



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**CRAWFORD C. MARTIN
ATTORNEY GENERAL**

May 22, 1969

Hon. Ralph M. Hall
Chairman, County, District and
Urban Affairs Committee
Senate, State of Texas
Austin, Texas

Opinion No. M- 400

Re: Certain questions
relating to the crea-
tion and authorization
of the South Eastland
County Hospital District
as contained in proposed
H.B. 1214.

Dear Senator Hall:

Reference is made to your letter in which you pro-
pounded three questions relating to H.B. 1214, 61st Legis-
lature, 1969, Regular Session, creating the "South East-
land County Hospital District," with a copy of said Bill
attached. We quote these questions:

"(1.) What restrictions, if any, are
there under the Constitution and Statutes of
the State of Texas governing the authorization
and creation of such a hospital district (pro-
posed under the provisions of Article IX, Section
9, of the Constitution of the State of Texas)
whereby a particular area can or must be included
in such proposed hospital district contrary to
the desires of the voters owning taxable property
within such a particular area? . . . (Emphasis
supplied.)

"(2.) What provisions, if any, are there under
the Constitution and Statutes of the State of Texas
whereby taxpayer-voters in those portions of the
respective school districts can hold separate elections

on the same day and be governed by a majority vote in each portion of the said school district to determine whether or not the particular area will be included in the proposed hospital district?

"(3.) If the Bill is enacted as proposed what provisions, if any, are there in the Constitution and Statutes of the State of Texas, whereby taxpayer-voters in those portions of the respective school districts can hold separate elections on the same day and be governed by the majority vote in each portion of said school district to determine whether or not the respective portion of the particular school districts will be included in the created hospital district?"

Article IX, Section 9, of the Texas Constitution, under which H.B. 1214 is proposed, provides, in part:

"Sec. 9. The Legislature may by law provide for the creation, establishment, maintenance and operation of hospital districts composed of one or more counties or all or any part of one or more counties with power to issue bonds for the purchase, construction, acquisition, repair or renovation of buildings and improvements and equipping same, for hospital purposes; . . . providing that such district shall not be created or such tax authorized unless approved by a majority of the qualified property taxpaying electors thereof voting at an election called for the purpose; . . .

"Provided, however, that no district shall be created except by act of the Legislature and then only after thirty (30) days' public notice

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to the district affected, and in no event may the Legislature provide for a district to be created without the affirmative vote of a majority of the taxpaying voters in the district concerned." (Emphasis supplied.)

H. B. 1214 relates to the creation, administration, powers, duties, and financing of the "South Eastland County Hospital District" of Eastland and Comanche Counties. Section 1 authorizes the creation of the district under the provisions of Article IX, Section 9, Constitution of the State of Texas, "over a part of Eastland and Comanche Counties . . . with such rights, powers, and duties as provided in this Act," It then sets out a description of the limits of the district by metes and bounds. Section 2 defines the purpose of the district, which is immaterial to our holding. Section 3 is the key provision, as it provides for the creation and authorization of the district, the basic portions of which are quoted, in part:

"Sec. 3. ELECTION TO CREATE DISTRICT.

"(a) The district shall not be created, nor shall any tax therein be authorized unless and until such creation and such tax are approved by a majority of the qualified property taxpaying electors of the area or areas of the proposed district voting at an election called for such purpose in accordance with this Act.

". . . In the event the commissioners court of a county named herein shall elect to call an election for a creation of the district, and the commissioners court of the other county shall not so elect, then all the terms and provisions of this Act shall be deemed to apply, and the same shall only apply, to the areas of the county in which the district is so created.

". . .

"(c) The commissioners courts of Eastland and Comanche counties may in the election order specify a procedure by which the proposed district is confirmed and the tax authorized by areas, as designated herein, within the metes and bounds of the proposed hospital district as described in Section 1 of this Act, or the two commissioners courts may choose to submit the election proposal to the entire district for confirmation. For purposes of confirmation of the district and authorization of the tax, the proposed hospital district may be divided into the following three areas: (1) that portion of the Carbon Independent School District, as those school district boundaries are set on the effective date of this Act, within the proposed hospital district (2) that portion of the Desdemona Independent School District, as those school district boundaries on the effective date of this Act, within the proposed hospital district, and (3) the remaining portion of the proposed hospital district not included in either of the aforementioned areas. Only those areas, as described herein, in which a majority of the qualified property taxpaying electors vote in favor of the proposition to create a hospital district shall be included in the confirmed hospital district, provided that the areas confirming the hospital district shall be contiguous in nature. In the event the commissioners courts of Eastland and Comanche counties choose to submit the election proposition to the entire district as described, a majority of the qualified tax paying electors voting at said election in favor of the proposition shall be sufficient for confirmation of the entire district. (Emphasis supplied.)

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"(e) Within 10 days after such election is held, the commissioners court of each county in which the election for creation of the district is held shall convene and canvass the returns of the election, and the majority of the qualified property taxpaying electors voting at said election vote in favor of the proposition, they shall so find and declare the hospital district established and created in said county and designate the areas in which the hospital district is created in said county. Any area, described herein, not voting to create the district shall not be restricted from joining the district at another date provided that. . . ."

It is our opinion that your first question may be answered by reference to the first-quoted clause of Section 9 of Article IX of the Constitution. The Legislature is empowered to create hospital districts composed of "one or more counties or all or any part of one or more counties." Within this limitation, coupled with Legislative discretion and prerogative, the Legislature may define the boundaries of a particular district, including areas therein who may be opposed to its creation. Redress is offered the opposition through voting at the authorization election that must be held in order for the district to be created, in accord with the same Section of the Texas Constitution.

Your second and third questions may also be answered by the quoted section of the Texas Constitution, which provides "that in no event may the Legislature provide for a district to be created without the affirmative vote of a majority of the taxpaying voters in the district concerned." Since H.B. 1214 defines the limits of the district in Section 1, it is our opinion that an affirmative vote of a majority of the taxpaying voters within the entire area defined in Section 1 is necessary

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under the Texas Constitution. Insofar as H.B. 1214 allows a method of creation of a district other than that prescribed in Section 9 of Article IX, that is, by permitting acceptance or rejection thereof by particular areas within the district, we hold H. B. 1214 to be unconstitutional.

S U M M A R Y

The Legislature is bound only by the provision of Article IX, Section 9, Texas Constitution, in defining boundaries of hospital districts created thereunder. House Bill 1214, as written, is unconstitutional, insofar as it permits a method of creation of the district other than that prescribed in Section 9 of Article IX, Constitution of Texas.

Yours very truly,



CRAWFORD C. MARTIN
Attorney General of Texas

Prepared by Donald Cummings
Assistant Attorney General

APPROVED:
OPINION COMMITTEE

Kerns Taylor, Chairman
George Kelton, Vice Chairman
Bill Allen
Bill Corbusier
Bob Crouch
Jim Swearingen

W. V. Geppert
Staff Legal Assistant
Hawthorne Phillips
Executive Assistant