



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**CRAWFORD C. MARTIN
ATTORNEY GENERAL**

August 14, 1967

Honorable John C. White
Commissioner of Agriculture
Texas Department of Agriculture
Austin, Texas

Opinion No. M-122

Re: Whether a public weigher can conduct weighing operations in counties other than the county for which he was elected or appointed and can he appoint deputies who are residents of other counties to serve in the counties of their residence.

Dear Mr. White:

You have requested the opinion of this office upon the following questions:

"1. Can an elected or appointed weigher, who is an employee of a particular firm, conduct weighing operations for his firm in adjacent counties other than the county for which he was elected or appointed?"

"2. Can a public weigher appointed by the Governor for one county appoint, in a second county, a deputy who is a legal resident of the second county?"

Article 5681, Vernon's Civil Statutes, provides in part that:

"The Governor is authorized and required to appoint five persons as public weighers in every city which receives annually one hundred thousand bales of cotton on sale or for shipment. In all cities and towns which receive as much as fifty thousand bales of cotton . . . or any other commodity in large quantities, it shall be lawful for the Governor to appoint a sufficient

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number of public weighers for such city or town to carefully and accurately weigh all produce tendered for the purpose of weighing for shipment." (Emphasis added.)

Article 5692, Vernon's Civil Statutes, provides in part that:

"In all counties of this State in which there are two or more cities, towns or shipping points that receive as much as fifty thousand bales of cotton. . .or any other commodity in large quantities, it shall be lawful for the Governor to appoint a sufficient number of weighers for such county to carefully and accurately weigh all commodities tendered for the purpose of weighing for shipment, sale or purchase. This Article shall not apply to Galveston County. All such appointments shall be made by the Governor on the recommendation of the senator from whose senatorial district such appointment is made, together with a majority of the representatives in the Legislature from such senatorial district. Every public weigher so appointed shall file a bond payable to the State of Texas, in the sum of Five Thousand (\$5,000.00) Dollars, conditioned that he will accurately weigh, or measure, all commodities tendered to him in said county for weighing or measuring . . .Such public weigher shall have the right to appoint a sufficient number of deputies to aid him in weighing or measuring any commodity that is tendered to him for weighing. All bonds given by such public weighers or their deputies shall be subject to the approval of the Commissioner of Agriculture, and all bonds and oaths of such public weighers or their deputies shall be filed with said Commissioner." (Emphasis added.)

Article 5683, Vernon's Civil Statutes, provides in part that:

"In all counties in which there are no city or cities in which the Governor is authorized to appoint public weighers, there shall be elected at each general election a public weigher for each justice precinct in the manner and form governing the election of other precinct officers. . . ." (Emphasis added.)

Article 5684, Vernon's Civil Statutes, provides in part that:

"No person shall be appointed or elected public weigher unless he is a qualified voter in the city or precinct for which he is appointed or elected. . . ."

Article 5691, Vernon's Civil Statutes, provides in part that:

"Each public weigher, appointed or elected, shall have the right, and it shall be his duty to appoint a sufficient number of deputies in each precinct, to weigh all produce tendered for the purpose of weighing, at any and all points within such precinct. He shall require of each of said deputies to file a bond in the penal sum of one thousand dollars, under the same terms and conditions as the bond which he filed with the commissioners court of the county in which he resides, before he shall be permitted to engage in the business of deputy public weigher; such bond so filed, shall be payable to the State of Texas, and shall be subject to the approval of the commissioners court of the county in which he resides, and certified to the Commissioner of Markets and Warehouses, before such deputy public weigher shall be entitled to engage in the business of public weighing. Such public weigher shall have the right to appoint a sufficient number of deputies to serve at will of the public weigher, to aid him in weighing or measuring any commodity that is tendered to him for weighing." (Emphasis added.)

Article 5690, Vernon's Civil Statutes, provides that:

"All public weighers or deputy public weighers, appointed or elected shall obtain from the Commissioner of Markets and Warehouses a certificate of authority to carry on the business of public weigher or deputy public weigher within the city, town, precinct, or shipping point for which he was elected or appointed."

In view of the foregoing, we are of the opinion that an elected or appointed public weigher may not conduct weighing operations, in his capacity as an elected or appointed public weigher,

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in areas other than that for which he was elected or appointed. However, the foregoing is not to be construed as a holding that an elected or appointed public weigher cannot conduct weighing operations in other areas than that for which he was elected or appointed if such person has complied with the provisions of Article 5704. See Paschal v. Inman, 106 Tex. 128, 157 S.W. 1158 (1913); Flippen v. Murray, 66 S.W.2d 757 (Tex.Civ.App. 1933); Martin v. Foy, 234 S.W. 698 (Tex.Civ.App. 1921).

In regard to your second question, we are of the opinion that Article 5691 contains no restriction which would require a deputy appointed by a public weigher to be a resident of the area which he was to serve as a deputy to the public weigher. However, the deputy may only conduct weighing operations in his capacity as a deputy to the public weigher in the area in which the public weigher is appointed or elected to serve.

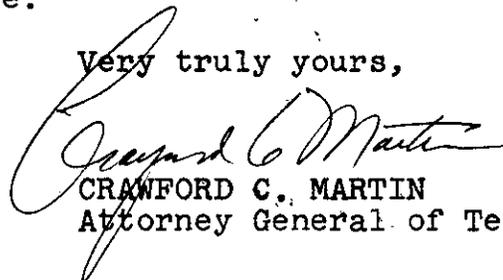
Senate Bill 364, Acts 60th Leg., 1967, Regular Session, ch. 508, p. 1144, which becomes effective on August 28, 1967, amends certain provisions of Article 5681, Article 5682 and Article 5692. However, such amendments deal primarily with providing for the Secretary of State rather than the Governor making the appointment of public weighers after August 28, 1967, and make no changes which would change the holding in this opinion.

S U M M A R Y

An elected or appointed public weigher may not conduct weighing operations, in his capacity as an elected or appointed public weigher, in areas other than that for which he was elected or appointed.

A deputy appointed by a public weigher need not be a resident of the area for which he is to serve as a deputy to the public weigher. However, the deputy may only conduct weighing operations, in his capacity as a deputy to the public weigher, in the area in which the public weigher is appointed or elected to serve.

Very truly yours,


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