OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Hill Co.

Honorable A. J. Bryan, Jr.
Criminal District Attorney
Hillsboro, Texas

Dear Sir:

Opinion No. O-2447
Re: Constitutionality of Art. 3116c, relating to payments by candidates for state representative to the County Executive Committee

This is in reply to your letter of May 29, 1940, requesting the opinion of this department as to the constitutionality of Article 3116c, Vernon's Annotated Civil Statutes, relating to payments by candidates for state representative to the County Executive Committee in certain counties.

Article 3116c, Vernon's Annotated Civil Statutes, reads as follows:

"Art. 3116c. That from and after the effective date of this Act, in all counties in this State having a population of not less than forty-three thousand (43,000) and not more than forty-three thousand, one hundred (43,100), and in all counties in this State having a population of not less than sixty thousand (60,000) and not more than sixty thousand, six hundred (60,600), and in all counties of this State having not less than ninety-eight thousand (98,000) nor more than ninety-nine thousand (99,000), according to the last preceding Federal Census, and where such counties constitute a Representative District, no person who is a candidate in a primary election of such counties, for nomination for State Representative, including Flotorial Representative, in the Legislature, shall have his or her name placed on such primary ballot in such counties, unless and until

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he or she has paid to the County Executive Committee of the political party whose nomination he or she seeks, the sum of Fifty Dollars ($50).

"It being the purpose of this Act to require the payment of Fifty Dollars ($50) as a prerequisite to having the name of the candidate placed on the official ballot in any primary election in each and all counties hereinabove set out."

Section 56 of Article 3 of the Constitution of Texas, reads, in part, as follows:

"The Legislature shall not, except as otherwise provided in this Constitution, pass any local or special law, authorizing: * * *

"And in all other cases where a general law can be made applicable, no local or special law shall be enacted; provided, that nothing herein contained shall be construed to prohibit the Legislature from passing special laws for the preservation of the game and fish of this State in certain localities."

The following rules are pertinent to the problem at hand:

"Classification of cities and counties by population, and legislation applicable to such classification, has generally been sustained where a substantial reason appears for such classification. * * *

"If the classification of cities or counties is based on population, whether an act is to be regarded as special, and whether its operation is uniform throughout the State, depends upon whether population affords a fair basis for the classification with reference to the matters to which it relates, and whether the result it accomplishes is in fact a real classification upon that basis, and not a designation of a single city or county to which alone it shall apply, under the guise of

such classification. Parker-Washington Co. vs. Kansas City, 73 Kan. 722, 85 P. 781." Smith v. State, 120 Tex. Cr. 431, 49 S. W. (2d) 739.

"The classification adopted must rest in real or substantial distinctions, which renders one class, in truth, distinct or different from another class * * * There must exist a reasonable justification for the classification; that is, the basis of the classification invoked must have a direct relation to the purpose of the law * * *" I McQuillen on Municipal Corporations, pp. 498, 499.

It is clear that Article 3116e, by its terms, applies only to counties "having a population of not less than forty-three thousand and not more than forty-three thousand, one hundred, and in all counties in this State having a population of not less than sixty thousand and not more than sixty thousand, one hundred and in all counties of this State having not less than ninety-eight thousand and not more than ninety-nine thousand, according to the last preceding Federal Census * * * where such counties constitute a Representative District." Is Article 3116e repugnant to Section 56 of Article 3 of the Constitution of Texas? Is this an attempt on the part of the Legislature to enact a local or special law when a general law can be and has been made applicable? We hold that it is.

We are informed that Hill County, Texas, had a population of forty-three thousand and thirty-six, according to the 1950 Federal Census; Navarro County, Texas, a population of sixty thousand, five hundred and seven, according to such census, and McLennan County, Texas, a population of ninety-eight thousand, six hundred and eighty-two inhabitants. Each of these counties constitute a representative district under Article 195, Revised Civil Statutes, 1925. These are the only counties, moreover, under the 1950 Federal Census, to which Article 3116e will apply.

All counties other than those enumerated in Article 3116e and Article 3116d of Vernon's Annotated Civil Statutes, are provided for in the general statute, Article 3116. According to this Article, "no candidate for nomination for

State Senator or Representative in the Legislature shall be required to pay more than One Dollar ($1.00) to any county executive committee or any other person or any particular committee as his portion of such expense for holding such primary."

Conceding the power of the Legislature to classify according to population, is the classification here based on reasonable grounds? Is there some difference in the counties in these population brackets, which bears a just and proper relation in the subject matter of the legislation? Let us examine the practical operation of this statute.

Cherokee County, Texas, according to the 1930 Federal Census, had a population of forty-three thousand, one hundred and eighty. The candidates for state representative in that county were required to pay to the County Executive Committee "not more than One Dollar ($1.)," yet candidates for representative in Hill County, Texas, such county having a population of only forty-four persons less than Cherokee County, Texas, were required under Article 3116c to pay over to the County Executive Committee fifty dollars. Surely, here is a mere arbitrary and capricious selection of Hill County, the classification having no reasonable relationship to the subject matter of the enactment.

Insofar as the second population bracket is concerned, sixty thousand to sixty thousand, six hundred, according to the 1930 Federal Census, Navarro County, Texas, is the only county coming within it; yet Galveston County with a population of sixty-four thousand, four hundred and one, and Grayson County with a population of sixty-five thousand, eight hundred and forty-three inhabitants, as examples, are treated differently. Likewise, McLennan County with a population of ninety-eight thousand, six hundred and eighty-two inhabitants is the only county according to the 1930 Federal Census, falling within the bracket ninety-eight thousand to ninety-nine thousand. In counties above and below that population bracket candidates are accorded different treatment. Just why candidates for election to the Legislature in Hill, Navarro and McLennan Counties should be required to pay fifty ($50.00) dollars to the County Executive Committee and candidates for the same office residing in counties of greater and less population should pay only one ($1.00) dollar is apparent neither from the statute nor any valid reason we can conceive.

See the recent case of Ex Parte Ferguson, 132 S. W. (2d) 408, wherein the Court of Criminal Appeals said:

> "Moreover, the classification seems to be based merely on the numbers of people in the various counties not as to age, sex, or physical infirmaties, or in any other manner which would appear to be a just or reasonable basis for classification. We are not unmindful of the power and authority of the Legislature to classify according to population, but such classification must be based on reasonable grounds - some difference which bears a just and proper relation to the attempted classification and not a mere arbitrary selection. Willoughby on the Constitution, Vol. 2, Sec. 485 (1910 Edition). This being true, we fail to see a reasonable basis for the classification in the instant case. Just why the people in Lamar County and the peoples of other counties falling within the prescribed population brackets should be accorded different treatment to the peoples of other counties of this State is apparent neither from the Act nor from the record before us."

Consequently, it is the opinion of this department and you are respectfully advised that Article 5116e, Vernon's Annotated Civil Statutes, being H. B. 1020, Acts 1939, 46th Leg., relating to payments to the County Executive Committee by candidates for state representative in certain counties is null and void, the same being repugnant to Sec. 56 of Article 3 of the Constitution of Texas.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By Walter R. Koch
Walter R. Koch
Assistant

By James D. Smullen
James D. Smullen

APPROVED JUN 19, 1940
Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

JDS:EP

APPROVED
OPINION
COMMITTEE
BY Burns
CHAIRMAN