



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**WAGGONER CARR  
ATTORNEY GENERAL**

March 8, 1963

Hon. Menton J. Murray, Chairman  
Committee on Congressional & Legis-  
lative Districts  
House of Representatives  
Austin, Texas

Opinion No. C-33

Re: Whether it is permis-  
sible to use "Flotorial"  
districts in apportioning  
the State of Texas  
into Congressional Dis-  
tricts.

Dear Mr. Murray:

You have requested our opinion as to the validity of the use of "Flotorial Districts" in apportioning the State of Texas into Congressional Districts. You stated in your request:

"The Committee on Congressional and Legisla-  
tive Districts in the House of Representatives, of  
which I am Chairman, has before it for considera-  
tion H.B. 522, which seeks to apportion the State  
of Texas into Congressional Districts. Two of the  
districts set forth in this bill are what is com-  
monly known as 'Flotorial' Districts.

"I have been requested by the Committee to in-  
quire of your office if it is permissible to use  
'Flotorial' Districts in apportioning the State of  
Texas into Congressional Districts."

As used in Texas, a "Flotorial District" refers to those districts whose boundaries include a portion of the area that makes up the territory of one or more other districts. The two "Flotorial Districts" that are provided for in House Bill 522 are the Fourth and Seventeenth Congressional Districts. Under the provisions of the bill, Tarrant County is within both the Fourth and Twelfth Congressional Districts, and Bexar County is within both the Seventeenth and Twentieth Congressional Dis-  
tricts.

A question similar to this was ruled on in Attorney Gen-  
eral's Opinion No. WW-118, dated May 7, 1957, a copy of which is

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enclosed for your information. As in that opinion, the question presented here is whether a given geographic area may be within more than one Congressional District.

Section 2 of the 14th Amendment to the Constitution of the United States provides in part:

"Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. . . ."

Congress before 1929 required that Congressional Districts be "composed of a contiguous and compact territory, . . . containing as nearly as practicable an equal number of inhabitants." [2 U.S.C.A. Sec. 3, 37 Stat. 13, 14 (1911)]. The Reapportionment Act of 1929 omitted such a requirement by providing:

"Until a State is redistricted in the manner provided by the law thereof after any apportionment, the Representatives to which such State is entitled under such apportionment shall be elected in the following manner: (1) If there is no change in the number of Representatives, they shall be elected from the districts then prescribed by the law of such State, and if any of them are elected from the State at large they shall continue to be so elected; (2) If there is an increase in the number of Representatives, such additional Representative or Representatives shall be elected from the State at large and the other Representatives from the districts then prescribed by the law of such State; (3) If there is a decrease in the number of Representatives but the number of districts in such State is equal to such decreased number of Representatives, they shall be elected from the districts then prescribed by the law of such State; (4) If there is a decrease in the number of Representatives but the number of districts in such State is less than such number of Representatives, the number of Representatives by which such number of districts is exceeded shall be elected from the State at large and the other Representatives from the districts then prescribed by the law of such State; or (5) If there is a decrease in the number of Representatives and the number of districts in

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such State exceeds such decreased number of Representatives, they shall be elected from the State at large." 2 U.S.C.A., Sec. 2a, subdivision (c).

The Federal Constitution and acts of Congress have left it to the individual states to redistrict themselves into Congressional Districts. There is no provision in the Texas Constitution which sets forth the manner in which the State must be redistricted into Congressional Districts. In the absence of any prohibition restricting one Congressional District from being comprised of a portion of the same area as that of another Congressional District, we must assume that such redistricting would be constitutional and valid.

It should be pointed out, however, that Congress is the judge of its own membership. We have found no state which has ever employed such a method.

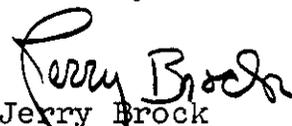
S U M M A R Y

In redistricting the State into Congressional Districts the Legislature may include one geographic area in more than one Congressional District.

Very truly yours,

WAGGONER CARR  
Attorney General

By:

  
Jerry Brock  
Assistant

JB:wb:mkh

APPROVED:  
OPINION COMMITTEE

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Howard Mays  
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