



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

February 8, 1962

Honorable H. F. Grindstaff
County Attorney
Fisher County
Roby, Texas

Opinion No. WW-1255

Re: Whether Fisher County may hold a special election in accordance with Article 2688e, Vernon's Civil Statutes, to abolish the ex officio county school superintendent and county school board in the regular election year of the county judge.

Dear Sir:

In a recent letter you requested our opinion on whether Fisher County could hold a special election in accordance with Article 2688e, Vernon's Civil Statutes, to abolish the ex officio county superintendent and county school board in the regular election year of the county judge.

The pertinent facts are that the office of county school superintendent was abolished last year (December 30, 1961) under the provisions of Article 2688e, Vernon's Civil Statutes. The present superintendent has this year remaining in office (1962). This year is also the election year of the county judge, and the question is, can there also be a special election this year under the provisions of Article 2688e to abolish the ex officio county superintendent and county school board.

Section 1(a) of Article 2688e of Vernon's Civil Statutes provides:

"Section 1. (a) Upon a petition of twenty-five per cent (25%) of the qualified voters who cast a vote in the Governor's race at the preceding General Election in counties of less than one hundred thousand (100,000) population according to the last Federal Census; or upon a petition of twenty per cent (20%) of the qualified voters who

cast a vote in the Governor's race at the preceding General Election in counties of one hundred thousand (100,000) or more population according to the last Federal Census, the county judge shall within ninety (90) days of the receipt of such petition call an election to determine by majority vote whether the office of county superintendent (or ex officio county superintendent and the county school board in counties having an ex officio county superintendent) shall be abolished. . . ."

The limiting section of Article 2688e is Section 2 which provides:

"Sec.2 Provided that not more than one such election may be called during any term of office of the incumbent county superintendent or ex officio county superintendent and that not during the year that a regular election for the office is being held."

In Attorney General's Opinion O-3839 (1942) it was held:

"The courts have held that the power to create the office of county school superintendent is purely a legislative power. Stanfield v. State, 83 Tex. 317. The same authority, further holds that the power to abolish or discontinue that office is also a legislative power, and that in order for the people or the commissioners' court to exercise the power of abolishing or discontinuing that office, such action must be pursuant of a law of the Legislature."

It would also seem mandatory that in abolishing the ex officio county superintendent and county school board there be statutory compliance.

It is our opinion that the provision in the latter part of Section 2 of this act, "AND THAT NOT DURING THE YEAR THAT A REGULAR ELECTION FOR THE OFFICE IS BEING HELD," (emphasis added) prevents a special election this year since

this is the year of the regular election of the county judge. True, at this time, the county judge is not the ex officio county superintendent. Section 1(b) of Article 2688e provides:

"Where the majority of the qualified electors approve the abolition of the office of county superintendent the duties of such abolished office as may still be required by law shall vest in the county judge in ex officio capacity UPON EXPIRATION OF THE CURRENT TERM OF THAT OFFICE." (Emphasis added)

But it is also true that at this time the candidates who will seek the office of county judge will be offering themselves both for the county judge and ex officio county superintendent. This is to say that as matters now stand, the regular election for the county judge will also determine who is the ex officio county school superintendent. As such, it is the opinion of this office that this is the year that a "regular election for the office is being held," and Section 2 prohibits a special election to abolish the ex officio county school superintendent in the same year.

S U M M A R Y

Section 2 of Article 2688e, Vernon's Civil Statutes, prohibits a special election to abolish the ex officio county school superintendent and school board in the same year of the regular election of county judge.

Very truly yours,

WILL WILSON
Attorney General of Texas

John H. Hofmann

By John H. Hofmann
Assistant

Honorable H. F. Grindstaff, page 4 (WW-1255)

APPROVED:

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REVIEWED FOR THE ATTORNEY GENERAL
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