



**THE ATTORNEY GENERAL
OF TEXAS**

WAGGONER CARR
ATTORNEY GENERAL

AUSTIN 11, TEXAS

June 11, 1964

This Opinion
Affirms Opinion

0-7218

Honorable Guy E. Jones
County Attorney
Bowie County Courthouse
Texarkana, Texas

Opinion No. C-266

Re: Construction of Art. 666-32,
V.P.C. in reference to a petition
for a local option election in
the town of Leary

Dear Mr. Jones:

In your letter of April 17, 1964, you asked for a construction of Article 666-32, Vernon's Penal Code, in anticipation of a local option election in the town of Leary.

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:

"In the General Election in 1960, which would be the last preceding General Election at which presidential electors were elected, the Leary box was not limited to voters of the

Town of Leary, but the total vote cast contained many voters outside the Town of Leary who lived within the particular voting precinct. In that election, two hundred sixty-one votes were cast, and it is the position of the Commissioners that it is impossible to determine how many signatures would be required on the petition in order to constitute as many as twenty-five per cent, since it is not known how many votes were actually cast by residents of the Town of Leary in the 1960 election. The Petitioners can prove, by use of the 1959 poll list and by testimony of persons who resided in the corporate limits of Leary at the time of the 1960 General Election, the number of persons actually qualified to vote for the office of Governor in that election. They are not in a position, however, to prove the actual number of votes cast by Leary residents."

An identical problem existed in Montgomery County in 1946. This office held in Attorney General's Opinion No. O-7218, 1946, enclosed, 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, et al v. Remington, et al, 115 S.W.2d 714 (Tex.Civ. App. 1938, error dismissed), and Attorney General's Opinion No. O-488, 1939, are in accord. We affirm Attorney General's Opinion No. O-7218 insofar as it applies to your problem.

It is further stated in your request that Petitioners maintain that substantial compliance with the statute would be met if they could show that the number of signatures on the petition was equal to 25 per cent or more of the number of persons qualified to vote in the corporate limits at the time of the 1960 General Election. It is suggested that even a greater burden than is required by the statute would have been met. With this we concur. This reasoning, if adopted by the Commissioners Court, represents a fair and reasonable approach and within the language of the attached opinion.

S U M M A R Y

Where it is impossible to determine the requisite number of signatures on a local

Honorable Guy E. Jones, Page 3 (Opinion No. C-266)

option petition, the Bowie County officials
may exercise their own discretion, based
upon reason and fairness.

Respectfully submitted,

WAGGONER CARR
Attorney General of Texas

By: Brady S. Coleman
BRADY S. COLEMAN
Assistant Attorney General

BSC/lh

APPROVED:
OPINION COMMITTEE

W. V. Geppert, Chairman
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APPROVED FOR THE ATTORNEY GENERAL
BY: Stanton Stone