



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**WAGGONER CARR
ATTORNEY GENERAL**

May 12, 1966

Honorable G. L. Kelly, Jr.
County Attorney
County of Bastrop
Bastrop, Texas

Opinion No. C-681

Re: When a smaller entity has voted "dry" under a prior local option election and has been consolidated into a "wet" entity, a Justice Precinct; and an application has been presented to the County Clerk for a petition for a local option election to legalize the sale of all intoxicating liquors in the "dry" area only, is it necessary for the election to be held for the entire Justice Precinct as it now exists, or only for the lesser entity, i.e., the smaller prior precinct which is dry and a related question.

Dear Mr. Kelly:

Your letter requesting an opinion of this office reads as follows:

"This is a request for an Attorney General's Opinion concerning Art. 666-32 of the Texas Penal Code, as amended, specifically concerning Local Option Elections under the Texas Liquor Act.

"Prior to 1948, this County was composed of eight (8) Justice Precincts. In 1948 these eight were consolidated into four (4) Justice Precincts.

"Prior to 1948, one of the Justice Precincts which is now consolidated into a larger Precinct, voted 'dry' and exists presently as such. The remainder of the present Justice Precinct (and the larger portion, area and population wise) is

'wet'. Application is being made under the above quoted Act for a Petition for a Local Option Election to legalize the sale of all alcoholic beverages in the dry area, it being the intent only to affect the area now 'dry' and not to affect, in any manner, the rest of the presently existing Justice Precinct which is 'wet'. Inasmuch as the subdivisions listed in said act are limited to 'county, justice precinct or incorporated town or city' as the specific areas to which an election can be defined, this is the question:

"QUESTION: When a smaller entity has voted 'dry' under a prior local option election, and has been consolidated into a predominantly 'wet' larger entity, a Justice Precinct; (which is the smallest subdivision in the Texas Liquor Control Act in rural areas) and an application has been presented to the County Clerk for a Petition for a local option election to legalize the sale of all intoxicating liquors in the 'dry' area only, is it necessary for the election to be held for the entire Justice Precinct as it now exists, or only for the lesser entity, i.e. the smaller prior precinct, which is 'dry'?

"A second question exists also. This made existent since our Voter Registration Law of 1966. The Local Option Election portion above quoted states that if a petition is issued, it requires 25% of the qualified voters of said subdivision (whatever the subdivision may be, according to your answer to the Question above.) before an election can be ordered by the Commissioners Court. It further states '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 said subdivision. Obviously, the number of 'qualified voters' at said preceding 'General Election' will not be the same as the 'qualified voters' under the Voter Registration Law of 1966.

"QUESTION: Which criteria should be used in determining whether 25% of the qualified voters of a subdivision, in a local option election have signed a petition for such an election: 1) The votes for Governor at the last preceding General Election at which presidential electors were elected; or, 2) The qualified voters who have qualified to vote by registering under the Voter Registration Law of 1966?"

Attorney General's Opinion No. 0-6917 (1946) states in part as follows (a copy of which is attached hereto):

"It is a well settled rule under the Texas cases that whenever a local option law is once legally put into operation in a given territory, it must remain in force until it has been voted out by the voters of the territory where such law was originally vitalized. See Ex Parte Pollard, 103 S.W. 878, and Walling vs. King, County Judge, 87 S.W. (2d) 1074. Article XVI, Section 20 of the Texas Constitution provides for elections only in the county, justice's precinct or incorporated town or city.

"Having determined that the exclusive method of changing the status of a 'dry' or 'wet' area is by an election, we now proceed to the question of the form of the ballot to be used in an election in an incorporated city part of which is 'wet' and part of which is 'dry'.

"Pursuant to Section 20 of Article XVI of the Texas Constitution, previously set forth in this opinion, the Forty-fourth Legislature in 1935 passed the Texas Liquor Control Act which is to be found in Articles 666 and 667 of Vernon's Annotated Penal Code, 1925. Article 666-23 defines a 'dry area' and a 'wet area' as follows:

"Whenever the term "dry area" is used in this Act it shall mean and refer to all counties, justice precincts, incorporated cities or towns wherein the sale of alcoholic beverages has been prohibited by valid local

option elections held under the laws of the State in force at the time of the taking effect of Section 20, Article XVI, Constitution of Texas in the year 1919. It likewise shall mean and refer to any such areas where sale of such alcoholic beverages shall be prohibited under the terms of this Act.

"The term "wet area" shall mean and refer to all other areas of the State.' (Emphasis added)

"An examination of the above underscored language in Article 666-33 (sic) forces us to the conclusion that the determination of the status of one of the political subdivisions mentioned in Article XVI, Section 20 of the Texas Constitution depends upon a consideration of the status of the county, justice precinct, or incorporated town or city as a whole, and that one of the above subdivisions may not be part 'dry' and part 'wet' for the purposes of a local option election. It is our further opinion that if any part of the subdivision is 'wet' then the entire subdivision is 'wet' for purposes of a local option election. The City of Pasadena, despite the fact that the entire city was originally a 'dry area', is now a 'wet area' by virtue of the fact that liquor may now be legally sold in a portion of the incorporated city."

In view of the above Attorney General's Opinion and Patton v. Texas Liquor Control Board, 293 S.W.2d 99 (Tex. Civ.App. 1956 error ref. n.r.e.), it is the opinion of this office that it is necessary for the election to be held for the entire Justice Precinct as it now exists.

It is further the opinion of this office that for the limited purposes of a local option election, the Justice Precinct as it presently exists shall be considered as a "wet area" within the meaning of the Texas Liquor Control Act.

Honorable G. L. Kelly, Jr., Page 5 (C-681)

In answer to your second question, Attorney General's Opinion No. C-332 holds that the language of Article 666-32, Vernon's Penal Code, which prescribes the form of a petition for a local option election, is mandatory, not directory.

We here reaffirm and concur in the correctness of Attorney General's Opinion No. C-332 (1964) and the necessary implications of such opinion. Article 666-32 specifically sets forth the criterion to be followed in determining the qualified voters in the county, justice's precinct or incorporated town or city and is not affected by the Voter Registration Law of 1966.

It should be noted that the State Legislature may set any reasonable standard that must be met in any petition calling for an election. In Article 666-32, Vernon's Penal Code, the criterion to be followed is 25 per cent of the qualified voters in the justice's precinct "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 such . . . justice's precinct. . . ."

S U M M A R Y

When a prior Justice Precinct has voted "dry" under a prior local option election and has been consolidated into a "wet" Justice Precinct, in order for the prior Justice Precinct to become "wet" it is necessary for an election to be held for the entire Justice Precinct as it now exists; the criterion to be used in determining whether 25% of the qualified voters have signed a petition, for a local option election, is the votes cast for Governor at the last preceding General Election at which presidential electors were elected. Article 666-32, V.P.C.

Yours very truly,

WAGGONER CARR
Attorney General of Texas

Honorable G. L. Kelly, Jr., Page 6 (C-681)


DOUGLAS H. CHILTON
Assistant Attorney General

DHC/dt

APPROVED

OPINION COMMITTEE

W. V. Geppert, Chairman
Mary K. Wall
John Reeves
Phillip Crawford
Ronald Luna

APPROVED FOR THE ATTORNEY GENERAL
BY T. B. Wright