



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**WAGGONER CARR  
ATTORNEY GENERAL**

June 4, 1964

Honorable Donald E. Short  
County Attorney  
Wichita County Courthouse  
Wichita Falls, Texas

Opinion No. C-263

Re: Construction of Art. 666-32,  
V.P.C. in reference to a pe-  
tition for a local option  
election in the City of  
Pleasant Valley.

Dear Mr. Short:

In your letter of March 20, 1964, you asked for a con-  
struction of Article 666-32, Vernon's Penal Code, in antici-  
pation of an incorporated city's local option election to pro-  
hibit the sale of alcoholic beverages.

The pertinent part of the statute is:

" . . . When any such petition so issued shall within thirty (30) days after the date of issue be filed with the Clerk of the Commissioners Court bearing the actual signatures of as many as twenty-five per cent (25%) of the qualified voters of any such county, justice's precinct, or incorporated city or town, together with a notation showing the residence address of each of the said signers, together with the number that appears on his poll tax receipt or exemption certificate, or a sworn statement that the signer is entitled to vote without holding either a poll tax receipt or an exemption certificate, taking the votes for Governor at the last preceding General Election at which presidential electors were elected as the basis for determining the qualified voters in any such county, justice's precinct, or incorporated city or town, it is hereby required that the Commissioners Court at its next regular session shall order a local option election to be held upon the issue set out in such petition . . . ." (Emphasis Supplied)

The facts as you state in your letter are that the City of Pleasant Valley was incorporated subsequent to the last preceding general election at which presidential electors were elected. It will therefore be difficult to determine the 25% requirement.

If the law directs an officer or officers to order an election when a certain number of qualified voters have joined in a petition, it is the duty of the officers to ascertain whether the requisite number of voters have joined in the petition and whether they are qualified. However, the officials will be allowed to exercise their own discretion in this matter, provided that their decision is based on reason and fairness and is not impelled by fraud or caprice. 21 Tex.Jur.2d 285.

The Montgomery County Clerk was faced with a similar problem in 1946 in that the City of Conroe wanted to petition for a local option election, and the two voting boxes used for general elections extended beyond the city limits. The result was that there was no means of determining how many of the votes cast at the last election for Governor, at which time Presidential Electors were elected, were actually voters residing within the city limits of Conroe. On that question this office held, in Attorney General's Opinion No. 0-7218, 1946, that the County Clerk, whenever a petition called for under Article 666-32 is presented to him, may adopt any means he deems necessary and proper to determine whether or not the signers of such a petition are qualified voters of the county or political subdivision and to ascertain the number of qualified voters signing the same. The earlier case of Akers v. Remington, 115 S.W.2d 714 (Tex.Civ App. 1938, error dismissed), and Attorney General's Opinion No. 0-488, 1939, are in accord.

Since the yardstick for determining qualified voters prescribed by the statute cannot be calculated, it appears that under the above authority, the County Clerk has the authority to adopt fair and proper means to ascertain the qualifications of petitioners.

By way of suggestion only, we point out that 25% of the number of inhabitants of the town of Pleasant Valley before its incorporation that now lies within the boundaries of the present City of Pleasant Valley who voted for Governor in the last presidential election might be an equitable basis for determining the sufficiency of the petition.

#### S U M M A R Y

Under the present circumstances, the County Clerk of Wichita County may adopt any means he deems necessary and proper to determine whether or not the signers of a petition for a local option election in Pleasant Valley are qualified voters under Art. 666-32, V.P.C.

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Yours very truly,

WAGGONER CARR  
Attorney General of Texas

By: Brady S. Coleman  
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BSC:ls:br

APPROVED:

OPINION COMMITTEE

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