Given To a White Applicant

ARTICLE 12 Section 240. All elections by the people shall be by ballot.

## Example of a Section of the Mississippi Constitution That Might Be Given To an African-American Applicant

ARTICLE 7 Section 182. The power to tax corporations and their property shall never be surrendered or abridged by any contract or grant to which the state or any political subdivision thereof may be a party, except that the Legislature may grant exemption from taxation in the encouragement of manufactures and other new enterprises of public utility extending for a period of not exceeding ten (10) years on each such enterprise hereafter constructed, and may grant exemptions not exceeding ten (10) years on each addition thereto or expansion thereof, and may grant exemptions not exceeding ten (10) years on future additions to or expansions of existing manufactures and other enterprises of public utility. The time of each exemption shall commence from the date of completion of the new enterprise, and from the date of completion of each addition or expansion, for which an exemption is granted. When the Legislature grants such exemptions for a period of ten (10) years or less, it shall be done by general laws, which shall distinctly enumerate the classes of manufactures and other new enterprises of public utility, entitled to such exemptions, and shall prescribe the mode and manner in which the right to such exemptions shall be determined. SOURCES: Laws 1961, ch. 9, 1st Extraordinary Session, effective October 16, 1961. NOTE: The 1961 amendment to Section 182 was proposed by Laws 1961, ch. 9, 1st Extraordinary Session, and upon ratification by the electorate on October 3, 1961, was inserted by proclamation of the Secretary of State on October 16, 1961.

***Shelby County v. Holder,***  
**570 U.S. \_\_\_\_\_, 133 S.Ct. 2612 (2013)**

- **On June 25, 2013, by a 5-4 vote, the U.S. Supreme Court struck down section 4 of the Act**
  - **Section 4 provides the formula by which states and other jurisdictions are brought under section 5**
  - **Shelby County effectively ended the requirement that cities seek and receive preclearance for election changes thus freeing cities to make changes that might have been considered to be retrogressive**

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***Shelby County v. Holder,***  
**570 U.S. \_\_\_\_\_, 133 S.Ct. 2612 (2013)**

- **BUT should a city want to make a change that would have been prohibited under section 5?**
  - **A change can increase racial and ethnic tension**
  - **The city may be sued under section 2**

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***Shelby County v. Holder,***  
**570 U.S. \_\_\_\_\_, 133 S.Ct. 2612 (2013)**

- **BUT should a city want to make a change that would have been prohibited under section 5?**
  - **The defense of a section 2 suit is very expensive and if the city loses, it will likely need to pay the plaintiffs' attorney fees**
  - **If a city loses, a court may invoke section 3 of the Act, which would re-impose a section 5-type requirement on the city going forward**

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## **Joint Elections**

- **Only two permitted election days:**
  - **Second Saturday in May**
  - **First Tuesday after the first Monday in November**
- **Chapter 31 of the Election Code authorizes contracts for joint elections**



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## Joint Elections

- **County elections administrators are required to enter into joint election contracts on request**
  - **Counties without an elections administrator are not required to contract, but may do so**
- **School districts may be required to hold elections with a city or other partner**
- **Joint elections are generally less expensive for political subdivisions and more convenient for the voters**

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## Timing for Elections

- **The election process is conducted pursuant to detailed time lines**
- **The dates for calling the election and for other election events vary depending on whether the election is in **May** or **November****
- **Elections held on the **May** uniform election date are to be ordered not later than the **71<sup>st</sup>** day before election day**
- **For **November** elections, the comparable beginning point is the **78<sup>th</sup>** day**

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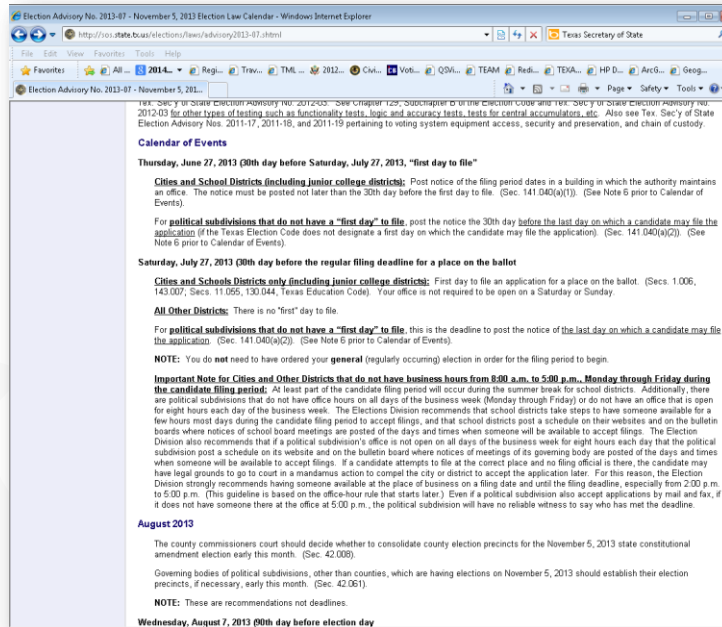
## Timing for Elections

- Each year, specific election calendars are posted on the Secretary of State's website [www.sos.state.tx.us/elections](http://www.sos.state.tx.us/elections)



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## Timing for Elections



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## Prohibition on Using Public Funds to Influence Elections

- **Texas Election Code, Section 255.003**
  - a) **An officer or employee of a political subdivision may not knowingly spend or authorize spending of public funds for political advertising**
  - b) **The prohibition does not apply to a communication that factually describes the purpose of a measure if the communication does not advocate passage or defeat of the measure**

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## Prohibition on Using Public Funds to Influence Elections

- **Texas Election Code, Section 255.003**
  - (b-1) An officer or employee of a political subdivision may not spend or authorize spending public funds for a communication describing a measure if the communication contains information**
    - **The officer or employee knows is false, and**
    - **Is sufficiently substantial and important to be reasonably likely to influence a person to vote for or against the measure**
  - **A violation of (a) spending public funds for political advertising or (b-1) spending public funds for communication known to be false is a Class A misdemeanor**

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## Prohibition on Using Public Funds to Influence Elections

- **Texas Election Code, Section 255.003**
  - A Class A misdemeanor is punishable by
    - a fine of up to \$4,000;
    - up to one year's confinement;
    - or both a fine and confinement
- **Conviction results in removal from office**
  - **Tex. Loc. Gov't Code, section 21.031**

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## Prohibition on Using Public Funds to Influence Elections

- **The issue arises most often in bond elections and similar votes on measures**
- **Permissible**
  - Proposition One provides \$5 million for construction of new roads
- **Impermissible**
  - Good roads are essential to a good city
  - or**
  - Support Our City's Growth
  - or**
  - A growing community deserves good roads



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## Prohibition on Using Public Funds to Influence Elections

- Use of Public Funds for newsletters can be construed to be political advertising supporting a candidate



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## Prohibition on Using Public Funds to Influence Elections

- Texas Ethics Commission has published guidelines as to how much coverage of a public official is too much
  - Texas Ethics Commission Rule 26.2, 1TAC § 26.2
    - No more than two pictures of an official on a newsletter page and the pictures may not take up more than 20% of the page
    - No more than eight personal references (e.g., I, me, the councilmember) on a "8-1/2 x 11" page

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