



**THE ATTORNEY GENERAL  
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON  
ATTORNEY GENERAL**

November 6, 1957

Honorable Joseph C. Ternus,  
County Attorney,  
San Patricio County,  
Sinton, Texas

Opinion No. WW-296.

Re: Whether or not persons  
residing in area recently  
annexed by the City of  
Ingleside are residents  
of Ingleside and quali-  
fied to vote in local  
option election on Nov-  
ember 9th, which was  
ordered prior to annex-  
ation.

Dear Mr. Ternus:

You have requested our opinion with reference to  
the following two questions:

1. Whether Aransas Pass has the right to  
complete its annexation which was begun on  
October 15th without regard to the fact that  
Ingleside has later passed annexation ordinances  
covering the same land. If Aransas Pass does  
have the right to complete its annexation, it  
would necessarily follow that the persons resid-  
ing in the area being annexed by Aransas Pass  
would not be eligible to vote in the Ingleside  
Dry Election on November 9th.

2. Whether in your opinion any ordinance  
annexing territory to Ingleside which would  
increase its superficial area to more than four  
square miles is void, and any person residing  
in such area to be annexed would not be eligible  
to vote in the Ingleside Dry Election.

From your letter we have determined the following  
facts:

Aransas Pass is a Home Rule city and took  
the first step towards annexing the area in  
question on October 15, 1957. On October 16,  
1957, the City of Ingleside, a general law city,  
started proceedings to annex substantially the  
same land, which proceeding has been completed  
by the City of Ingleside. Prior to October 16,

Honorable Joseph C. Ternus, Page 2 (WW-296).

a local option election was ordered for the City of Ingleside, to be held on November 9, 1957. Ingleside is a city of between two thousand and five thousand population, and the recent annexation has increased the area within the city boundaries to approximately sixteen square miles.

Ingleside is a general law city, organized under Chapter 12, Title 28, Vernon's Civil Statutes, and the recent annexation was made under the provisions of Article 1135, Vernon's Civil Statutes, which reads as follows:

"Whenever a majority of the inhabitants, who are qualified voters of any territory adjoining the limits of any town or village incorporated hereunder, shall vote in favor of becoming a part of said town or village, any three of them may make affidavit to such fact and file such affidavit with the mayor of said town or village, and such mayor shall certify the same to the council of said town or village. Thereupon, such council may, by ordinance, receive such inhabitants as a part of said town or village. Thenceforth the territory so received shall be a part of said town or village and the inhabitants shall be entitled to all the rights and privileges of other citizens and bound by all the acts and ordinances made in conformity thereto and passed in pursuance of this chapter; provided, that the area of no town or village shall ever exceed that of cities or towns, as provided for in chapter one of this title."

In the foregoing statute and particularly the last clause thereof, which reads "provided, that the area of no town or village shall ever exceed that of cities or towns, as provided for in chapter one of this title", the Legislature intended to impose limitations upon the power of the city or town after incorporation to increase its superficial area by annexation of additional territory beyond the limits imposed upon said cities and towns in Article 971, V.C.S. City of Deer Park v. State ex rel Shell Oil Co., 259 S.W. 2d 284 (Tex. Civ. App. 1953) aff'd. 154 Tex.124, 275 S.W. 2d 77 (1954).

Article 971 reads as follows:

Honorable Joseph C. Ternus, Page 3 (WW-296).

"No city or town in this State shall be hereafter incorporated under the provisions of the general charter for cities and towns contained in this title with a superficial area of more than two square miles, when such town or city has less than two thousand inhabitants, nor more than four square miles when such city or town has more than two thousand and less than five thousand inhabitants, nor more than nine square miles, when such city or town has more than five and less than ten thousand inhabitants. The mayor and board of aldermen, immediately after they qualify as such officers, shall pass an ordinance causing an actual survey of the boundaries of such town to be made according to the boundaries designated in the petition for incorporation and the field notes thereof recorded in the minute book of such town or city, and also in the record books of deeds in the county in which such city or town is situated."

Ingleside is a city of between two and five thousand population, and its recent annexation would enlarge its area to approximately sixteen square miles, as opposed to the four square mile limit placed on it by the provisions of the foregoing statute.

Under these facts the City of Ingleside was without authority to make the recent annexation and for this reason the attempted annexation was invalid. City of Port Arthur v. Gaskin, 107 S.W. 2d 610 (Tex. Civ. App. 1937); Spurlin v. State, 51 C.A. 266, 115 S.W. 130 (1908). It follows that voters living in the area annexed to the City of Ingleside by the recent annexation are not legal residents of the City of Ingleside and are not eligible to vote in the local option election to be held November 9, 1957. Our answer to your second question makes unnecessary an answer to your first question.

#### SUMMARY

Persons residing in area of  
recent annexation to the city of

Honorable Joseph C. Ternus, Page 4 (WW-296).

Ingleside are not legal residents of that city, and therefore, are not eligible to vote in the city's local option election to be held November 9, 1957.

Yours very truly,

WILL WILSON  
Attorney General of Texas

By

*John H. Minton, Jr.*  
John H. Minton, Jr.  
Assistant

and

*Galloway Calhoun, Jr.*  
Galloway Calhoun, Jr.  
Assistant

GC:pf

APPROVED:

OPINION COMMITTEE

Geo. P. Blackburn, Chairman

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J. C. Davis, Jr.

REVIEWED FOR THE ATTORNEY GENERAL

By: James N. Ludlum.