

Mrs. Nancy Archer
Liberty County Democratic Executive Committee
Chairperson

Re: Formal Request for Administrative Declaration of Ineligibility "Election Code 145.003"

Dear Mrs. Archer:

In response to our discussion pertaining to information provided us, a few weeks ago, alledging that extremely important Election law provisions have been grossly ignored and violated with respect to a Liberty County Democratic candidate for office. As we now know, according to **Texas Election Code Section 141.001(a)(5)**, to be an eligible candidate for county office a person must have resided *continuously* in the county from which the office is elected for *six months immediately preceding* the date of the regular filing deadline for a candidate's application for a place on the ballot. Further, **Texas Election Code Section 145.003(f)(2)** provides that a candidate may be declared ineligible if facts indicating that the candidate is ineligible are conclusively established by another public record. **Texas Election Code Section 145.003(f)(2)** further provides that when presented with a public record containing information pertinent to a candidates eligibility, the appropriate authority *shall* promptly review the record. If the authority determines that the record establishes ineligibility as provided, the authority *shall* declare the candidate ineligible. Important to note is the use of the term *shall*. The use of this term makes it **MANDATORY** that the authority declare the candidate ineligible.

Laws and public records pertaining to voters and residential homestead exemptions conclusively establish that the current Democratic candidate for Liberty County Judge, Ken Morrison, is *legally ineligible* to be a candidate for County Judge of Liberty County. First, during the six-month time period he was legally required to be a continuous resident of Liberty County, and in clear violation of this requirement, Mr. Morrison elected to affirm his Harris County residency by voting in the Harris County November 2009 election. **Texas Election Code Sections 11.001 (a)(2) & (b)** irrefutably establishes that an individual is a legal resident of the territory in which he votes, regardless of whether a person resides on properties located in more than one territory. Additionally, Mr. Morrison further affirmed his Harris County residency during this time period by declaring his Harris County Homestead exemption as of January 1, 2010. In order to qualify for a Homestead exemption in Harris County, Mr. Morrison *must have* (1) owned the property on January 1, 2010; (2) occupied it as his principal residence on January 1, 2010; and (3) he or his spouse have not claimed a residence homestead exemption on any other property. It is essential to note that, Mr. Morrison's intentions were made clear by his actions regarding these two instances.

The law and public records are clear. Accordingly, your committee is legally required to declare Ken Morrison ineligible as a candidate for the office of Liberty County Judge. However, there is still time for this committee to save the Liberty County Democratic Party from this precarious situation.

In order to correct this wrong, time must be of extreme essence. According to **Texas Election Code Sections 172.058(b), 145.035, and 1.006**, a vacancy in nomination may be filled

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if the name of the party's nominee will not appear on the November ballot due to declaration of ineligibility occurring after December 30, 2009 (62nd day before primary) and on or before **AUGUST 20, 2010** (74th day before general election). **Texas Election Code Sections 145.035 and 145.036** go on to provide that if a candidate is declared ineligible before the 74th day before election day, the political party's executive committee may nominate a replacement candidate to fill the vacancy in the nomination. **Texas Election Code Sections 145.037(d), (e), and (f)** further provide that the chair of the appropriate executive committee must deliver the certificate of the replacement nominee's name by **5:00 p.m., August 24, 2010** (70th day before general election), to either the Secretary of State for a statewide or district office, or the county clerk/elections administrator for a county or precinct office, whichever is applicable. If the certificate is filed by mail, it must be received by the filing authority by the deadline.

Failure to take appropriate action at this time would then place the burden of making a decision of ineligibility on the shoulders of the presiding officer of the final canvassing authority, after the election, Texas Election Code Section 145.003(d), which is the county judge. If a decision is required after the election, I will turn the gavel over to Commissioner Melvin Hunt and allow him to preside over the meeting and make that decision.

It is unfortunate that we are now in this position. But the law is clear. This committee is legally required to declare Ken Morrison ineligible. The only way for the Democratic Party to have a candidate for county judge in November is for this committee to declare him ineligible before August 20th, and before he has the opportunity to withdraw himself. Then the committee chair must deliver the replacement candidate's name before August 24th. I have full faith that you will follow the law and do what is best for your party and our county. Thank you for your prompt attention to this matter.

Regards,


Phil Fitzgerald