

Memo

Date: Monday, November 21, 2005
From: Ben Stool, Assistant Criminal District Attorney
To: Pat Batchelor, Chief, Public Integrity Division
Cc:
Re: Criminal Prosecution of Incidents at the Polling Place at Highland Park Middle School during the 2005 Constitutional Election

I believe that a criminal investigation may produce sufficient evidence to bring a criminal prosecution against the County Judge and/or Election Judge Jim Hairston for incidents occurring at the polling place at Highland Park Middle School during the 2005 Constitutional Election. The class B misdemeanor offense in the Election Code is Unlawfully Accepting Voter: "An election officer commits an offense if the officer knowingly permits an ineligible voter to vote other than as provided by Section 63.011."¹

The emails, news article, and fax that I already have indicate that the County Judge and/or the Election Judge may have unlawfully permitted many ineligible voters to vote. The Election Judge allegedly did this by not requiring the voters to go through the basic process if they merely stated that they had a voter registration certificate. It appears that he either ordered or permitted others to hand out regular ballots to voters without those voters presenting voter registration certificates. The Election Judge also may have distributed the ballots himself. The County Judge may have directed the Election Judge or his clerks to hand out regular ballots to voters without requiring the voters to go through the basic required procedure. That could make her a party to the offense. Eventually, some voters were asked to produce voter registration certificates. However, it also appears that none of the voters in question had their names checked against the precinct list of registered voters, nor were they required to sign the signature roster. Bruce Sherbet, the Elections Administrator, informed me that over 100 more ballots were cast at this particular polling place than there were signatures on the roster.

One of the requirements for a voter to be eligible to vote in an election is that the voter must, "satisfy all other requirements for voting prescribed by law for the particular election."² Some of the most basic requirements prescribed by law for all elections are for all voters to present their voter registration certificates to an election officer at the polling place. An election officer is supposed to determine whether each voter's name is on the list of registered voters for the precinct. If the voter's name is on the precinct list of registered voters, the election officer is supposed to accept the voter for voting and note that acceptance in writing beside the voter's name. The voter must then sign the signature roster before the voter is permitted to vote. Voters are not eligible to vote until they have complied with these basic procedures.

I expect that there may be some controversy over whether the Elections Administrator or Micki Swindle, his Executive Secretary, instructed or permitted the Election Judge and/or the County Judge to alter the basic required procedure. I have a written statement from Ms. Swindle stating that she told the Election Judge to follow the rules. Mr. Sherbet said that he would have a statement to me by today.

¹ Texas Election Code § 63.012(a)(1). Section 63.011 is the procedure for provisional voting. It is used when a voter cannot demonstrate his or her eligibility to vote in the election. That is not what the alleged problem was at this polling place.

² Texas Election Code § 11.001(a)(3).