



THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

JOHN L. HILL
ATTORNEY GENERAL

March 25, 1975

The Honorable Preston Stevens
Wheeler County Attorney
P. O. Box 571
Shamrock, Texas 79079

Opinion No. H- 564

Re: The authority of a county
to redistrict justice of the
peace precincts

Dear Mr. Stevens:

You have asked whether the commissioners court may create a new justice of the peace precinct out of a portion of an existing precinct and appoint a person to fill the new office thus created.

It is well established that a county commissioners court may divide justice of the peace precincts "from time to time, for the convenience of the people." Tex. Const., art. 5, sec. 18; Williams v. Castleman, 247 S. W. 263 (Tex. Sup. 1922); State ex rel Dowlen v. Rigsby, 43 S. W. 271 (Tex. Civ. App. 1897), writ denied, "correctly decided," 42 S. W. 1101 (Tex. Sup. 1897); Attorney General Opinion M-1176 (1972).

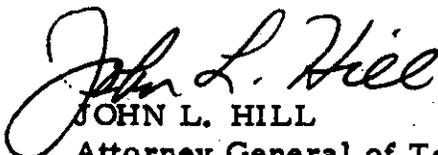
The office of justice of the peace in a newly created precinct is vacant when it comes into being. Article 5, section 18 of the Texas Constitution authorizes the commissioners court to fill vacancies in the office of justice of the peace. This constitutional authority has been recognized as applicable to filling the office of justice of the peace in a newly created precinct. Williams v. Castleman, *supra*; State ex rel Dowlen v. Rigsby, *supra*; Attorney General Opinion M-1176 (1972).

We answer your question in the affirmative, provided that the proposed change is not intended to affect the incumbent justice of the peace except by changing the boundaries of his precinct. We have held that justices of the peace who have been elected to a full term are entitled to serve that term and that a redistricting of their precincts by the commissioners court resulting in a justice not living in his precinct does not vacate his office. Attorney General Opinion H-220 (1974). See also Childress County v. Sachse, 310 S. W. 2d 414 (Tex. Civ. App. -- Amarillo 1958), holding approved per curiam 312 S. W. 2d 380 (Tex. Sup. 1958); McGuire v. Hughes, 452 S. W. 2d 29 (Tex. Civ. App. -- Dallas 1970, no writ); Harris County Commissioners Court v. Moore, 43 U.S.L.W. 4222 (U.S. Feb. 18, 1975), reversing and remanding, 378 F. Supp. 1006 (S.D. Tex. 1974) (3 judge ct.).

S U M M A R Y

The commissioners court may create an entirely new justice of the peace precinct from an existing precinct and may fill by appointment the vacancy in the office created, provided that the incumbent's term of office is not affected.

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman
Opinion Committee