



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable Thomas L. Blanton, Jr.
County Attorney
Shackelford County
Albany, Texas

Dear Sir:

Opinion No. O-6003
Re: Time limit on successive
local option elections.

We have your letter reading as follows:

"An application has been made for a petition to call a local option election for the purpose of determining whether or not beer and wine shall be legalized in Shackelford County, and it is my understanding that said petition will be presented to the Commissioners' Court, containing enough signers, at its next regular meeting to be held on Monday, May 8th.

"On September 4, 1945, an election was held in Shackelford County on the issue of whether or not all alcoholic beverages should be prohibited, and by a majority vote the sale of all alcoholic beverages was prohibited.

"Article 635, Section 32, of the Penal Code of Texas provides, 'No subsequent election upon the same issue in the same political subdivision shall be held within one year from the date of the preceding local option election in any county or political subdivision thereof.'

"In the case of Mitchell vs. McCharen, a Court of Civil Appeals in Volume 119, SW (2d) at Page 676, holds that the fact that there has been a local option election within a year on the issue whether the sale of all alcoholic beverages

Honorable Thomas L. Blanton, page 2

should be prohibited or legalized, would not preclude the holding of a local option election on the issue whether the sale of beer not containing alcoholic in excess of four percent by weight should be prohibited or legalized. This case grew out of a petition to mandamus the commissioners' court to call such election.

"Based upon the authority of this case, it would be my opinion that the Commissioners' Court of Shackelford County upon the presentation of a proper petition would be forced to call a local option election to determine whether or not beer and wine could be legally sold in Shackelford County, but before advising the Commissioners' Court in this respect I would like very much to have an opinion from your department on this question.

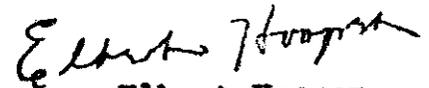
"Due to the fact that the petition will probably be filed before Monday, and the statute provides that the Commissioners' Court at its regular meeting shall order a local option election to be held upon the issue or issues set out in such petition, I would appreciate your letting me have the opinion before next Monday."

We think your conclusion is the correct one and that the September 4, 1943, election does not, under Article 666-32, bar the proposed election on a different issue. We enclose our Opinion No. O-682 to the same effect.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By



Elbert Hooper
Assistant



ER:db

Enclosure

