



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

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ATTORNEY GENERAL**

November 13, 1956

Honorable Coke R. Stevenson, Jr.
Administrator
Texas Liquor Control Board
Austin, Texas

Letter Opinion No. MS-260

Re: Validity of copies of local option
petition not conforming to Sections
32 and 40, Article 666, P.D.

Dear Mr. Stevenson:

I quote in part from your letter of November 9, as follows:

"Recently an application for petition for a local option election for Tom Green County, where the sale of all alcoholic beverages is now legal in certain areas, was presented to the County Clerk of that county with the following issue set out in the application:

'For the legal sale of all alcoholic beverages.
'Against the legal sale of all alcoholic beverages.'

Upon receipt of this application the County Clerk issued several copies of a petition in conformance with the provisions of Section 32, Article 666 of the Penal Code. The issue as stated in the petitions was the same as that contained in the application.

"The attached photostatic copy of one of the copies of the petition was returned to the County Clerk's office. You will note that lines have been drawn through one of the options contained on the petition copy, striking out the option 'For the legal sale of all alcoholic beverages.'

"Section 32, Article 666 of the Penal Code of Texas, provides in part, 'The petition so issued shall clearly state the issue to be voted upon in such election, which shall be the same issue as that set out in the application; . . .

"In view of the fact that this copy of the petition has

been altered, thereby eliminating the required language and not stating the issue in the application, shall the County Clerk of that county have the authority to include the signatures on this altered petition copy in the total when certification is made to the Commissioners' Court?"

I note that you call our attention to the fact that Section 40, Article 666 of the Penal Code of Texas, sets out the issues which may be submitted in a local option election, and you say it is "significant and controlling" that in each of these issues a "for" and "against" of the proposition is required in order to constitute an issue.

You also call our attention to the case of Smith vs. Counts, 282 S.W. 2d 422, where the El Paso Court of Civil Appeals voided the results of a local option election because the petition did not properly state the issue to be voted upon. We have re-examined this case and we note that the court there adopted in toto two opinions of this office: one dated August 16, 1954, and addressed to Hon. R. A. Barton, County Attorney of Calhoun County, and the other dated October 11, 1954, and addressed to you as Administrator of the Texas Liquor Control Board.

This was an election contest based on the proposition that the application for the petitions for a local option election set out an issue which did not conform to the language of any issue made available in Section 40 of Article 666 of the Penal Code of Texas, and the court in its adoption of the first of our opinions made use of this language: "In accordance with the above. . . . the election should not (have been) called upon this petition in that the same was not a proper petition under the amended act and would not be a basis for a legal election."

The court quotes from our second opinion, that of October 11, 1954, addressed to you, and adopts this wording: "Such specific statutory wording must be used in the petition, in the election order, and on the ballot in order to have a valid election", and then goes on to say, "We agree with the Attorney General's construction . . . we think it clear that the Attorney General has correctly arrived at the legislative intent."

Section 32 of Article 666 calls for a "proper" petition and goes on therein and in Section 40 of Article 666 to set out in extensive detail just what a "proper" petition is. After the whole procedure of the presentation of the application, the issuance and numbering and dating of the petitions containing the proper issue under Section 40, the securing of the signatures to the petitions, the return of the petitions to

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the County Clerk for a check of the validity of the signatures and the sufficiency of their number, and his certification to the Court, we find this language: "In any election ordered by the Commissioners' Court the issue ordered to appear on the ballot shall be the same as that applied for and set out in the petition."

We find on examination that this language was added at the last Regular Session of the legislature, which was held in 1955, and this fact leads us to the conclusion that by its position in the section referred to just above, and by its strict wording that it was the legislative intent to further assure that the election if called at all would be called in strict compliance with this requirement.

Since Section 40 in each of its 18 lettered paragraphs sets out a different but a complete issue, and since in each of these paragraphs there appears both the "for" and the "against" side of the question, it is our opinion that both the "for" and the "against" of the proposition are required to constitute an issue, and that where any copy of the petition fails to carry both sides of the proposition either because it never carried both sides, or because one or both have been stricken by some handler of the petition prior to its return to the County Clerk of the Commissioners' Court, then neither the County Clerk nor the Commissioners' Court may consider such copy or copies, and the County Clerk and the Commissioners' Court would be without authority to include the names appearing on such a copy or copies of the petition in the count by the County Clerk prior to his certification of the sufficiency or insufficiency of the petition as set out in the statute, nor by the Commissioners' Court in its determination of whether or not the petition is a sufficient one for the calling of a local option election.

Yours very truly,

JOHN BEN SHEPPERD
Attorney General