

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL  
State of California

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OPINION	:	No. 79-804
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of	:	<u>May 9, 1980</u>
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SUBJECT: REGISTRATION OF VOTERS—A deputy registrar may be paid by an individual or organization for securing registration of voters of a particular political party but may not refuse to register a person of a different political party. A person who distributes or collects voter registration cards may also be paid for securing registration of voters of a particular political party and may refuse to distribute a card to or collect a card from a person of a different political party.

1. May a deputy registrar of voters be paid by an individual or organization for securing registration of voters of a particular political party and may such person refuse to register a person of a different political party?

2. May a person who distributes or collects voter registration cards be paid by an individual or organization for securing registration of voters of a particular political party and may such person refuse to distribute a card to or collect a card from a person of a different political party?

## CONCLUSIONS

1. A deputy registrar of voters may, if authorized by local ordinance, be paid by an individual or organization for securing registration of voters of a particular political party but may not refuse to register a person of a different political party.

2. A person who distributes or collects voter registration cards may be paid by an individual or organization for securing registration of voters of a particular political party and may refuse to distribute a card to or collect a card from a person of a different political party.

## ANALYSIS

A brief synopsis of California election law will aid in understanding California's voter registration system. It is the duty of the county clerk, or the registrar of voters in counties having such office, to register "such electors as apply for registration and perform such other duties as are required . . . by the Elections Code." (Gov. Code, § 26802.) Under Election Code section 17<sup>1</sup> an "elector" is defined as "any person who is a United States citizen 18 years of age or older and a resident of an election precinct at least 29 days prior to an election." Section 302 provides for the deputizing of qualified citizens as deputy registrars of voters. Until 1976 under former sections 200 and 201,<sup>2</sup> the only form of registration was a voter's affidavit of registration made *in person* before the county clerk, the registrar of voters or a deputy registrar. In 1975 registration *by mail* was added to and became part of the registration system. Thus, presently registration may be made in person or by mail.

### Registration By Mail

Pursuant to section 506, the "affidavit of registration" is now contained on one part of a multi-part card known as the voter registration card. The card contains instructions and is returnable to the county clerk or registrar as a self-enclosed mailer with postage paid by the Secretary of State. (§ 506; Cal. Admin. Code, tit. 2, § 19055 (a).) The affidavit part of the card is numbered and has a numbered receipt attached. (§ 506.) Under section 301, the affidavit of registration, which is used under both registration systems, is made under penalty of perjury.

A person to whom a completed card is entrusted must return it to the clerk or registrar, or deposit it in the mail, within three business days of receipt from the voter.

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<sup>1</sup> All unidentified statutory references are to the Elections Code.

<sup>2</sup> Statutes of 1961, chapter 23.

(§ 403.) Any person who, without the voter's authorization, retains a completed card more than three business days, or who willfully interferes with the prompt transfer of a completed affidavit to the clerk, or who denies a voter the right to return his own completed card to the clerk is guilty of a misdemeanor. (Elec. Code, § 29202.)

The clerk or the registrar must provide voter registration cards to citizens or organizations desiring to distribute such cards. (§ 507.) An elector may give his completed registration card to another person for delivery to the registrar, which person must execute the numbered receipt, returning it to the elector. (§ 507.)

### Registration In Person

Affidavits of registration to be used by deputy registrars of voters rather than the cards which are designed to be mailed are slightly modified for this purpose. The deputy registrar fills in the stub, after which the voter signs it, keeping the stub and the informational part of the form. (§ 508; Cal. Admin. Code, tit. 2, § 19055(b).) Any person, including a deputy registrar, who assists another in completing the affidavit must also sign and date the affidavit. (§ 500.) Registration is effective upon receipt by the registrar under both systems. (§ 301.) Voter notification is sent to the voter bearing the effective date of the registration whether the voter registered in person or by mail. (§ 503; Cal. Admin. Code, tit. 2, § 19058.)

### Deputy Registrars

We now turn to our first question. May a deputy registrar be paid by an individual or organization for securing the registration of voters of a particular political party? We conclude that a deputy registrar may, under certain circumstances, be so paid.

In 40 Ops. Cal. Atty. Gen. 106 (1962) we concluded that political parties and organizations could not pay deputy registrars for registering voters of a particular party. Our conclusion rested upon the nonpartisan nature of the registration system which is designed to maximize registration by all voters regardless of political affiliation. We noted that various statutes demonstrate the nonpartisan nature of the system. The registrar is an "officer" with a duty to register such electors as apply for registration. (Gov. Code, § 26802.) Registration procedures are designed to reach all qualified voters of a county. (§§ 302, 304, 507.) In our previous opinion we concluded:

"The above system of voter registration is entirely nonpartisan. It is designed to maximize registration throughout the county, not just in one party. Paying deputy registrars a bonus for registering voters in a particular party is inconsistent with this system. Moreover, it might defeat the

legislative purpose of promoting voter registrations on a nonpartisan basis since it would tend to encourage the deputy registrar to neglect registration of those voters for whom a bonus would not be paid. Accordingly, any practice of paying bonuses for registering voters of a certain party affiliation is unauthorized.” (40 Ops. Cal. Atty. Gen. 106, 107 (1962).)

We also noted in 40 Ops. Cal. Atty. Gen. 106, 107–109 (1962) that while partisan payments to registrars alone would not establish bribery (Pen. Code, § 67 1/2), receiving a bribe (Pen. Code, § 68) or conspiracy (Pen. Code, § 182), should the additional elements required to commit those crimes be present in a particular case, such payments could constitute an element of those crimes. This is still true today.

In 1975, over a decade subsequent to the publication of the above referenced opinion, Penal Code section 70 was amended by adding a second paragraph making the section read:

“Every executive or ministerial officer, employee or appointee of the State of California, county or city therein or political subdivision thereof, who knowingly asks, receives or agrees to receive any emolument, gratuity or reward, or any promise thereof excepting such as may be authorized by law for doing an official act, is guilty of a misdemeanor.

“This section shall not be construed to prohibit deputy registrars of voters from receiving compensation when authorized by local ordinance from any candidate, political committee, or statewide political organization for securing the registration of voters.”

This new paragraph is an apparent attempt to allow deputy registrars to be paid for registering voters when authorized by local ordinance. Since it is expressed as a limitation on the definition of a particular crime rather than as an enabling act, it may be doubted whether it provides cities and counties with authority to enact such an ordinance. Article XI, section 7 of the Constitution provides: that a “county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.” This power can be applied only within the territory of the county or city and is subject to displacement by general state law, but otherwise it is as broad as the police powers exercisable by the Legislature itself. (*Birkenfeld v. City of Berkeley* (1976) 17 Cal. 3d 129.) That portions of the election procedures are left to local regulation is established by state delegation to fix precinct boundaries (see Elec. Code, § 1501 and Gov. Code, § 25201) and call special local elections. (Elec. Code, § 2653; see also *Strubm v. City Council* (1964) 229 Cal. App. 2d 278.) The new last paragraph of Penal Code section 70 makes it clear that the Legislature did not intend to occupy the field as to

registrar payments. Thus, we conclude that counties and cities are authorized to enact registrar payment ordinances under the authority granted by article XI, section 7 of the Constitution. Our conclusion, then, rests upon whether a local ordinance authorizes such payment. In the absence of such authorization, such payments would be unlawful. (40 Ops. Cal. Atty. Gen. 106 (1962).)

We are also asked whether a deputy registrar of voters may refuse to register a person with a particular party affiliation. We conclude a deputy registrar is not authorized to do so.

As we recognized in 40 Ops. Cal. Atty. Gen. 106 (1962), the voter registration system in California is a nonpartisan one, and a declaration of party affiliation is not a prerequisite to registration. (§ 501.) It is the official duty of the registrar to register any elector who applies. (Gov. Code, § 26802.) Deputy registrars share this duty as well. (Gov. Code, § 24100.)

Under Elections Code section 29102, it is unlawful for a person to willfully neglect or refuse to perform any duty under the provisions of state law relating to elections. This section provides:

“Every person charged with the performance of any duty under the provisions of any law of this state relating to elections, who willfully neglects or refuses to perform it, or who, in his official capacity, knowingly and fraudulently acts in contravention or violation of any of the provisions of such laws, is, unless a different punishment is prescribed by this code, punishable by fine not exceeding one thousand dollars (\$1,000) or by imprisonment in the state prison for 16 months or two or three years, or by both.”

A deputy registrar refusing to register a person with a particular party affiliation (or with no affiliation at all) would violate an official duty. Any deputy registrar doing this willfully (Pen. Code, § 7, subd. (1)) could face criminal penalties under Elections Code section 29102. Accordingly, we conclude that a deputy registrar is not authorized to refuse to register a person with a particular party affiliation.

#### Registration Card Distributors

We now turn to the second question, whether a person who distributes or collects voter registration cards may receive payment from an individual or group for securing registrations of a particular political party. We note that the restraints placed upon deputy registrars by Penal Code section 70 do not apply to volunteers, as they are not officers or

public employees.

With regard to the card distribution programs, however, the Secretary of State has adopted regulations relating to such programs as authorized by section 304,<sup>3</sup> Title 2, California Administrative Code, section 20001(g) states:

“(g) Distribution Controls. Each program shall establish orderly limits upon bulk distributions of registration affidavit forms. Such controls should include, but not be limited to, record keeping, training, and contingency plans for form allocation in the event that supplies become depleted.

“All requests for more than 50 registration forms shall be accompanied by a brief statement of distribution plans, which shall be a necessary condition to issuance of the voter registration cards. This statement shall designate the name and address of the person or persons proposing such a distribution plan. This statement shall contain declarations executed under penalty of perjury that reasonable steps will be taken to insure that:

“(1) The person or persons distributing such cards to potential registrants will not neglect or refuse to give a voter registration card to any elector *requesting* one for the purpose of registering to vote; and

“(2) The voter registration cards issued will not be altered, defaced, or changed in any way, other than by the insertion of a mailing address and the affixing of postage, if mailed, or as otherwise specifically authorized by the Secretary of State, prior to distribution to prospective registrants and that the affidavit portion of the voter registration cards will not be marked, stamped, or partially or fully completed by anyone other than an elector attempting to register to vote or by another person assisting such elector after being requested by such elector to assist in completing the affidavit.” (Emphasis added.)

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<sup>3</sup> Section 304 provides:

“It is the intent of the Legislature that voter registration be maintained at the highest possible level. The Secretary of State shall adopt regulations requiring each county to design and implement programs intended to identify qualified electors who are not registered voters, and to register such persons to vote. The Secretary of State shall adopt regulations prescribing minimum requirements for such programs . . . .”

We find no prohibition in the regulation against payment to card distributors based upon the number of registrations secured for a particular political party. There is no affirmative duty placed upon these distributors by the regulation to seek out registrants for all parties.

Section 507(b) requires the county clerk to “provide voter registration cards in sufficient quantities to any citizens or organizations who wish to distribute such cards. Such citizens and organizations shall be permitted to distribute voter registration cards anywhere within the county.”<sup>4</sup> Volunteers who distribute voter registration cards to applicants have no duty to distribute them to anyone and thus breach no duty when they decline to provide a card on request. Volunteers are not public officials or public employees, nor do they share the duty of the registrar and deputy registrars to register all electors. Thus, there could be no violation of Elections Code section 29102 by a refusal to distribute or collect a card. We note, however, that once a completed registration card is given to a person, it is a misdemeanor for that person not to return or mail the card to the county clerk. (See § 403; Elec. Code, § 29202.)

We note that under the regulation quoted above regarding card distribution programs, all requests for 50 or more cards must be accompanied by a statement, executed under penalty of perjury, that reasonable steps will be taken to insure that the person or persons distributing the cards will not neglect or refuse to give a card to any elector *requesting* one. The person making such a statement might be guilty of perjury for any

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<sup>4</sup> Section 507 states:

“In addition to registration conducted by deputy registrars of voters, the county clerk shall, as follows:

“(a) Provide voter registration cards for the registration of voters at his office and in sufficient number of locations throughout the county for the convenience of persons desiring to register, to the end that registration may be maintained at a high level.

“(b) Provide voter registration cards in sufficient quantities to any citizens or organizations who wish to distribute such cards. Such citizens and organizations shall be permitted to distribute voter registration cards anywhere within the county.

“If, after completing his or her voter registration affidavit, an elector entrusts it to another person, the latter shall sign and date the attached, numbered receipt indicating his or her address and telephone number, if any, and give the receipt to the elector.

“If distribution of voter registration cards pursuant to this subdivision is undertaken by mailing cards to persons who have not requested the cards, the person mailing such cards shall enclose a cover letter or other notice with each card instructing the recipients to disregard the cards if they are currently registered voters.

“(c) Mail a voter registration card immediately to any person who wishes to register to vote and requests a voter registration card.”

false statements made therein but nothing in the regulator purports to directly address the conduct of the distributors. Thus, refusal by a distributor to provide a registration card on request would not violate the regulation as it is now worded.

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