



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable W. J. Muller
County Attorney
Kinney County
Brackettville, Texas

Dear Sir:

Opinion No. O-2640

Re: Whether a person's name
may be on ballot for gen-
eral election as candidate
for both Justice of Peace
and County Commissioner.

Your letter of August 15, requesting our opinion
on the above question has been received.

Article 2978, Revised Civil Statutes, provides,
in part:

"The name of no candidate shall appear
more than once upon the official ballot, ex-
cept as a candidate for two or more offices
permitted by the Constitution to be held by
the same person."

Article 16, Section 40 of the Constitution of Tex-
as provides, in part:

"No person shall hold or exercise, at
the same time, more than one Civil Office of
emolument, except that of Justice of Peace,
County Commissioner, Notary Public and Post-
master. * * *"

In spite of the express exemptions enumerated in
the above constitutional provision, the Courts of Texas have
imposed an additional requirement to permit a person to hold
two offices, i. e., that the two offices be not incompatible.
Biencourt v. Parker, 27 Tex. 558; State v. Brinkerhoff, 66
Tex. 45; Thomas v. Albernathy County Line Independent School
District, 290 S. W. 152; State v. Martin, 51 S. W. (2d) 815.

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Are the offices of Justice of Peace and County Commissioner incompatible? Article 1052, Code of Criminal Procedure, as amended, 1929, provides that the Commissioners' Court shall approve the accounts of Justices of Peace for fees in criminal actions. Should a Justice of the Peace likewise be a County Commissioner, he would, in one capacity, be passing upon his own account in another office. Such a situation presents an anomaly which clearly renders the two offices incompatible. There may be other functions of the two offices which are likewise incompatible, but the one instance cited is sufficient to come within the rule laid down by the above cases.

You are therefore advised that the same person's name may not appear on the official ballot at a general election as a candidate both for the offices of Justice of Peace and County Commissioner.

APPROVED AUG 22, 1940.

Yours very truly

ATTORNEY GENERAL OF TEXAS

Ernest Allen
FIRST ASSISTANT
ATTORNEY GENERAL

By

Walter R. Koch
Walter R. Koch
Assistant

WRK:RS

