



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL  
ATTORNEY GENERAL

June 25, 1947

Hon. Royce Whitten  
County Attorney  
Lamar County  
Paris, Texas

Opinion No. V-266

Re: Publication of order of  
Commissioners' Court di-  
viding county into elec-  
tion precincts.

Dear Sir:

Your request for an opinion from this office on the above subject matter is, in part, as follows:

"Transmitted herewith is a letter from the Honorable Cedric Townsend, County Judge of Lamar County, Texas, requesting an opinion ... whether or not that part of Article 2933 V.C.S., to-wit: 'they shall immediately thereafter publish such order in some newspaper in the County for three (3) consecutive weeks;', is discretionary with such Court or mandatory. Please advise further as to whether or not, in your opinion, the failure of said Court to publish said order would vitiate any subsequent elections held following the creation of any new election precincts."

The part of Article 2933, V.C.S., pertinent to your inquiry is:

"Each commissioners court may, if they deem it proper, at each August term of the court, divide their respective counties, and counties attached thereto for judicial purposes, into convenient election precincts, each of which shall be differently numbered and described by natural or artificial boundaries or survey lines by an order to be entered upon the minutes of the court. They shall immediately thereafter publish such order in some newspaper in the county for three consecutive weeks. If there be no newspaper in the county, then such copy of such order shall be posted in some public place in each precinct in the county. . . ."

Hon. Royce Whitten, Page 2

We are of the opinion that the Legislature intended to require the publication of such election orders and that the word "shall" as there used, is mandatory.

In Opinion No. 0-4623, it was held that the above quoted provisions of Article 2933 are mandatory. We adhere to that holding and enclose a copy of that opinion for your information.

In State v. Wurdeman, (Mo.) 246 S.W. 189, 194, the Court said:

"Usually the word 'shall' indicates a mandate, and unless there are other things in a statute, it indicates a mandatory statute."

Since the presumption that officers will perform their mandatory duties obtains, we assume that the court will proceed to publish the order and it becomes unnecessary for us to pass on other questions.

SUMMARY

The provision of Article 2933, V. C. S., requiring the publication of a Commissioners' Court order establishing or changing election precincts is mandatory.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *John Reeves*  
John Reeves  
Assistant

APPROVED

*Price Daniel*  
ATTORNEY GENERAL

JR: djm: jrb