



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable John R. Shook
Criminal District Attorney
San Antonio, Texas

Dear Sir:

Attention: Mr. Jay Sam Levey

Opinion No. 0-4170

Re: Whether Bexar County must pay expenses of holding an election to determine whether there shall be created a Junior College District of Bexar County, and related questions.

We have your letter of October 24th requesting our opinion on the following questions:

"The Commissioners' Court of Bexar County, in accordance with the provisions of Sections 18, 19 and 20 of Article 2815h of the R.C.S. of Texas, as amended, has ordered an election to be held throughout Bexar County on November 15, 1941, to determine whether or not there should be created a Junior College District of Bexar County.

"We have been requested to secure an opinion from you, as soon as possible, answering these questions:

"1. What political subdivision of the state is liable for the costs of such election?

"2. May Bexar County accept free supplies and services for holding such election?

"3. Is it obligatory to use the regularly appointed election officials in this election?"

Section 19 of Article 2815h, Vernon's Annotated Civil Statutes, provides in part:

"If the State Board of Education approves of the establishment of the Junior College District, it shall then be the duty of the Commissioners' Court or Courts, as the case may be, to

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enter an order for an election to be held in the proposed territory within a time not less than twenty days and not more than thirty days after such order is issued, to determine whether or not such Junior College District shall be created and formed. . . ."

In Opinion No. 0-810 we held that the expense of an election for the incorporation of a city as provided by Article 1134, R. C. S., directing the county judge to call such election, are to be paid by the county under the provisions of Articles 2943 and 2996, R. C. S. The same reasoning would apply to the election here involved, particularly since Section 19 of Article 2815h expressly directs the Commissioners' Court of the county to call the election.

Articles 2943 and 2996, R. C. S., providing for the payment of the expenses of elections provide:

"Article 2943. Pay of judges and clerks"

"Judges and Clerks of general and special elections shall be paid Three Dollars (\$3) a day each, and Thirty (30) Cents per hour each for any time in excess of a day's work as herein defined; provided that in all counties having a population in excess of three hundred and fifty-five thousand (355,000) inhabitants, according to the last preceding or any future Federal Census, such Judges and Clerks shall be paid Five Dollars (\$5) a day each, and Fifty (50) Cents per hour each for any time in excess of a day's work as herein defined. The Judge who delivers the returns of election immediately after the votes have been counted shall be paid Two Dollars (\$2) for that service, provided the polling place of his precinct is at least two (2) miles from the courthouse, and provided also he shall make returns of all election supplies not used when he makes return of the election. Ten (10) working hours shall be considered a day within the meaning of this Article. The compensation of Judges and Clerks of general and special elections shall be paid by the County Treasurer of the county where such services are rendered upon order of the Commissioners Court of such county."

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"Article 2936. Expenses for election supplies

"All expenses incurred in providing voting booths, stationery, official ballots, wooden or rubber stamps, tally sheets, polling lists, instruction cards, ballot boxes, envelopes, sealing wax and all other supplies required for conducting a general or special election shall be paid for by the county, except the cost of supplying booths for cities. All accounts for supplies furnished or services rendered shall first be approved by the commissioners court, except the accounts for voting booths for cities."

In answer to your first question, it is our opinion that Bexar County is liable for the costs of holding the election to determine whether a Junior College District of Bexar County shall be created. Once such district has been created, however, all subsequent elections pertaining thereto are to be paid by said district as declared in our Opinion No. 0-365.

We agree with your conclusion as to your second question that "with reference to the acceptance of free supplies and services by the county, we have been unable to find any definite authority, statutory or otherwise." If the county will incur no obligation, express or implied, in the acceptance of free services and supplies, and the Commissioners' Court is satisfied as to the bona fide motives of such gratuities, we are aware of no reason why the county may not accept them.

The answer to your third question is controlled by Articles 2937 and 2938 which read as follows:

"Article 2937. In small precincts

"The commissioners court at the February term shall appoint from among the citizens of each voting precinct in which there are less than one hundred voters who have paid their poll tax and received their certificates of exemption, two reputable qualified voters as judges of the election, selected from different political parties, if practicable, who shall continue

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to act until their successors are appointed. When the bounds of the precinct are changed so that one or more judges reside outside of the precinct for which they were appointed, the court shall appoint others to fill such vacancy or vacancies. One of the judges who shall, in all cases belong to the party that at the last general election cast the largest vote for Governor throughout the State shall be designated as the presiding judge at elections; he shall appoint two competent and reputable qualified voters of different political parties if practicable, to act as clerks of the election. The order appointing all judges shall be entered of record. The presiding judge shall act in receiving and depositing the votes in the ballot boxes, and the other judge shall act in counting the votes cast; one clerk shall keep the poll list of qualified voters, and upon the poll list he shall write at the time of voting the name and number of each voter; the other clerk shall act as canvassing clerk, and shall keep the tally list of votes counted. Said officers shall perform such other duties as the presiding judge may direct."

"Article 2938. In large precincts

"For every precinct in which there are one hundred citizens or more who have paid their poll tax or received their certificates of exemption, the commissioners court shall appoint four judges of election, who shall be chosen when practicable from opposing political parties, one of whom shall be designated as presiding judge. The presiding and one associate judge shall act in receiving and depositing the votes in the ballot box, and the other two judges shall act in counting the votes cast. The presiding judge shall appoint four competent and reputable clerks who have paid their poll tax, and of different political parties, when practicable; two of said clerks shall assist in keeping poll lists and the list of qualified voters; upon the poll lists they shall write the name and number of each voter, and at the time voted. Two clerks shall be canvassing clerks, who shall

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keep tally lists of votes counted and perform such other duties as the presiding judge may direct. At the close of the canvassing and during its progress, the tally clerks shall compare their tally lists and certify officially to their correctness. Provided, that in all elections held under the provisions of this title, other than general elections, local option elections and primary elections, the officers to be appointed by the commissioners court to hold said elections shall be a presiding judge, and assistant judge and two clerks, whose compensation shall be two dollars per day, and two dollars extra to the presiding judge for making return of the election." (Emphasis ours)

We call attention to the underscored portion of Article 2938, above, which prescribes the appointment of only four election officials in special elections in place of the eight officials required in each precinct containing 100 eligible voters or more in general elections. The forthcoming election to determine whether a Junior College District is to be created is unquestionably a special election. 9 Ruling Case Law, p. 978, 20 Corpus Juris p. 56. It will, therefore, be necessary for the commissioners' court to designate a presiding judge and an assistant judge for this special election. It would seem proper to select them from among the four judges previously appointed for general elections, or to select two qualified persons not previously appointed. The statute is silent as to this question. In any event, as declared at 16 Texas Jurisprudence 34:

"The statutes with reference to the manner of appointing election officers are directory. Where they have not been complied with, if it be shown that the election was held at the time and place provided by law, that the election was fairly conducted, and that the vote as cast, counted and returned, expressed the will of the majority of the qualified voters voting at such place and time, irregularities as to the manner of appointing the officers will not in the absence of express provision of statute affect the validity of the election."

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Should any of the election officials appointed by the commissioners' court fail or refuse to act, substitute officials may be appointed by the voters in the manner provided by Article 3001, R. C. S. 1925.

We want to express our appreciation for the helpful discussion of these questions contained in your letter of request.

Yours very truly

WED NOV 4, 1941

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