



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**WAGGONER CARR
ATTORNEY GENERAL**

January 12, 1966

Honorable Ed Keys
County Attorney
Ward County
Monahans, Texas

Opinion No. C-580

Re: Whether a person presently residing in Commissioner's Precinct No. 2, but who will be living in a new precinct on January 1, 1967, is eligible to run for Commissioner of Precinct No. 2 in the 1966 election, under the facts stated.

Dear Sir:

In your letter requesting an opinion on the above-captioned question, you state that the commissioners' precincts in Ward County have been changed, effective January 1, 1967, and that as a result of the precinct boundary changes some people presently residing in Precinct 2 will reside in another precinct on the effective date of the changes. Quoting from your letter, you state further:

"Article 2351 $\frac{1}{2}$, R.C.S., clearly states that persons presently living in Precinct 2 but who will live in another precinct on said date can run for Commissioner in their new precinct in the 1966 general election. However, the question I have to pose is this: Can the person presently residing in Precinct 2 but who will be living in a new precinct on said date run for Commissioner in 1966 in Precinct 2?"

Article 2351 $\frac{1}{2}$, Texas Revised Civil Statutes, enacted in 1965 (Acts 59th Leg., 1965, ch. 664, p. 1523), reads in part as follows:

"(a) Whenever the Commissioners Court changes the boundaries of commissioners precincts or of justice precincts, it may specify

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in its order a future date, not later than the first day of January following the next general election, on which the changes shall become effective. If an election for any precinct office is held before the effective date of the order, the office shall be filled at the election by the voters of the precinct as it will exist on the effective date of the change in boundaries. A person who has resided within the territory embraced in the new boundaries for the length of time required to be eligible to hold the office shall not be rendered ineligible by virtue of the precinct's not having been in existence for that length of time."

Article 1.05 of Vernon's Texas Election Code, as amended in 1963, provides in part as follows:

"No person shall be eligible to be a candidate for, or to be elected or appointed to, any public office in this state unless he shall be eligible to hold such office under the Constitution and laws of this state, and unless he is a citizen of the United States and shall have resided in this state for a period of twelve months next preceding the date of any primary, general or special election at which he offers himself as a candidate or next preceding the date of his appointment, as the case may be, and for any office which is less than state-wide, shall have resided for six months next preceding such election in the district, county, precinct, municipality or other political subdivision for which the office is to be filled; provided, however, that the foregoing residence requirements shall not apply to any office for which the Constitution or statutes of the United States or of this state prescribe residence qualifications in conflict herewith, and in case of conflict the provisions of such other laws shall control. * * *"

In Brown v. Meeks, 96 S.W.2d 839 (Tex.Civ.App. 1936, error dism.), the Commissioners Court of Bexar County, prior to the primary election in 1936, had entered an order changing

the boundaries of the justice precincts and had specified that the changes were to be effective as of January 1, 1937. The order further provided that the nomination and election of justice precinct officers in the 1936 elections should be in accordance with the precincts as they would exist on and after January 1, 1937. In an election contest over the office of constable for new Precinct No. 1, the Court of Civil Appeals held that the portion of the order providing for the nomination and election of officers for the new precincts was void, as it was not within the power of the commissioners court to authorize persons to become candidates for office and vote in a precinct to be created in the future. The basis for the decision is stated in the following quotation from the opinion, 96 S.W.2d at pp. 841-842:

"The Constitution and statutes of this state, particularly article 2927, R.S. 1925 /now Article 1.05, Vernon's Texas Election Code/, prescribe the qualifications of candidates. One of such qualifications is that a candidate for office must reside for six months in the precinct in which he attempts to become a candidate for office. Certainly no one is at the present time a resident of new precinct No. 1, for the very simple reason that this legal entity does not exist at the present time. It will not come into existence, according to its own terms, prior to January 1, 1937. Until that time no legal entity in the form of a new justice precinct is in existence.

"There can be no question as to the power of the commissioners' court to create new justice precincts, from time to time, for the convenience of the people. * * *

"The commissioners' court also has the power, when lawfully exercised, to pass an order redistricting the county into new justice of the peace precincts to become effective in the future. * * *

"However, when the commissioners' court attempts to determine who may become a candidate or vote in such new districts, it is attempting to legislate upon a subject over

which it has no jurisdiction. The Legislature of this state has fixed the qualifications of candidates for the office of constable, or any other precinct officer, article 2927, R.S.1925, and the commissioners' court cannot add to or take from these qualifications."

The holding in Brown v. Meeks was applicable to commissioners' precincts as well as justice precincts.

In our opinion, the purpose of paragraph (a) of Article 2351 $\frac{1}{2}$ is to supply the legislative authority, found lacking in the Brown case, for the election of precinct officers in accordance with precinct boundaries which are to become effective in the future, and to make it clear that the precinct residence requirement prescribed by Article 1.05 of the Election Code for seeking and holding the precinct offices shall be determined with reference to the boundaries of the precincts as they will exist upon the effective date of the changes. Thus, a person who on the date of the first primary election in 1966 will have resided for six months in the territory embraced within new Commissioners' Precinct No. 2 of Ward County will meet the precinct residence requirement to be a candidate for nomination for commissioner of that precinct, although he may be living in a precinct of a different number under the old designation. We do not find any indication of an intent to do away with the necessity for meeting the precinct residence requirement as prescribed and clarified in these two statutes. A person living in territory comprised in old Precinct No. 2 but which is transferred to some other precinct under the new order will not meet the residence requirement for commissioner of new Precinct No. 2 and will not be eligible to run for that office.

S U M M A R Y

Where the commissioners court has adopted an order changing the boundaries of commissioners' precincts, to become effective on January 1, 1967, the precinct residence requirement for running for county commissioner in the 1966 elections is to be determined with reference to the boundaries as they will exist after the effective date of the order. A person residing in territory presently comprised in Commissioners Precinct No. 2 but which is transferred to some other precinct under the new order will not meet the residence requirement for commissioner of new Precinct No. 2 and will not be eligible to run for that office in the 1966 elections. Art. 1.05, Vernon's Texas Election Code,

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and Art. 2351 $\frac{1}{2}$, Texas Revised Civil Statutes
(Acts 59th Leg., 1965, ch. 664, p. 1523).

Yours very truly,

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By: *Mary K. Wall*
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Assistant

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APPROVED:
OPINION COMMITTEE

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