



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**CRAWFORD C. MARTIN
ATTORNEY GENERAL**

April 22, 1970

Hon. F. A. Cerda
County Attorney
Jim Hogg County
Hebbronville, Texas

Opinion No. M-612

Re: Whether the Justice of the Peace and Constables who are running for election to be deemed legally in the race for their respective precincts in the May 2nd Primary under the stated facts and circumstances.

Dear Mr. Cerda:

Your opinion request on the above captioned subject reads, in part, as follows:

"Are the Justice of the Peace and Constables who are running for re-election legally in the race for their respective precincts in the May 2nd primary under the following facts and circumstances?

". . .

"On the 31st day of January, 1969, the Commissioners' Court passed an order re-districting the commissioners' precincts, which said order was duly published in the newspaper and posted in several different places in the county, a copy is herein attached.

"On the 22nd day of August, 1969, the Commissioners' Court by the attached order created the election precincts with the same boundaries as the commissioners precinct, wherein they wanted to create the justice and constables and inadvertently the wording to create same was left out in the ordering part.

"The deadline for filing for candidates for justice of peace and constables as well as others

was February 2, 1970 and the candidates filed for positions for justice of peace and constables in conformity with the newly created precincts.

"On the 9th day of March, 1970, the Commissioners' Court passed an order (copy of which is herein attached) stating that in the order of August 22, 1969, it was their intent to create the justice of peace and constable precincts and to clarify the matter and in addition to said order they were at this time establishing the new justice of peace and constable precincts with the same boundaries as the commissioners precincts created on the 31st day of January, 1969.

"Discussing is only to justice of peace and constable candidates. The commissioner precincts, election precincts and the justice of peace and constable precincts have the same boundaries.

"Each person filing for these positions are well within their boundaries and none are affected adversely. They all filed with the intention to run for their respective positions within the newly created precincts."

The copies of the commissioners court minutes show that on January 31, 1969, the Commissioners Court redistricted all of the commissioners precincts setting out descriptions by metes and bounds for all four precincts, thereby creating new county commissioners precincts to be effective April 10, 1969.

On August 22, 1969, the Commissioners Court redistricted all election precincts to conform to the boundaries of the new county commissioners precincts and in said order recited the following:

"Whereas, the Commissioners' Court of Jim Hogg County, Texas, on Friday the 31st day of January, 1969, did pass an order changing the boundaries of Commissioners Precinct Nos. 1, 2, 3, and 4 of Jim Hogg County, and

"Whereas, the voters of each of the above precincts are entitled to elect one (1) county commissioner, one (1) Justice of the Peace, and one (1) constable, and . . .

"Now therefore, it is ordered, adjudged and decreed that the County of Jim Hogg is hereby divided into

election precincts to be known as follows, to-wit:

. . .

"It is further ordered that this order be published for three weeks (3) consecutive weeks as required by law, and that said order shall become effective according to law.

". . ."

On March 9, 1970, the Commissioners Court passed an order reading, in part, as follows:

"The Commissioners' Court of Jim Hogg County, Texas, did on the 22nd day of August, 1969, pass an order specifying the new election precinct boundaries at which time it was the intention of the Commissioners Court to also create new Justice of the Peace and Constables precinct boundaries. The said new Justice of the Peace and Constable precincts boundaries would conform to the County Commissioners' precinct boundaries which were created on Commissioners' order dated January 31, 1969, and in order to clarify the intent of the Order dated August 22, 1969, in addition to, without changing the said Order of August 22, 1969, it is now Ordered, Adjudged and Decreed that the County of Jim Hogg, Justice of the Peace Precinct No. 1 and Constable Precinct No. 1 shall have the same boundaries of the County Commissioners' Precinct No. 1 boundaries as described by metes and bounds in the Order of the Commissioners' Court of Jim Hogg County, Texas, dated January 31, 1969; Justice of the Peace Precinct No. 2 and Constable Precinct No. 2 shall have the same boundaries of the County Commissioners Precinct No. 2 boundaries as described by metes and bounds in the Order of the Commissioners' Court of Jim Hogg County, Texas, dated January 31, 1969; Justice of the Peace Precinct No. 3 and Constable Precinct No. 3 shall have the same boundaries of the County Commissioners Precinct No. 3 boundaries as described by metes and bounds in the Order of the Commissioners Court of Jim Hogg County, Texas, dated January 31, 1969; Justice of the Peace No. 4 and Constable Precinct No. 4 shall have the same boundaries of the County Commissioners Precinct No. 4 boundaries as described by metes and bounds in the Order of the Commissioners' Court of Jim Hogg County, Texas, dated January 31, 1969."

Under the provisions of Section 65 of Article XVI of the Texas Constitution this is an election year for the office of Justice of the Peace but is not an election year for the office of Constable. The offices of constable and Justice of the Peace in each of the new precincts came into being vacant as of March 9, 1970, and said vacancies were to be filled by the Commissioners Court until the next General Election. Attorney General Opinions WW-536 (1958) and V-1032 (1950).

The order of March 9th changed the boundaries but did not change the numbers of the Justice precincts, there being at all times four justice precincts as required by the Constitution. Under the provisions of Section 65 of Article XVI of the Texas Constitution this is an election year for all Justices of the Peace in single justice precincts. All such offices are to be filled for a four year term. This holds true for newly created as well as previously existing offices of justice of the peace. The candidates filed for the office of justice of the peace by the proper precinct number. The changing of the boundaries could have affected their residence requirements but did not do so under the facts set out in your letter. The changing of the precinct numbers could have affected the identification of the particular office for which a candidate sought to run but did not do so under the facts presented. You also stated that all candidates for justice of the peace filed with the intention to run for their respective positions within the newly created precincts which at the time they filed they thought corresponded to the new County Commissioners precincts. The order of March the 9th recites that the justice precincts shall correspond to the commissioners precincts. We have found no provision of the Election Code which would extend the deadline for filing for justice of the peace or would require that such candidates to amend their applications, withdraw them, or refile their applications for the office under the facts presented. Therefore, based upon the facts presented, we have concluded that the candidates who filed for the offices of justice of the peace by the February 2nd deadline are legally on the ballot for the May 2nd primary election.

The controlling legal question is whether a candidate's application filed in accordance with the Election Code but prior to the change of boundaries of the justice precincts by the order of the Commissioners' Court must be treated as a nullity. The intention of the candidate to run for the described office is clear under Article 13.12 of the Election Code. If the candidate desired

to withdraw for such position, authority there exists for him to do so. Since there was no withdrawal, it is clear that the application was intended to remain on file for the position described. There is no requirement of law that the application must describe the boundaries of the precinct but only that it be identified by number, and this was complied with. Since the boundaries for the various precinct numbers came into effect well prior to the election, there can be no question as to the intent of the voters to vote for the candidates seeking election in their precincts.

There is no statutory provision governing the specific procedure here involved, but our Supreme Court has held that in the absence of a statute to cover a particular procedure or method when by virtue of a happening (resignation) it was too late for prospective candidates to file applications to get their names on the ballots on final date fixed by statute, the party is free to follow any other method in keeping with its usages and customs, if not expressly prohibited by law. Kilday v. Germany, 139 Tex. 380, 163 S.W.2d 184 (1942).

It is the opinion of this office that the candidate's application under the circumstances must be deemed at least a substantial compliance with the Election Code, and should not be deemed a nullity. In cases of doubt, it is well settled that all doubts should be resolved in favor of the right so to participate as a candidate. In any event, in an election contest, it is well settled that elections may be contested only upon the grounds authorized by the Election Code, and the irregularity involved here could not be raised. Magnolia Petroleum Co. v. Jackson County Water Control and Imp. Dist. No. 1, 290 S.W.2d 310, Tex.Civ.App. 1956, no writ; Oser v. Cullen, 435 S.W.2d 896 (Tex.Civ.App. 1968, error dism.). Tested by the above considerations, we conclude that the premature filing of the candidate's application under the facts and circumstances is not a fatal irregularity which would invalidate the election of such candidate should he be elected.

The question of the effect of the Commissioners Court order in changing the precinct boundaries is not necessarily a pertinent or controlling consideration here in view of the foregoing considerations.

Since under the provisions of Section 65 of Article XVI of the Texas Constitution this is not an election year for the office of constable, the office of constable in each of the new

precincts came into being vacant and with an unexpired term which ends on December 31, 1972. See Attorney General's Opinion No. WW-1499 (1962). Article 13.12a of the Texas Election Code prescribes the manner in which persons are to be nominated and elected to fill unexpired terms. The vacancies in the offices of constable occurred on March 9, 1970. That date is more than five days after the regular filing deadline of February 2, 1970, and more than thirty days before the general primary on May 2, 1970; therefore, the provisions of paragraph 2 (ii) of Article 13.12a, Texas Election Code, apply and said section declares that:

" . . . nomination for the unexpired term shall be made by primary election, and candidates shall have until the end of the twenty-fifth day preceding the day of the general primary in which to file applications for a place on the primary ballot. The application must be received and filed in the office of the proper chairman before the deadline, and applications mailed but not actually received before the deadline shall not be accepted for filing."

According to our calculations the filing deadline prescribed by this provision is midnight of April 7, 1970.

Based upon the facts as set out in your letter this office holds that all candidates who have filed for the office of constable for the unexpired term which ends on December 31, 1972 by midnight of April 7, 1970 and who meet all requirements of the Election Code would legally be on the May 2nd primary ballot for their respective constable precincts.

S U M M A R Y

Based upon the facts and circumstances presented, all candidates for justice of the peace who filed by the February 2nd deadline are legally on the primary ballot for the election to be held May 2nd. Candidates for the unexpired term of Constable who filed by midnight of April 7th, 1970 who meet all election law requirements would be legally on the May 2nd primary ballot.

Very truly yours,


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