



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable H. A. Hodges
County Auditor
Williamson County
Georgetown, Texas

Dear Sir:

Opinion No. 0-2145

Re: Is each county commissioner required to vote on all matters before the court requiring a vote, or does he have the right to refuse to vote or remain silent? And related questions.

Your letter of March 28, 1940, requesting an opinion of this Department on the following questions has been received.

"1. Does the County Judge have a right to vote on all matters brought before the Commissioners Court requiring a vote of that body, or does he just have the right to vote to break a tie vote of the court?

"2. If he has the right to vote on all such matters is he required to vote on each, or may he just vote at his discretion when there is not a tie vote?

"3. Is each County Commissioner required to vote on all matters coming before the Court requiring a vote, or does he have the right to refuse to vote, or remain silent?

"4. If each County Commissioner is required to vote on matters coming before the Court what is

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the penalty for failing or refusing, to vote?"

Article 2342, Vernon's Annotated Civil Statutes, reads as follows:

"The several commissioners, together with the county judge, shall compose the 'Commissioners Court' and the county judge, when present, shall be the presiding officer of said court."

We quote from Texas Jurisprudence, Volume II, page 559 and 560 as follows:

"Any three members of the Commissioners Court, including the county judge, constitute a quorum for the transaction of any business except that of levying a county tax. That is to say, a quorum for the transaction of business is constituted by any three commissioners or by the county judge and any two commissioners. . . It is not necessary that the county judge be present and presiding in order that the Commissioners Court may transact its business; the statutes merely require that the county judge preside when he is present. . ." Article 2343, Vernon's Annotated Civil Statutes; Dalton v. Allen, 215 S. W. 439.

Section 18 of Article 5 of the Texas Constitution reads, in part, as follows:

". . . Each county shall in like manner be divided into four commissioners precincts, in each of which there shall be elected by the qualified voters thereof one county commissioner, who shall hold his office for two years until his successor shall be elected and qualified. The county commissioners so chosen, with the county judge, as presiding officer, shall compose the county commissioners court, which shall exercise such powers and jurisdiction over all county business as is conferred in this Constitution and the laws of the State, or as may be hereafter prescribed."

With reference to your first question, your attention is respectfully directed to our Opinion No. 0-1716,

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which holds that:

"The county judge enjoys equal voting rights with all of the other members of the commissioners' court which will include the right to make or second any motion and the right to vote whether there be a tie among the votes of other members of the court or not."

We are enclosing a copy of the above mentioned Opinion for your information and convenience. You will note, as above stated, that the county judge has the right to vote on all matters brought before the commissioners' court requiring a vote of that body, which includes the right to make or second any motion and the right to vote whether there be a tie among the votes of the other members of the court or not. The right of the county judge to vote on all matters brought before the commissioners' court is not restricted to instances to where there is a tie vote.

In reply to your second question, it appears from all the authorities that we have examined, constitutional, statutory, or judicial interpretations, the county judge is not required or compelled to vote upon any matter brought before the commissioners' court, but has the right to vote or refrain from voting as he may determine.

In answer to your third question as above stated, any three members of the commissioners' court, including the county judge, constitute a quorum for the transaction of any business except that of levying a county tax. Therefore, what has been said with reference to requiring or compelling a county judge to vote on any matter before the commissioners' court is equally applicable to any commissioner, and each commissioner may vote or refuse to vote on any question as he shall determine.

In reply to your fourth question, you are advised that a commissioner is not required or compelled to vote on any matter coming before the court, and that a refusal to vote on any such matter does not constitute a penal offense of any nature.

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Trusting that the foregoing fully answers your inquiries, we remain

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Ardell Williams*
Ardell Williams
Assistant

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APPROVED APR 6, 1940
E. C. Mann
ATTORNEY GENERAL OF TEXAS

