



STATE OF ARKANSAS
Office of the Attorney General

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Attorney General

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Opinion No. 94-218

August 17, 1994

The Honorable Julia Hughes Jones
Auditor of State
230 State Capitol
Little Rock, Arkansas 72201

Dear Ms. Jones:

This is in response to your request for an opinion as to whether there is any information contained in voter registration lists which should be removed prior to such lists being duplicated, published, or otherwise made available to the public pursuant to Section 14 of Amendment 51 to the Arkansas Constitution or Section 1 of Act 1161 of 1993. The constitutional provision provides in pertinent part:

By the first day of June of each year, and at such other times as may be practicable, all Permanent Registrars¹ shall, and at their discretion at other times may, print or otherwise duplicate and publish lists of registered voters by precincts, and may distribute such lists free of cost, or, with the approval of the County Board of Registration, at a price necessary to cover cost of publication. A copy of the most current such list in each precinct shall be furnished the election officials at each precinct at the time the ballot boxes are delivered

¹ The term "Permanent Registrars" refers to the county clerks. See Ark. Const. amend. 51, § 2(b).

and such election officials shall post said list at a conspicuous place in the polling area.²

Ark. Const. amend. 51, § 14(a).

Section 1 of Act 1161 of 1993, codified as A.C.A. § 7-5-109 (Repl. 1993), provides that county clerks who maintain on computer the list of registered voters within the county " ... shall, on request and at reasonable cost, provide the list on computer disk or tape to candidates for elective office and holders of elective office. The list shall include at least the name, address, and precinct number of the voters." A.C.A. § 7-5-109(a). See also Op. Att'y Gen. No. 93-405 (stating that the general public is also entitled to access computer voter registration list information if the request is for information, and not for equipment maintained by the clerk's office). A clerk may, however, as a condition to providing the voter registration list on computer tape or disk under this provision, require the candidate or officer-holder to agree to use the list only for campaign or office-holding purposes and not for resale. See A.C.A. § 7-5-109(c).

With respect to the foregoing provisions, you have asked for an opinion on the following questions, which I have restated in part:

1. Is there any information which might be contained in an individual voter's registration record which should not be included in the voter registration lists made available under Section 14 of Amendment 51 or A.C.A. § 7-5-109(a)?

² In your correspondence, you also mention in relation to this section of Amendment 51 A.C.A. § 7-5-105 (Repl. 1993), which provides that the county clerks shall be entitled to receive two cents per name, payable from the general fund of the county, for each name on the published list of registered voters required to be printed or otherwise duplicated under the provisions of Section 14 of Amendment 51; the clerks are entitled to this fee, however, only in connection with the preparation of the first list of registered voters prepared during each calendar year. A.C.A. § 7-5-105(a). Pursuant to Section 2 of Act 1092 of 1993, a new subparagraph was added to § 7-5-105 to provide that an additional fee in the amount of one cent for each registered voter identification and address purchased through any county clerk by a private citizen or a private entity is "hereby levied." A.C.A. § 7-5-105(b)(1)(A). See also Op. Att'y Gen. No. 93-405, discussing A.C.A. § 7-5-105(b). This new fee is to be collected by the county clerks and remitted to the State Treasurer and will be used to fund a computerized statewide voter registration system. A.C.A. §§ 7-5-105(b)(1)(B) and (b)(2)(B).

2. Does the Privacy Act of 1974 preclude making any information about a voter available through the publication or duplication of voter registration lists under Section 14 of Amendment 51 or A.C.A. § 7-5-109(a)?

With regard to your first question, I assume that when you refer to "an individual voter's registration record," you are referring to an affidavit of voter registration.³ Although your question seems to presume otherwise, it is my opinion that the only information that probably would be contained in a voter registration list made available pursuant to Section 14 of Amendment 51 would be the names of registered voters, their addresses, and the precincts in which they vote, since the provision refers to "lists of registered voters by precincts." As a voter registration list created pursuant to this provision would be considered a "public record" under the Arkansas Freedom of Information Act ("FOIA") (see Op. Att'y Gen. No. 93-405 and *Blaylock v. Staley*, 293 Ark. 26, 732 S.W.2d 152 (1987)), and as there are no provisions of the FOIA or any other state statute which would exempt from disclosure the types of information contained in these lists (i.e., names, addresses, and precincts of registered voters), it is my opinion that there is no prohibition in the inclusion of this information in the voter registration lists.

While, in my opinion, Section 14 of Amendment 51 probably contemplates a list composed of names, addresses, and precincts of registered voters, A.C.A. § 7-5-109, as discussed above, states that the computer lists of registered voters which shall be made available thereunder "shall include at least the name, address, and precinct number of the voters." [Emphasis added.] A.C.A. § 7-5-109(a). Thus, a voter registration list created thereunder may include more information than what appears to be required in the list described in Amendment 51. A voter registration list created under this provision would, however, also be a "public record" for

³ Pursuant to Section 6 of Amendment 51, the following information must be contained on the front of an affidavit of registration: (1) the name of the county in which issued, (2) the voter's name, (3) the legal residence of the voter, (4) the country or state and country of the voter's birth, (5) if voter is foreign born, how his American citizenship was acquired, (6) the month, day and year of birth of the voter, (7) if the voter cannot read or write, this must be indicated, (8) if the voter is unable to make a mark or cross on the affidavit, this must be indicated, (9) number or name of the voter's school district and precinct; (10) if a voter so desires, the political party affiliation of the voter, (11) the address in Arkansas where the voter was last registered, (12) the signature of the permanent or deputy registrar who receives the voter's application to register.

purposes of the FOIA, and there are no provisions of the FOIA which would prohibit from disclosure any of the other information that might be taken from a voter's affidavit of registration and included in the list. Thus, as a general matter, the answer to your first question is "no."

With respect to your second question, the only provision of the federal Privacy Act, 5 U.S.C. § 552a, which applies to state and local agencies is the one prohibiting disclosure of social security numbers. Thus, the Act would prohibit the inclusion of an individual's social security number on a voter registration list that was being made available to the public under Amendment 51 or A.C.A. § 7-5-109. It appears, however, that such information would normally not be included on such lists in any event since Amendment 51 does not contemplate a list containing such information and since social security numbers are not required to be included on an affidavit of voter registration (meaning the information could not be taken from the affidavit and placed on the list).

The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General Nancy A. Hall.

Sincerely,


WINSTON BRYANT
Attorney General

WB:NAH/cyh