



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

May 25, 1988

Honorable Oliver Lewis, Jr.  
County Auditor  
County of Bexar  
224 Dwyer  
San Antonio, Texas 78204

LO-88-62

Dear Mr. Lewis:

You ask whether a county election commission has authority to order disciplinary action against the county elections administrator. You provide the following background to your question:

On Tuesday, November 3, 1987 a general election was held in Bexar County. Due to incorrect estimations on voter turnout, many precincts found that they did not have enough voting machines to accommodate the voters. Long lines developed and became prohibitory to voting. Complaints from all parts of the County poured into the Office of the County Commissioners Court.

At a duly called meeting of the Election Commission held on November 9, 1987, the commission members discussed what action, if any, should be taken. The commission considered the possible termination of the County Election Administrator for misfeasance. After discussion, a motion in favor of suspension for one pay period was duly made, seconded and approved unanimously by the Election Commission as authorized pursuant to §31.033(c) of the Texas Election Code.

The commissioners court of each county is authorized -- but not required -- to create the position of county elections administrator. Elec. Code §31.031.

Section 31.032 of the Election Code provides that the position of county elections administrator is filled by appointment of the county election commission. §31.032.1

The election commission has a very limited function, and we think that it is a body of limited authority.<sup>2</sup> See Tri-City Fresh Water Supply Dist. No. 2 of Harris County v. Mann, 142 S.W.2d 945, 948 (Tex. 1940). Nothing in the relevant statutes expressly authorizes the election commission to discipline the elections administrator, and we do not think such authority can be implied from the powers and duties given to the election commission. Indeed, we think such authority would be inconsistent with the statutes governing election commissions and elections administrators.

The statutes governing elections administrators limit the authority of both the election commission and the county commissioners court in regard to the elections administrator. Although a mere majority of the election commission is necessary to appoint an elections administrator, once an administrator has been appointed, his or her employment may be terminated only by a four-fifths vote of the election commission and approval of that action by a majority of the commissioners court. Elec. Code §31.037. Furthermore, termination must be for good and sufficient cause. Id. The county commissioners court, not the election commission, sets the administrator's salary. The commissioners court also determines the number of persons the administrator may

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1. The election commission consists of the county judge, as chairman; the county clerk, as vice-chairman; the county tax assessor-collector, as secretary; and the county chairman of each political party that made nominations by primary election for the general election for state and county officers preceding the date of the meeting at which the appointment is made. Elec. Code §31.032.

2. In your brief you cite the well-established proposition that a county commissioners court has only those powers expressly granted to it or necessarily implied for the proposition that the commissioners court, which has certain specified powers in regard to the elections administrator, has no authority to review a decision by the elections commission to discipline the administrator. You do not suggest, however, why the election commission would have powers in regard to the election administrator other than those specified in the Election Code.

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employ and the operating expenses of the administrator's office. §31.039. That statutory scheme indicates that the legislature intended the elections administrator to be largely independent of both the commissioners court and the election commission.<sup>3</sup> It also indicates that the legislature did not intend the election commission to be involved in the day-to-day performance of the administrator's job. It would be inconsistent with those legislative purposes to conclude that the election commission had implied authority to discipline the elections administrator. Therefore, we conclude that the election commission has no authority to order disciplinary action against the county elections administrator.

Very truly yours,

Sarah Woelk  
Assistant Attorney General  
Opinion Committee

SW/bc

cc: Bexar County District Attorney  
County Judge  
Elections Administrator

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3. Other Election Code provisions attempt to insulate the administrator from partisan politics. Section 31.035 sets out restrictions on political activities by elections administrators. A county elections administrator may not be a candidate for or hold a public office or an office of a political party. §31.035(a). If an elections administrator does so, he or she vacates the position. Id. Also, a county elections administrator commits a Class A misdemeanor if he or she makes a political contribution or political expenditure or publicly supports or opposes a candidate for public office or a measure to be voted on. Conviction terminates the elections administrator's position.