



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

JOHN BEN SHEPPERD  
ATTORNEY GENERAL

October 10, 1953

Honorable H. K. Harrelson  
County Attorney  
Booker, Texas

Letter Opinion No. MS-100

Re: Time within which a local option election on sale of beer for off-premise consumption only may be held after a preceding election in same political subdivision on sale of beer, which resulted in prohibition thereof, under Articles 666-32 and 666-40, V.P.C., as amended by Chapter 249, Acts of the 53rd Legislature, 1953, page 643.

Dear Mr. Harrelson:

You have requested our opinion as to whether a local option election to "legalize the sale of beer for off-premise consumption only" may be held in the same political subdivision within one year after the date of an election "For prohibiting the sale of beer containing alcohol not exceeding four (4%) per centum by weight," which resulted in prohibition thereof.

Article 666-40 of Vernon's Penal Code, as amended by Chapter 249, Acts of the 53rd Legislature, 1953, page 643, lists "For the legal sale of beer" and "Against the legal sale of beer" and "For the legal sale of beer for off-premise consumption only" and "Against the legal sale of beer for off-premise consumption only" as separate and distinct "issues", among others, which may be used in certain local option elections. The "off-premise" issue was added as an entirely new issue by the above named amendment.

Also added to such article by the same amendment is the following:

"Vinous and malt liquor, containing not more than fourteen per centum (14%) alcohol by volume, and beer, which are sold or dispensed to the public in unbroken, sealed and individual containers are hereby declared to be a separate and distinct type and kind of alcoholic beverage and where the sale of alcoholic beverages has been legalized for off-premise consumption only, the sale or

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consumption of any other type or kind of alcoholic beverages on the licensed premises shall be unlawful."

The above mentioned statutory provisions appear to indicate that the Legislature intended to treat the new "issue" for the sale of beer for off-premise consumption as an issue separate from all the other propositions by the Legislature as "issues."

Therefore, when the Legislature, in Article 666-32, V.P.C., provided that "No subsequent election upon the same issue in the same political subdivision shall be held within one (1) year from the date of the preceding local option election in any county or political subdivision thereof, . . ." it apparently used the word "issue" in the same sense, in the absence of any contrary expression.

It is our opinion that a local option election on the issue " 'For the legal sale of beer for off-premise consumption only' and 'Against the legal sale of beer for off-premise consumption only' " need not be delayed until after the expiration of one year from the date of a preceding local option election in the same political subdivision on the issue " 'For prohibiting the sale of beer containing alcohol not exceeding four (4%) per centum by weight' and 'Against prohibiting the sale of beer containing alcohol not exceeding four (4%) per centum by weight,' " which resulted in prohibition thereof.

For the same reasons, such subsequent election on the issue of sale of beer for off-premise consumption only need not be so delayed after a preceding election in the same political subdivision on the issue " 'For the legal sale of beer' and 'Against the legal sale of beer' " held under the above mentioned amendment to Article 666-40, contained in Chapter 249, Acts of the 53rd Legislature, 1953, page 643, and resulting in prohibition thereof.

Article 666-32, V.P.C., as amended by Chapter 249, Acts of the 53rd Legislature, 1953, page 643, does not require that a local option election on the issue of sale of beer for off-premise consumption only be delayed until after the expiration of one year from the date of a preceding local option election in the same political subdivision on the issue of the sale of beer, held before or after the effective date of such amendment, and resulting in prohibition thereof.

Yours very truly,

JOHN BEN SHEPPERD  
Attorney General

By  
John Atchison  
Assistant

JA:hep