



**THE ATTORNEY GENERAL
OF TEXAS
AUSTIN, TEXAS**

**PRICE DANIEL
ATTORNEY GENERAL**

August 9, 1948

Honorable Sam Dollahite
County Attorney
Falls County
Marlin, Texas

Opinion No. V-657

Re: Local option status of area separated from a "wet" precinct and attached to a "dry" precinct by a Commissioners' Court order changing the precinct boundaries.

Dear Sir:

Your letter requesting an opinion reads, in part, as follows:

"Justice Precinct 5 of Falls County, Texas has always been "dry"—Justice Precinct 4 has always been "wet". The division line between these two Precincts used to be the Marlin-Chilton road. Several years ago by order of the Commissioners Court the boundary line of Justice Precinct 5 was moved from the Marlin-Chilton road to a line running about 300 yards South of said road.

"Up to the time of this order the territory taken off of Precinct 4 and made a part of Precinct 5 in said order, had been in the "wet" area.

"The question involved is whether the order of the court so changing the boundary prohibits the sale of beer in that portion of Precinct 4 which was made a part of Precinct 5 by said order."

The question for our decision is the effect the annexation of part of a "wet" justice precinct to a "dry" justice precinct has upon the local option status of the annexed portion. Both the Constitution and Statutes of Texas contain provisions setting forth the method for adopting or rejecting prohibition. Subsection (b) of Article XVI, Section 20, of the Texas Constitution as amended in 1935 provides:

"The Legislature shall enact a law or laws whereby the qualified voters of any county, justice's precinct or incorporated town or city may by a majority vote of those voting, determine from time to time whether the sale of intoxicating liquors

for beverage purposes shall be prohibited or legalized within the prescribed limits; and such laws shall contain provisions for voting on the sale of intoxicating liquors of various types and various alcoholic content." (Emphasis ours)

Pursuant to the above constitutional mandate, the Legislature in 1935 passed the Texas Liquor Control Act regulating the sale of intoxicating beverages and providing among other things for the holding of local option elections. These provisions pertaining to elections are codified as Articles 666-32, et seq., Vernon's Penal Code.

Numerous cases have been decided by the Texas courts in which a part of a "dry" precinct was annexed to a "wet" precinct, and the courts have uniformly held that the "dry" portion retained its local option status regardless of the annexation. See the cases of Medford v. State, 74 S.W. 768; Woods v. State, 75 S.W. 37; Oxley v. Allen, 107 S.W. 945; Goodie Goodie Sandwich, Inc. v. State, 138 S.W. (2d) 906. It is obvious that the same rule would apply to the reverse of the above proposition, i.e., a portion of a "wet" justice precinct annexed to a "dry" justice precinct. The answer to this question is to be found in the language used by the Supreme Court of Texas in the case of Houchins v. Plainos, 130 Tex. 413, 110 S.W. (2d) 549. In that case a "dry" area which had formerly been an independent municipality (Houston Heights) was annexed to a "wet" city (Houston). The question for the court's determination was whether or not that "dry" area which was annexed to the "wet" city had become "wet" solely by reason of the annexation. The court in its opinion stated:

"When the people of Houston Heights voted to become a part of the wet city of Houston, they did not vote on local option at all. This must be true, because, under the law in effect, when Houston Heights voted dry, and also under the law in effect when Houston Heights voted annexation with the city of Houston, a territory once voted dry could only be voted wet by strict compliance with the then existing local option laws. Certainly, such local option laws did not permit local option once voted into effect to be voted off by merely voting on a collateral matter. A reading of such statutes clearly negatives such a conclusion. In this regard, it is settled as the law of this state that where a power is expressly given by the Constitution, and the means by which, or the manner in which it is to be exercised, is prescribed, such means or manner is exclusive of all others. Parks v. West, 102 Tex. 11, 111 S. W. 726. At the time the city of Hous-

ton Heights voted dry, and at the time it was annexed to the wet city of Houston, the local option laws of this state governed, and governed exclusively the matter of voting upon such question."
(Emphasis ours)

It is our opinion that in so far as the local option status of an area is concerned, Article XVI Section 20 of the Constitution of Texas and Articles 666-32, et seq., Vernon's Penal Code, provide the exclusive method for prohibiting or legalizing intoxicating beverages. The mere annexation of a portion of a "wet" justice precinct to a "dry" justice precinct does not affect such local option status of the annexed portion. To hold otherwise would allow the Commissioners' Court alone to change the local option status, because Article V Section 18 of the Texas Constitution provides for the division by the Commissioners' Court of the county into precincts. The case of Goodie Goodie Sandwich, Inc. v. State, 138 S.W. (2d) 906, held that such constitutional provision empowered the Commissioners' Court to alter boundaries of precincts within counties. We quote the following language from that case:

"It cannot be gainsaid that the Commissioners' Court had the power and authority to define, re-define, change, or alter the boundaries of precincts within the county, and to ascertain the facts necessary to the exercise of such powers; but it does not lie within the power of the Court to detach "dry" territory from a "dry" precinct and attach it to a "wet" precinct, thereby making the detached territory "wet", and allowing the sale, barter and exchange of prohibited liquors within the detached territory, perforce of the change."

Therefore, the action of the Commissioners' Court in attaching a portion of a "wet" precinct to a "dry" precinct does not serve to prohibit the sale of intoxicating beverages in the attached territory and the "wet" area remains "wet."

SUMMARY

The order of the Commissioners' Court of Falls County attaching a portion of "wet" Justice Precinct No. 4 to "dry" Justice Precinct No. 5 does not serve to prohibit the sale of intoxicating

beverages in the attached portion, and this attached portion remains "wet." Houchins v. Plainos, 130 Tex. 413, 110 S.W. (2d) 549.

Yours very truly

ATTORNEY GENERAL OF TEXAS

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APPROVED

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ATTORNEY GENERAL