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Secretary of State Primary Rules / Allowable Costs

TEXAS SECRETARY OF STATE

Welcome

Election Funds Management
2016 Primary Finance Rules

17th Biennial Election Law Seminar for County Chairs

October 9, 2015

TEXAS SECRETARY OF STATE

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Primary Finance Overview

State primary funds are issued to county chairs overseeing the conduct of primary elections every two years, in accordance with Chapter 173 of the Texas Election Code.

The state funds approximately 75 to 80 percent of the primary election costs with candidate filing fees covering the balance.

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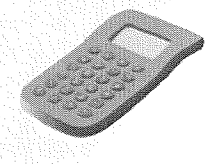
Primary Finance Overview (cont.)

The Secretary of State initially distributes funding to the county chairs based on estimated costs.



Seventy-five (75%) of the approved estimated cost is advanced to the chair.

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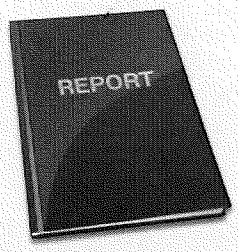
Primary Finance Overview (cont.)

After the primary and runoff (if a runoff is held), chairs remit a final cost report of actual expenses. Additional funds are either due to the chair or the state is owed money.



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Primary Finance Overview (cont.)

Most county parties contract with the county to lease voting equipment as well as for other election services.

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Legislative, Rule, and Funding Changes

- SB 1073, 84th Tx Leg, requires the chairs to electronically submit to the SOS a list of all candidates that file to be on primary ballot and include a status for each candidate.
- SB 1448 , 84th Tx Leg, requires the county election officer to contract with the state chair if requested in a county without county party leadership.

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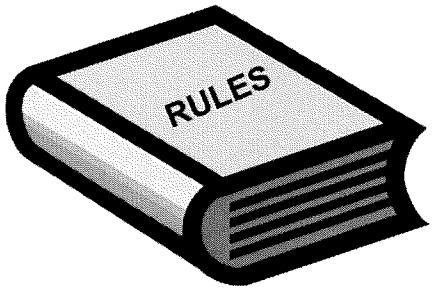
STATUTORY AND ADMINISTRATIVE RULES



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Legal References

- Texas Election Code ("TEC"):
  - Chapter 31, Subchapter D (election service contract provisions)
  - Chapter 51, Subchapter B (election equipment and supplies regarding primaries)
  - Chapter 123, Subchapter B (election equipment leases for primaries)
  - Chapter 173 (primary finance provisions)
- Texas Administrative Code ("TAC"):
  - Title I, Chapter 81, Subchapters F and G (SOS primary finance rules)

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Primary/Runoff Cost Est. (§81.101, TAC)

Approval of the Primary/Runoff Election Cost Estimate does not relieve the chair, any employee, or third party from complying with applicable statutes or administrative rules governing the use of primary funds.

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Primary/Runoff Cost Est. (§81.101, TAC)

- The "pre-populated" primary estimate and the runoff, if applicable, are based on 75% of the final approved costs less non-state appropriated financing sources (e.g., filing fees) for the most recent comparable election(s).

- In order to receive the cost estimate payments, the chair must submit to the SOS a primary election cost estimate or runoff election cost estimate via the SOS online primary finance system.

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Primary/Runoff Cost Est. (§81.101, TAC) (cont.)

- §173.031 of the Texas Election Code allows the SOS to make direct payments to a county of a population of 100,000 or more who conducts a primary election under an election services contract.
- It is the county's prerogative and responsibility to request direct payment from the state.
- The state is not responsible for revenue due to the county held by the county chair, such as candidate filing fees.

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Election Funds Defined (§81.102, TAC)

- The primary fund consists of the following:
  - Candidate filing fees
  - State funds
  - Contributions made to for the purposes of defraying primary expenses
  - Income earned in the fund
  - Any refund of money expended from the primary fund

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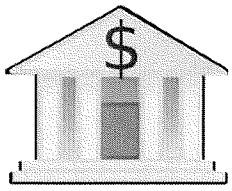
Primary Bank Account (§81.103, TAC)

- A bank account must be established exclusively for primary funds (other funds cannot be comingled).



- Payments issued by the Comptroller will be payable to the county party chair, not an individuals name, via check or direct deposit. Forms may be obtained from the Comptroller.

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Election Funds Defined (§81.102, TAC) (cont.)

DO NOT comingle primary and party funds.

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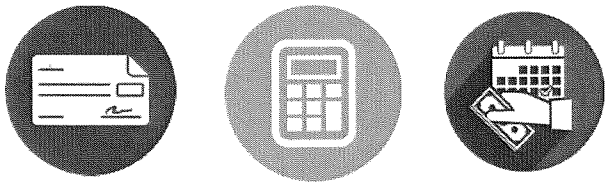
Primary Bank Account (§81.103, TAC)

- All checks issued from the account must include the statement: "VOID AFTER 180 DAYS."
- Account reconciliations shall be completed monthly and are considered part of the primary records.



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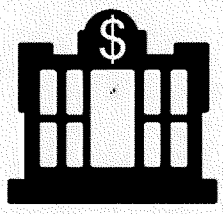
Primary Bank Account (§81.103, TAC)

- A nominal amount may be retained in the account after the primary to maintain the account.



- All account information must be transferred to the incoming chair.

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Signing Checks and Authorizing Expenses (§81.104, TAC)

- The county chair or authorized agent must authorize all expenditures and sign all checks – rubber stamps and facsimile signatures cannot be used.

- The chair must sign all checks for the following:
  - Amounts of $1,000 or greater
  - Payroll for administrative personnel
  - Payments to sole-source vendors

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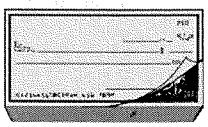
Payee of Checks(§81.105, TAC)

- Checks shall be paid to a person or entity.



- Checks may be made payable to the chair for the following:
  - Petty-cash fund
  - Seminar travel reimbursement
  - Personal loans to the primary fund to cover eligible expenses
  - County chair compensation consistent with §173.004, TEC

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Payee of Checks(§81.105, TAC)

Checks shall not be issued from the primary fund for:

- Contributions to the party
- Reimbursement of payments made by an election judge to election workers

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Deposits (§81.106, TAC)

The chair, or an authorized agent of the chair, must:

- Deposit all filing fees, contributions, and miscellaneous receipts into the primary fund
- Maintain an itemized list detailing the funding source of all deposits, including candidate filing fees

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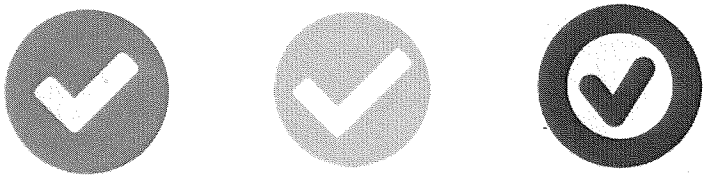
Deposits (§81.106, TAC)

The SOS will verify the itemized list of candidate filings against the data reported pursuant to SB 1073, 84th Tx Leg, and §81.112, TAC.



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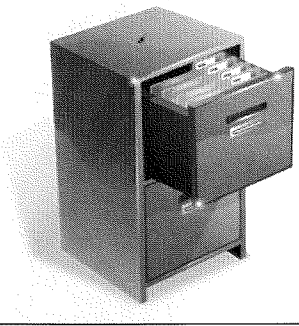
Primary Fund Records (§81.107, TAC)

- The chair must preserve all primary fund records until the later of:
  - 22 months following the primary elections; or
  - the conclusion of any relevant litigation or official investigation.



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Primary Fund Records (§81.107, TAC) (cont.)

Prior to approval of the final cost report, the chair must submit copies of:

- Receipts
- Bills
- Invoices
- Contracts
- Competitive Bids
- Petty-cash Receipts for Items and Services Over $500
- All Monthly Bank Statements
- Electronic Bookkeeping Records (i.e. Quicken or Quickbooks)
- Any other related materials documenting primary-fund expenditures

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Primary Fund Records (§81.107/§81.113, TAC)

- The chair must complete all final cost reporting requirements no later than July 1 of the primary election year and return all surplus funds.
- §81.113, TAC, states misuse or misappropriation of primary funds, including failure to submit the final cost report, will be referred to the appropriate prosecuting authority.

(Prosecuting authority includes but is not limited to Office of the Attorney General.)

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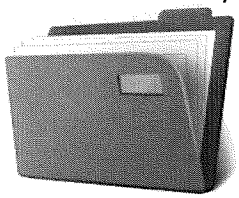
Transfer of Records (§81.108, TAC)

- ALL primary records must be turned over to the incoming chair within 30 days of his or her term.
- Texas Election Code §171.028 provides a criminal penalty for failure to transfer records to the new county chair.
- The county executive committee shall appoint a custodian of the records in the event of a vacancy.



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Transfer of Records (§81.108, TAC) (cont.)

The incoming chair or the appointed custodian and the outgoing chair must coordinate the completion of the primary finance reporting process, including the disbursement of the county chair compensation.

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Transfer of Records (§81.108, TAC) (cont.)

- Payments issued by the Comptroller of Public Accounts will be payable to the county party chair, not the individual's name.
- It is the responsibility of the individual with access to the primary fund established pursuant to §81.102-103, TAC, to ensure final payment(s) from the primary fund are issued properly to close out the financing of the primary.

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Costs Not Payable (§81.109, TAC)

- Primary funds may only pay for costs necessary for and directly related to the conduct of the primary.
- Political expenses and activities not required by law are not reimbursable.

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Costs Not Payable (§81.109, TAC) (cont.)

Examples of non-payable items:

- Expenses incurred in connection with a convention of a political party
- Any food or drink items
- Stationery not related to the conduct of the primary election
- Costs associated with voter-registration drives or get-out-the-vote campaigns
- Election notices, except for public testing announcements
- Early voting costs, except for ballots & EVBB costs
- Costs for election workers to attend training
- Costs for training materials available through the SOS

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Costs Not Payable (§81.109, TAC) (cont.)

Examples of non-payable items:

- Duties a county election officer is statutorily required to perform as well as salaries of county personnel during regular business hours
- Voting by mail kits and postage related to mail ballots
- Purchases of MBB's/PEB's or other voting system items transferable to other elections
- Voting booths and ballot boxes owned by the county

TEXAS SECRETARY OF STATE

Fidelity Bond (§81.110, TAC)

- A fidelity bond may be purchased for an individual who handles receipt or expenditure of primary funds.
- The fidelity bond amount should be based on the estimated amount of funds collected and disbursed from November 1 to the last day of the month in which the final primary election occurs, not to exceed $50,000.

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Start Up Loans (§81.111, TAC)

- A county chair may acquire a start up loan to defray the cost of the primary election prior to receiving reimbursement from the state.

- Interest paid on a startup loan opened to defray the cost of the primary election prior to receiving state funds is not reimbursable with primary funds.

TEXAS SECRETARY OF STATE

Candidate and Filing Fee Lists (§81.112, TAC)

Pursuant to SB 1073, 84th Legislature, 2015, a chair shall file with the SOS, through electronic means prescribed by the SOS, the following information pertaining to candidates who file an application for a place on the ballot:

- the name of the candidate as it is to appear on the ballot
- the candidates address as shown on the application
- the date the candidate filed the application
- the candidates phone number as shown on the application
- the candidates email address as shown on the application
- whether the candidate paid a filing fee or filed a petition in lieu of the filing fee that satisfies the requirements prescribed by §141.062 of the Texas Election Code
- amount of the filing fee
- status of the candidate

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Candidate and Filing Fee Lists (§81.112, TAC) (cont.)

- The chair shall submit a candidate's information and a notation of each candidate's status not later than 24 hours after the chair completes the review of the candidate's application in accordance with §172.029, TEC.
- By not later than the 8th day after the regular filing deadline, the chair shall submit a candidate's information and a notation concerning the candidate's status for all candidates who filed in accordance with §172.029, TEC.

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Candidate and Filing Fee Lists (§81.112, TAC) (cont.)

- The state chair shall notify the applicable county chairs that candidate information has been submitted for all candidates in accordance with §172.028 and §172.029, TEC.
- The county chair shall notify the applicable county clerk that candidate information has been submitted for all candidates in accordance with §172.029, TEC.

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Candidate and Filing Fee Lists (§81.112, TAC) (cont.)

- The SOS is only responsible for providing electronic means to accept the data and display the information publicly on its website.
- The SOS does not alter the data nor verify its accuracy.

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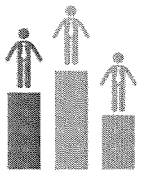
Conflicts of Interest (§81.114, TAC)

- Primary funds cannot be paid personally to the chair or to an entity or business in which the party, the county chair, the county chair's spouse, or the county chair's family has a financial interest.
- Exceptions:
  - Election Day Workers
  - Incidental Administrative Costs
  - County Chair Compensation

TEXAS SECRETARY OF STATE

Competitive Bids (§81.115, TAC)

- Purchases of $2,000 or less do not require competitive bids (minimum of three bids).
  - Purchases cannot be divided to avoid $2,000 threshold.
  - Competitive bids are required for aggregate purchases from a single vendor that totals more than $2,000.
- Documentation must be maintained and submitted with the final cost report for "sole source" bids (e.g. only one vendor was available).



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Estimating Voter Turnout (§81.116, TAC)

- The formula for estimating voter turnout is:

$$(A \times B) + C = D$$

A = The percentage of voter turnout for the office that received the most recent comparable election

B = The number of registered voters as of October preceding the primary

C = 25% of the number resulting when you multiply A x B

D = Estimated Turnout

- If the pre-populated cost estimate is accepted, an estimate is not needed for voter turnout.

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Number of Election Workers Per Polling Place (§81.117, TAC)

Estimated Turnout per Polling Location	Paper Ballot/Optical Scan (primary voting method)	Electronic Voting System (primary voting method)
200 or fewer	3	3
201 - 400	5	4
401 - 700	6	5
701 - 1,100	8	6
1,101 or more	12	8

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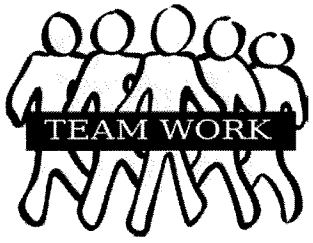
Flex Scheduling of Precinct Workers (§81.118, TAC)

- The county chair has the flexibility to determine the exact number of workers needed for each polling location.
- The chair may assign election workers to work in shifts.



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County Chair Compensation (§81.119, TAC)

- County chair compensation will be:
  - No less than $300, or;
  - five percent of the total expenses incurred conducting the primary up to $8,000.
- The following items will not be factored into the chair's compensation:
  - Legal Fees
  - Contracted Services

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County Chair Compensation (§81.119, TAC) (cont.)

- County chair compensation will not be authorized until the final cost report is approved and all bills have been paid.

- The chair shall be paid with a check drawn on the county's primary fund account.

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County Chair Compensation (§81.119, TAC) (cont.)

A chair that does not submit the final cost report by July 1 will forfeit his or her county chair compensation.

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Compensation for Election Workers (§81.120, TAC)

- Polling-place judges and clerks, early-voting-ballot board members, and central counting station judges and clerks will only be reimbursed by the state at a rate not to exceed $8 per hour.
- Technical support personnel at the central counting station (appointed under Texas Election Code §§127.002, 127.003, or 127.004) may be paid more than $8.00, but cannot exceed rates paid to county staff for comparable work.

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Compensation for Election Workers (§81.120, TAC) (cont.)

- A judge or clerk may be paid only for the *actual time* spent on election duties performed in the polling place or central counting station.
- The county chair is authorized to:
  - Allow one election worker from each polling place up to one hour before election day to annotate the precinct list of registered voters
  - Pay members of the early voting ballot board

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Compensation for Election Workers (§81.120, TAC) (cont.)

- Members of the early voting ballot board may be compensated only for *actual hours* worked up to $8.00 per hour.
  - Members may reconvene to process provisional or late ballots, which must be completed not later than the 7th day after the primary or primary runoff elections.
- The chair may pay $15 for one election worker per polling place and the early voting ballot board to deliver and pick up the election records, equipment, and unused supplies.
  - The chair may not pay an election worker for travel time, delivery of supplies, or attendance at the precinct convention.

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No Compensation for Schools (§81.121, TAC)

- Training materials may be ordered free of charge from SOS. (Call 1-800-252-2216, press "4")
- Online poll worker training is also available.
- Materials available through the SOS are not reimbursable if purchased from another source.
- No reimbursement for costs associated with attending election schools (other than this seminar).

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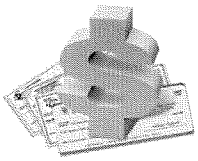
Personnel Payroll Taxes and Benefits (§81.122, TAC)

- The chair must follow all applicable federal and state laws with respect to payroll taxes.
- Primary funds may not be used to pay penalties resulting from non-compliance.
- All tax forms must be maintained with the primary records.
- Group medical, dental, life insurance or retirement benefits may NOT be paid with primary funds.



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Administrative Personnel & Overall Administrative Costs (§81.123, TAC)

- Administrative personnel are non-election day workers and are not required for the conduct of the primary elections.
- Administrative personnel costs include, but are not limited to, polling location services, ballot ordering, and secretarial services.
- Administrative personnel may be compensated for a period not earlier than November 1 to the last day of the month in which the final primary election occurs.

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Administrative Personnel & Overall Administrative Costs (§81.123, TAC) (cont.)

Other administrative costs chargeable to the primary fund are items such as:

- administrative personnel
- office rental
- telephone and utilities
- office furniture and equipment rental
- 1 computer purchase (if one was not purchased during the previous primary)
- office supplies
- bank fees
- 2 election law books
- other miscellaneous expenses

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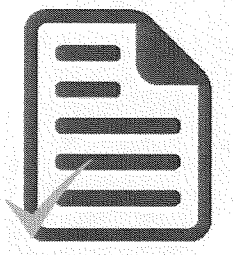
Administrative Personnel & Overall Administrative Costs (§81.123, TAC) (cont.)

If the chair contracts with a third party or county elections officer, the chair cannot charge administrative costs being provided by the third party, such as polling location services.



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Administrative Personnel & Overall Administrative Costs (§81.123, TAC) (cont.)

- The following funding caps apply to total administrative costs:

Number of Registered Voters	Costs Allowed Thru March 31	Additional Month For Runoff
10,000 or less	$300	$75
10,001 – 25,000	$1,500	$375
25,001 – 50,000	$3,000	$750
50,001 – 140,000	$12,000	$3,000
140,000 – 325,000	$24,000	$6,000
325,001 – 500,000	$40,000	$10,000
Over 500,000	$52,000	$13,000

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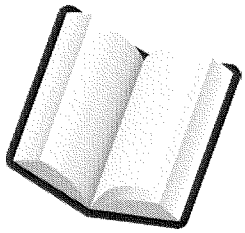
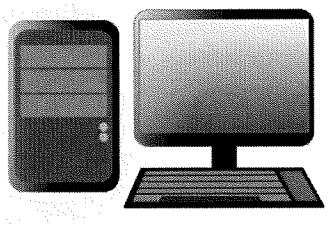
Administrative Personnel & Overall Administrative Costs (§81.123, TAC) (cont.)

Election Law Books and a computer purchase will be excluded from the administrative cost cap.





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Number of Ballots Per Precinct (§81.124, TAC)

- The county chair shall determine the number of ballots based on estimated voter turnout as determined pursuant to §81.116.
- The number of ballots cannot be less than the estimated turnout.
- If more ballots are ordered, the total number ordered cannot exceed the total number of registered voters in the precinct.
- In no event should a polling place ballot supply be limited so as to impede the voting process or jeopardize voting rights.

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DREs/Precinct Counters Per Precinct (§81.125, TAC)

- DRE/Precinct Counter formula:

Estimated Voter Turnout Per Voting Precinct	DRE Units	Precinct Ballot Counters
300 or fewer	2	1
301 - 450	3	1
451 - 600	4	1
601 - 750	5	1
751 - 900	6	1
For each additional: 300 voters	2	0

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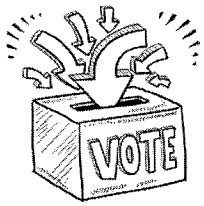
DREs/Precinct Counters Per Precinct (§81.125, TAC) (cont.)

- A county may request approval for additional units if the formula amount is inadequate.
- Pursuant to federal law, EVERY polling location must have an accessible voting unit.



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DREs/Precinct Counters Per Precinct (§81.125, TAC) (cont.)

- If the county has insufficient accessible voting units to allow each party to conduct a separate primary in all county election precincts, then each party will need to consolidate county election precincts in accordance with §42.009, TEC.
- Alternatively, the parties, with the agreement of a majority of the full membership of county commissioners court and the county election officer, may conduct a joint primary under §172.126, TEC.

TEXAS SECRETARY OF STATE

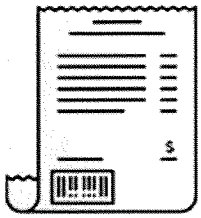
Reimbursement for Seminar (§81.126, TAC)

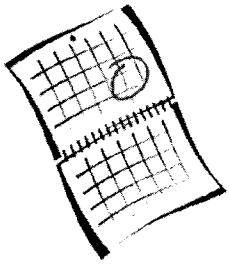
- Actual travel expenses to attend the Election Law Seminar for County Chairs may be reimbursed.
- The following costs are reimbursable:
  - Mileage (if driving personal vehicle) to Austin from county seat using mileage rate approved by Comptroller;
  - Airfare and airport transfers;
  - Airport parking; and
  - Lodging (up to state approved rate).

TEXAS SECRETARY OF STATE

Reimbursement for Seminar (§81.126, TAC) (cont.)

- Tips and gratuities may not be reimbursed.
- Actual receipts must be submitted for reimbursement.
- Requests for reimbursement must be made no later than 60 days after the seminar.





TEXAS SECRETARY OF STATE

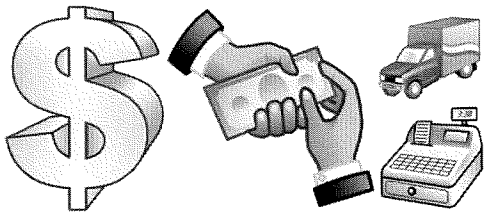
Office Equipment and Supplies (§81.127, TAC)

- Rental of equipment is not required.
- Lease of necessary office equipment allowed beginning November 1 to the last day of the month in which the final primary election occurs.

TEXAS SECRETARY OF STATE

Office Equipment and Supplies (§81.127, TAC)

- Conflict of interest rules apply.
- Businesses must have been in business at least 18 months with 3 other clients and on file with the SOS or locally.



TEXAS SECRETARY OF STATE

Office Equipment and Supplies (§81.127, TAC) (cont.)

- Purchase of supplies must be reasonable and/or necessary, including but not limited to:
  - 2 copies of the Election Code
  - Paper, toner and supplies
- Single purchases or equipment may not exceed $1,500. These items belong to the county party and must be transferred to the next county chair.
- Notary public expenses are not reimbursable.

TEXAS SECRETARY OF STATE

Telephone and Postage (§81.128, TAC)

- Necessary telephone and postage costs incurred for administration between November 1 to the last day of the month in which the final primary election occurs.

TEXAS SECRETARY OF STATE

Office Rental (§81.129 , TAC)

- Rental expenses incurred for administration of the primary from November 1 to the last day of the month in which the final primary election occurs are reimbursable.
- Rental of office space is not required.
- Office space must be procured from a regularly rented commercial building.
- Rent may not exceed fair market rate for comparable space in the area.

TEXAS SECRETARY OF STATE

Office Rental (§81.129 , TAC) (cont.)

- Unless required by the lease, janitorial services, parking and signage are not reimbursable.
- Conflict of interest rules apply.
- Copies of 3 competitive bids and the lease agreement must be submitted with the final cost report.
- If the party normally maintains office space (unrelated to the conduct of the primary), reimbursement will not exceed 30% of the monthly rental cost.

TEXAS SECRETARY OF STATE

Use of County-Owned Equipment (§81.130, TAC)

- Counties may not charge parties for use of county owned equipment, except a county may charge $5 for each unit of tabulating equipment and $5 for each complete unit which makes up a voting device.

- In addition, the primary fund may be used to pay the actual expenses incurred by the county in transporting, preparing, programming, and testing the necessary equipment, as well as for staffing the central counting station.

TEXAS SECRETARY OF STATE

Use of County-Owned Equipment (§81.130, TAC) (cont.)

Primary funds may not be used for expenses related to the use of non county-owned equipment, including, but not limited to, ballot boxes and voting booths without SOS approval.

TEXAS SECRETARY OF STATE

Contracting with the County (§81.131, TAC)

- The SOS has made available a "Model Contract" for use when contracting with the county election officer.
- Before making the final payment to the county election officer, the officer must submit an accounting of actual costs to the chair.
- SOS supplies a "Model Invoice" for counties to use. If the county chooses to use their own invoice, they must be sure to include the elements listed in the SOS Invoice.

TEXAS SECRETARY OF STATE

Contracting with the County (§81.131, TAC) (cont.)

- A contract may not allow for:
  - Reimbursement of training of elections workers or training material available through the SOS
  - Salaries of personnel regularly employed by the county
  - Duties the election officer is statutorily required to perform
- The contract shall stipulate whether the party or the county election officer is responsible for paying third party claims directly.

TEXAS SECRETARY OF STATE

Contracting with the County (§81.131, TAC) (cont.)

- Costs not eligible for reimbursement through the primary fund shall be negotiated between the county chair and the county election officer.
- County chairs are authorized to make deposits to the county election officer for contract election services prior to services being delivered consistent with §31.100, TEC.

TEXAS SECRETARY OF STATE

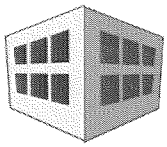
Early Voting: Paid by County (§81.132, TAC)

- The only reimbursable costs for early voting are ballot costs and expenses related to the early voting ballot board.
- The county pays all other costs associated with early voting (early voting election kits, workers, voting by mail, postage, etc.).

TEXAS SECRETARY OF STATE

No Charge for Public Building; Political Convention (§81.133 , TAC)

- No charge may be made for a public building used as a polling place or central counting station if the building is normally open for business on election day.
- Costs for use of a building for a party convention are not reimbursable.



TEXAS SECRETARY OF STATE

Legal Expenses (§81.134, TAC)

- County chairs may contact the Elections Division for legal advice free of charge. (Toll Free: 1-800-252-2216, option 2)
- What is covered?
  - Litigation regarding a candidate's name on the Primary Election ballot after the chair either rejected the candidate's application or declared the candidate ineligible or which seeks to exclude a candidate's name from the Primary Election ballot after the chair declined to do so.
  - Not sure? Call us.

TEXAS SECRETARY OF STATE

Legal Expenses (§81.134) (cont.)

- What is NOT covered?
  - Negligence or wrongful acts (failure to follow SOS directives/legal advice)
  - Litigation unrelated to the conduct of the primary

TEXAS SECRETARY OF STATE

Legal Expenses (§81.134) (cont.)

- How do I get reimbursed?
  - Written Notice
  - Pleadings and court documents
  - Invoices
- When do I submit my request?
  - Provide notice to our office before retaining an attorney.
  - As soon as the case becomes final, submit all invoices and court documents.

TEXAS SECRETARY OF STATE

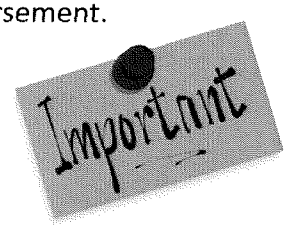
Applicability of Other Rules (§81.146, TAC)

Except for areas of conflict, the general primary finance rules governing primary elections also apply to joint primaries.

TEXAS SECRETARY OF STATE

Things to Remember

- Travel is covered for ONE person from each county's party or that chair's designee.
- The form must be signed and dated by the county chair even if a designee was sent in his/her place.
- All travel forms must be submitted to SOS within 60 days of travel for reimbursement.

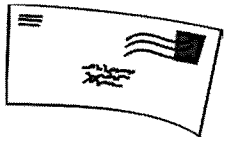


TEXAS SECRETARY OF STATE

Things to Remember (cont.)

- Forms may be sent to:

  Secretary of State
  Election Funds Management
  P.O. Box 12060
  Austin, TX 78711-2060
  Email: efmadmin@sos.texas.gov
  Fax: 512-463-7552



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