



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable Geo. H. Sheppard  
Comptroller of Public Accounts  
Austin, Texas

Dear Mr. Sheppard:

Opinion No. 0-3494

Re: Tenure of special judge elected  
by the bar for the District  
Court of the 17th Judicial  
District.

We have your inquiry of May 5, 1941, touching  
the above subject-matter, which letter reads as follows:

"The regular Judge of the 17th Judicial  
District has taken a leave of absence for a  
number of months, probably for the remainder  
of his elected term. The bar of this dis-  
trict has elected Honorable Geo. M. Conner  
to act as Special Judge of this District.

"This department desires your opinion  
as to whether it is necessary for the bar  
to elect a Special Judge for each term, or  
whether the Special Judge once elected may  
serve until the regular Judge returns and  
assumes his duties."

Section 23 of Article 2092 of the Revised Civil  
Statutes as presently in force is as follows:

"If a Judge of any Court is disqualified  
in any case pending in his Court, and his dis-  
qualification is certified to the Governor,  
the Governor may require the Judge of any  
other of such Courts to exchange benches or  
districts with the disqualified Judge, and  
may, at any time, require any of such Judges

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to exchange districts with each other or with any other District Judge. In case of the absence, sickness, or disqualification of any Judge, any other of said Judges may hold Court for him or may transfer from his Court to any other of said Courts any case or proceeding then pending in the Court of said absent, sick, or disqualified Judge and in such circumstances the practicing lawyers of the Court may elect a special Judge of said Court in the same manner as provided in Chapter 1 of Title 40 of the Revised Civil Statutes of 1925, and such special Judge when so elected shall have and exercise all the powers and duties which the regular Judge of said Court could have and exercise."

For the "manner" of the election of such special judge, we are sent to Chapter 1 of Title 40, of the Revised Civil Statutes of 1925.

Reverting to this Chapter, we find that Articles 1887 and 1893 are the only ones pertinent to our inquiry.

Article 1887 declares:

"Should the judge of a District Court on the first or any future day of a term fail or refuse to hold the court, the practicing lawyers of the court present may elect from among their number a special judge who shall hold the court and proceed with the business thereof."

Article 1893 provides:

"Like elections may be held from time to time during the term of the court to supply the absence, failure or inability of the judge, or of any special judge, to perform the duties of the office."

Your inquiry calls for an original construction of the statutes quoted, since there is no court authority in point.

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The statutes are obscure, but we must of necessity "discover" the intention of the Legislature with respect to the precise point of your inquiry.

The language of Article 1887, "on the first or any future day of a term" has some significance. We think it signifies by anticipation that notwithstanding the regular judge should fail or refuse to hold the court upon the first day of the term, and that a special judge should be selected in his stead, yet at a subsequent day of the term the regular judge might return and resume his duties, or the special judge might himself fail or refuse to act, whereupon another election should be held so that the business of the court would go on as usual. It is conceivable, upon this theory, that there might be repeated elections during the term, according as the regular judge might return and again fail or refuse to hold the court.

The language of Article 1893 accentuates the construction just given to the quoted words from Article 1887. Article 1893, however, contains the following language, which is even more significant. It provides, "Like elections may be held from time to time during the term" to supply the absence of a judge.

From these meager indicia of intention, we are constrained to advise you that the election of a special judge for the 17th Judicial District should be held on the first day of each respective term, in the event of the failure or refusal of the regular judge to hold the court, and as often thereafter during each respective term as the necessity therefor may require.

The following authorities tend to support our conclusion:

House v. Ford, 258 S. W. 527;

Cox v. Oliver, 95 S. W. 598;

Lowe v. State, 201 S. W. 986;

Watson v. State, 201 S. W. 988.

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Trusting that what we have said satisfactorily answers your inquiry, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

APPROVED MAY 14, 1941

*George Bell*

FIRST ASSISTANT  
ATTORNEY GENERAL

By

*Ocie Speer*

Ocie Speer  
Assistant

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7/17/41