



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

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ATTORNEY GENERAL**

April 22, 1977

Honorable William Moore
State Senator
The State of Texas
Austin, Texas

Letter Advisory No.138

Re: Constitutionality of
SB-556 relating to local
option elections in cities
located in more than one
county.

Dear Senator Moore:

You have requested our opinion regarding the constitutionality of Senate Bill 556, presently pending in the 65th Legislature. Senate Bill 556 would amend the Texas Liquor Control Act, article 666-1, et seq., Penal Code Auxiliary Laws, by adding a section 32a, as follows:

Local option elections held under the terms of this Act for incorporated cities lying in more than one county in the State shall be conducted and held by the county clerk and commissioners court of the county in which the greatest number of qualified voting residents of such city reside. The failure of any issue submitted under this Section has no effect on the 'wet' or 'dry' status of any portion of any affected city. In the event the precise number of votes cast in an incorporated city lying in more than one county in the governor's race determining the number of signatures required for the calling of a local option election is uncertain because the voting precincts in the city do not coincide with the city boundaries, the county clerk of the county calling the election shall determine the number of signatures required by determining the percentage of qualified voters in the county voting precinct which reside in the city, as certified by the city secretary, as related to the total number of qualified voters residing in the entire voting precinct,

and applying that percentage to the total number of votes cast in the governor's election in the voting precinct. The county clerk, may in his discretion, issue the petitions for a local option election in any manner or form he sees fit or deems necessary and may, without limiting the authority granted by this Section, affix his seal and signature on the petition by facsimile method or otherwise.

You ask whether Senate Bill 556, by establishing a procedure for local option elections in cities lying in more than one county, violates any provision of the Texas Constitution. We believe that the relevant portions of the Constitution are article 16, section 20, article 5, section 18, and article 5, section 20.

Article 16, section 20 provides, in pertinent part:

- (a) The Legislature shall have the power to enact a Mixed Beverage Law regulating the sale of mixed alcoholic beverages on a local option election basis.
- (b) The Legislature shall enact a law or laws whereby the qualified voters of any . . . incorporated town or city, may . . . determine . . . whether the sale of intoxicating liquors for beverage purposes shall be prohibited or legalized within the prescribed limits. . . .

In our opinion, Senate Bill 556 does not conflict with any portion of article 16, section 20. On the contrary, it establishes a means by which local option elections may be held in particular areas.

Senate Bill 556 recites that elections conducted thereunder "shall be conducted and held by the county clerk and commissioners court of the county in which the greatest number of qualified voting residents of such city reside." Article 5, section 20 of the Texas Constitution, which describes the office of county clerk, states only that his "duties . . . shall be prescribed by the Legislature." We do not believe the language of Senate Bill 556 is in any way inconsistent with this constitutional provision.

Article 5, section 18 presents a more difficult question, however. That section provides that a county commissioners court

shall exercise such powers and jurisdiction over all county business, as is conferred by this Constitution and the laws of the State, or as may be hereafter prescribed.

(Emphasis added). On the basis of this language, it might be argued that the Legislature may not confer upon a commissioners court duties which affect the business of a county other than its own.

Some support for this view is found in Ellis v. Hanks, 478 S.W.2d 172 (Tex. Civ. App. -- Dallas 1972, writ ref'd n.r.e.), in which certain citizens of Grand Prairie, a city lying in both Dallas and Tarrant Counties, petitioned the Clerk of Dallas County to call a local option election. In refusing to grant the applicants' petition for mandamus, the court implied that the defect was statutory in nature:

. . . the legislature . . . has failed to provide the method and machinery for the holding of an election in an incorporated city or town which is geographically located in two separate counties.

Id. at 176.

Relief from such situation is legislative and not judicial. . . . Such relief must be obtained from the legislature.

Id. at 177. On the other hand, the court also observed that a Commissioners court has no power or jurisdiction beyond the limits of its own county, and expressly noted that

the commissioners court is constitutionally restricted to county business within the limits of the county itself.

Id. at 176-77. See also Greggs v. Faulk, 343 S.W.2d 543 (Tex. Civ. App. -- Ft. Worth 1961, no writ).

In our opinion, this dicta from Ellis v. Hanks is not dispositive of your question. In Dancy v. Wells, 8 S.W.2d 198 (Tex. Civ. App. -- San Antonio 1928, writ ref'd), a statute creating a navigation district under the terms of article 16, section 59 of the Texas Constitution, had conferred upon the commissioners court of one county a degree of authority over the territory of another county. The court held that the authority of a commissioners court over "county business" is not

restricted merely to business of the county in and for which the court was created.

Id. at 201. A similar result was reached in Glenn v. Dallas County Bois d'Arc Island Levee Dist., 282 S.W. 339 (Tex. Civ. App. -- Dallas), reversed on other grounds 288 S.W. 165 (Comm'n App. 1926). The court said that, for purposes of article 5, section 18, the term "county business" is to be given a "broad and liberal construction," and may include

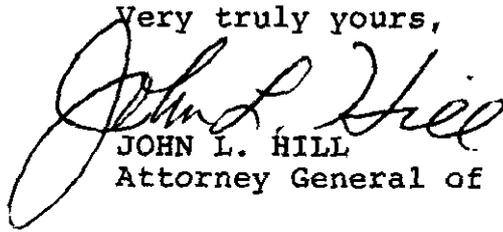
any and all business of that county and any other business of that county connected with or interrelated with the business of any other county. . . .

Id. at 343-44.

In our opinion Dancy and Glenn state the law applicable to these facts, and thus Senate Bill 556 cannot be said to conflict with the provisions of article 5, section 18. See V.T.C.S., 1134. Under the bill, a commissioners court of one county is granted limited jurisdiction over the affairs of another county only if such other county contains within its borders portions of a city over which the commissioners court also exercises partial jurisdiction. Since the city on whose behalf the election is called lies within both counties, it cannot be denied that, at least within the territory of that city, the business of the two counties is "connected and interrelated." Furthermore, Senate Bill 556 cannot be considered in isolation. It is a legislative response to the authority granted to the Legislature by article 16, section 20. Its legislative purpose is to confer upon a special class of cities the same privileges previously granted to all other cities by article 666-32, and thus to fill the statutory gap which the court noted in Ellis v. Hanks, *supra*. It is therefore our opinion that, should the Legislature decide to grant this authority, in all probability the courts would perceive no constitutional infirmity in this legislative response as per the terms of Senate Bill 556.

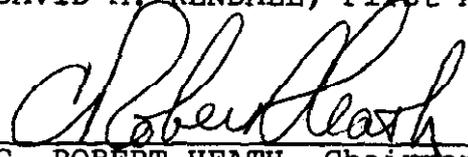
Honorable William Moore - page 5 (LA No. 138)

Very truly yours,


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APPROVED:


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