

The State of Texas

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Jane Nelson
Secretary of State

October 9, 2024

Ken Paxton
Attorney General

Dear General Paxton:

The Office of the Texas Secretary of State (the Office) has been working diligently to ensure that only eligible United States citizens participate in Texas elections. To that end, we have issued advisories to county election officials reminding them of their obligations to maintain clean voter rolls and reiterating the legal prohibitions on non-United States citizens registering to vote and voting in Texas elections. *See* Tex. Sec’y of State, *Election Advisory No. 2024-18: Required List Maintenance Activities* (June 4, 2024), <https://www.sos.state.tx.us/elections/laws/advisory2024-18.shtml>; Tex. Sec’y of State, *Election Advisory No. 2024-19: Citizenship Requirements for Texas Elections* (June 4, 2024), <https://www.sos.state.tx.us/elections/laws/advisory2024-19.shtml>.

Recently, the Office has received questions from election officials regarding the presentation of a limited-term driver’s license or identification cards as a form of identification by an individual seeking to vote in person during early voting or on election day.

Pursuant to federal regulations, the Texas Department of Public Safety issues temporary or limited-term licenses or identification cards to noncitizens in the State. *See* 6 C.F.R. § 37.21; TEX. TRANSP. CODE § 521.001(a)(3)(A); Tex. Dep’t of Public Safety, *Driver Licenses and ID Cards for Temporary Visitors*, <https://www.dps.texas.gov/section/driver-license/driver-licenses-and-id-cards-temporary-visitors>. As you know, federal and state law provide that only eligible United States citizens may register to vote in the State and cast ballots in Texas elections. Noncitizens who knowingly make false statements or claim that they are a citizen in order to register to vote are subject to fines and could be imprisoned up to five years. 18 U.S.C § 1015. In addition, a noncitizen who votes in any federal election may be deemed inadmissible and subject to deportation. 8 U.S.C. § 1182. State law, likewise, provides that “to be eligible to vote in an election in this state,” a person must be “a United States citizen.” TEX. ELEC. CODE §§ 11.001(a)(1), 11.002(a)(2), 13.001(a)(2). In Texas, it is a state jail felony to lie about citizenship status when registering to vote, *id.* § 276.018, and it is a second-degree felony for a noncitizen to cast a vote, *id.* § 64.012. It is also a crime for an election officer to knowingly permit a noncitizen to vote in Texas. *Id.* § 63.012.

Section 63.0101(a) specifies seven types of identification that qualify as acceptable forms of photo identification for in-person voting. One of those forms is “a driver’s license, election identification certificate, or personal identification card issued to the person by the Department of Public Safety that has not expired or that expired no earlier than four years before the date of presentation.” *See id.* § 63.0101(a)(1); *see also id.* § 63.0101(c) (allowing a person aged 70 or

older to use a form of identification listed in Section 63.0101(a) that has expired for the purposes of voting if the identification is otherwise valid).

The Office is aware of the possibility that a noncitizen who was previously issued a temporary or limited-term driver's license or identification card by the Texas Department of Public Safety may have subsequently become a naturalized citizen and failed to obtain an updated, permanent driver's license or ID card. Therefore, when an individual presents a limited-term driver's license or identification card at a polling place, the only thing that can be known for certain is that at some time—whether in the past or the present—the individual was a noncitizen who was *not* eligible to vote.

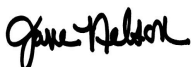
The Office has thus consistently made clear in its guidance that Texans should not use this type of license or identification card to participate in elections, even if it may otherwise constitute a valid form of identification under Section 63.0101(a) of the Texas Election Code. At the same time, we have indicated that if an individual with a limited-term driver's license or identification card appears to vote and is listed as registered voter, the election judge or clerk may deny the individual a regular ballot if the election judge or clerk believes the individual is not eligible to vote. We reiterated this advice in an advisory issued to election officials on October 8, 2024, in which the Office identified certain actions that an election judge or clerk should take in this circumstance before issuing the voter a ballot. *See* Tex. Sec'y of State, *Election Advisory No. 2024-30: Limited-Term Driver's License and Identification Card* (Oct. 8, 2024), <https://www.sos.state.tx.us/elections/laws/advisory2024-30.shtml>.

This issue is critical to our shared partnership to ensuring election integrity in the State. Accordingly, I request your opinion on the following questions:

- 1. Is a temporary or limited-term driver's license or identification card issued by the Texas Department of Public Safety that generates questions of voter eligibility an otherwise valid form of identification for purposes of Section 63.0101(a)(1) of the Texas Election Code?**
- 2. May an election official provide a ballot to an individual who presents only a temporary or limited-term driver's license or identification card in order to vote in person?**
- 3. How should election officials treat a mail-in ballot that supplies only an identification number from a temporary or limited-term driver's license or identification card, either for purposes of counting the vote or for investigating instances of fraud?**

Thank you for your prompt attention to this request. As time is of the essence on these questions, I ask that you expedite the response.

Sincerely,



Jane Nelson
Secretary of State