



OFFICE OF THE SECRETARY OF STATE

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October 8, 1982

The Honorable Robert F. Atkins  
County Attorney, San Jacinto County  
P. O. Box 87  
Coldspring, Texas 77331

Election Law Opinion DAD-66  
Re: Whether a local option  
liquor election may be  
held in the territory of  
a former justice precinct  
that has been consoli-  
dated into a larger  
justice precinct.

Dear Mr. Atkins:

In your letter of September 17, 1982, you state that the citizens of a former justice precinct that has been consolidated into a new, larger justice precinct in San Jacinto County have petitioned the commissioners court to order a local option liquor election in the territory of the former justice precinct. You ask whether the commissioners court may order such an election.

This official election law opinion is rendered by me as chief election officer of the state in accordance with V.A.T.S. Election Code, art. 1.03, subd. 1.

The Alcoholic Beverage Code provides for changing the status of a territory that has exercised local option:

Except as provided in Section 251.73 of this code, an authorized voting unit that has exercised or may exercise the right of local option retains the status adopted, whether absolute prohibition or legalization of the sale of alcoholic beverages of one or more of the various types and alcoholic contents on which an issue may be submitted under the terms of Section 251.14 of this code, until that status is changed by a subsequent local

option election in the same authorized voting unit. V.T.C.A., Alcoholic Beverage Code §251.72 (emphasis added).

The wording of this statute makes it clear that local option must be exercised by an authorized voting unit. Authorized voting units are limited by the Texas Constitution, as well as by statute, to counties, justice precincts, and incorporated cities and towns. Vernon's Ann. Tex. Const. Art. XVI, §20(b); V.T.C.A., Alcoholic Beverage Code §251.01; Patton v. Texas Liquor Control Board, 293 S.W.2d 99, 101 (Tex. Civ. App.-Austin, 1956, writ ref'd. n.r.e.).

Neither statutory nor case authority exists for the proposition that a former justice precinct constitutes an authorized voting area for a local option liquor election. Dicta in the case of Houchins v. Plainos, 110 S.W.2d 549 (Tex. 1937), suggests this possibility for a formerly incorporated city, however, Houchins v. Plainos dealt with specific problems arising from the re-establishment of local option in Texas following the repeal of prohibition. See: Tex. Att'y Gen. Op. No. H-515 (1975). The court in Coker v. Texas Alcoholic Beverage Commission, 524 S.W.2d 570 (Tex. Civ. App.-Dallas, 1975, writ ref'd n.r.e.) did not reach the question of whether an election concerning mixed beverages could be held in only the wet part of a partially dry and partially wet justice precinct. At any rate, the question, as presented in Coker, turned on specific statutory language in Acts 1971, ch. 65, §27, at 700, that is not relevant to the present situation.

A local option election held in only part of a justice precinct is void. Patton v. Texas Liquor Control Board, supra. Therefore, it is my opinion that, while a formerly constituted justice precinct was an authorized voting unit at the time it exercised local option and while the territory covered by such formerly constituted justice precinct retains its local option status until changed in accordance with the law, such justice precinct ceased to be an authorized voting unit at the time it was abolished by the commissioners court. In order for the local option status of the territory included within the boundaries of the former justice precinct to be changed, an affirmative vote will be required in the entire justice precinct as it is presently constituted. Tex. Att'y. Gen. Op. No. C-681 (1966).

SUMMARY

A local option liquor election may not be held in territory of a former justice precinct which has been incorporated in a new, larger justice precinct. In order for the local option status of the former justice precinct to change, an affirmative vote is required in the entire justice precinct as it is presently constituted.

Sincerely,



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APPROVED:  
OPINION COMMITTEE

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Felix R. Sanchez  
Donna Brown  
John Steiner

Election Law Opinion DAD-66

Request from Robert F. Atkins, Coldspring, regarding whether a local option liquor election may be held in the territory of a formerly constituted justice precinct.

SUMMARY

A local option liquor election may not be held in territory of a former justice precinct which has been incorporated in a new, larger justice precinct. In order for the local option status of the former justice precinct to change, an affirmative vote is required in the entire justice precinct as it is presently constituted.