



**THE ATTORNEY GENERAL
OF TEXAS**

October 13, 1988

**JIM MATTOX
ATTORNEY GENERAL**

Honorable Larry W. Allison
Lampasas County Attorney
P. O. Box 95
Lampasas, Texas 76550

Dear Mr. Allison:

Because of the tremendous increase in the volume of requests for opinions and open records decisions, we are responding to your request with the enclosed Letter Opinion or Open Records Ruling. A Letter Opinion or Open Records Ruling has the same force and effect as a formal Attorney General Opinion or Open Records Decision, and represents the opinion of the Attorney General unless and until it is modified or overruled by a subsequent Letter Opinion or Open Records Ruling, a formal Attorney General Opinion or Open Records Decision, or a decision of a court of record.

Very truly yours,

A handwritten signature in cursive script that reads "Jim Mattox".

J I M M A T T O X
Attorney General of Texas

JAM/er
Enclosure



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OF TEXAS**

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ATTORNEY GENERAL**

Honorable Larry W. Allison
Lampasas County Attorney
P. O. Box 95
Lampasas, Texas 76550

LO-88-118

Dear Mr. Allison:

You have requested an opinion concerning an election to consolidate assessing and collecting functions in the Lampasas County Appraisal District. Section 6.01 of the Tax Code establishes an appraisal district for each county in the state and provides that an appraisal district is a political subdivision of the state. Except as otherwise provided, an appraisal district's boundaries are the same as the county's boundaries. Tax Code § 6.02. Basically, the exception from the same county boundary rule is that a taxing unit that extends into two or more counties may choose which district to be a part of and the chosen district's boundaries are extended to incorporate that taxing unit. Although you do not specify the appraisal district's boundaries, from your questions we presume that the boundaries of the Lampasas County Appraisal District do extend beyond Lampasas County into at least two other counties.

You ask several questions about a consolidation election to be held pursuant to section 6.26 of the Tax Code. That section provides for an election on the issue of consolidating the assessing and collecting functions of the district on submission of a petition by "qualified voters residing in an appraisal district." You ask whether residents of the district who are not residents of Lampasas County are entitled to vote in the election. By its terms, section 6.26(a) authorizes qualified voters who reside within the district to petition for an election. Upon a finding by the commissioners court of the principal county in the district (presumably Lampasas County) that a petition is valid, the statute requires the commissioners court to order an election to be held in the district. Tax Code § 6.02(e). The plain language of the section provides that all qualified voters residing within the district's boundaries are eligible to sign the petition. We believe

that provision necessarily implies that all such voters may vote in the election. Therefore, if the Lampasas County Appraisal District extends beyond the boundaries of Lampasas County, all the voters who reside in the district, both inside and outside the county, are eligible to vote in the district's election.

Next you ask whether a consolidation election held pursuant to section 6.26 of the Tax Code may be held in November of an even-numbered year. Your question is prompted by the requirement in section 6.26(e) of the Tax Code that a consolidation election be held "on the next uniform election date prescribed by the Texas Election Code." Section 41.001(a) of the Election Code prescribes four uniform election dates and requires all elections to be held on one of those dates unless otherwise provided by one of the provisions of subchapter A of chapter 41 of the Election Code. The first Tuesday after the first Monday in November is one of the four uniform dates.

Section 41.003 of the Election Code restricts the elections that may be held on the November date in even-numbered years. This date is the date of the general election for state and county officers. Elec. Code § 41.002. None of the six types of elections specified in section 41.003 of the code that are allowed to be held on the November date includes a consolidation election involving territory of more than one county. Therefore, the November, 1988 general election date is not available for such an election.

Although your letter does not indicate whether the Lampasas County Commissioners Court has already ordered the election for that date, you did mention to me in a telephone conversation several weeks ago that the county judge wanted to select that date. As I told you by telephone, section 41.008 of the Election Code provides that an election held on a date not permitted by the Election Code is void. Thus, a consolidation election held on November 8, 1988, would be a nullity. The commissioners court would have exceeded its authority in ordering the election for that date, and the election would have to be conducted again on the next available uniform date.

You next ask about the mechanics of conducting a consolidation election. You inquire whether the county clerks in the adjoining counties should conduct the election and ask where voters who reside in adjoining counties are to vote. The Lampasas County Appraisal District is a political subdivision of the state. Generally, it is the

responsibility of a political subdivision's governing body to establish election precincts for its elections, see Elec. Code § 42.061, and to appoint election judges to conduct its elections. Elec. Code § 32.005. However, section 42.062 of the Election Code provides in pertinent part that the election precincts for an election ordered by a county authority are established by that authority "if the election relates to the creation, organization, functioning, or existence of one or more political subdivisions other than the county" (emphasis added). Since an election held pursuant to section 6.26 of the Tax Code meets the description quoted above, the Lampasas County Commissioners Court is required to establish the election precincts and polling places for the election. See Elec. Code § 43.005. It is not necessary that the regular county election precincts be designated as the precincts for the consolidation election or that a designated precinct be located wholly within one county. Elec. Code § 42.002. Voters residing within the district will vote at the designated polling places and in the designated precincts in which they reside, county boundaries notwithstanding.

Section 32.004 of the Election Code provides that the commissioners court as the authority ordering the election is to appoint the election judges. Section 83.007 of the Election Code provides that the authority ordering the election shall appoint the absentee voting clerk. Thus, the Lampasas County Commissioners Court will appoint this election officer. I believe that you indicated by telephone that the county clerk has already been designated as the absentee voting clerk for the election. The county clerk is responsible for procuring, allocating, and distributing the election supplies for the election. See Elec. Code §§ 51.003 and 51.004. Thus, the election will be conducted for the whole district by the Lampasas County Clerk.

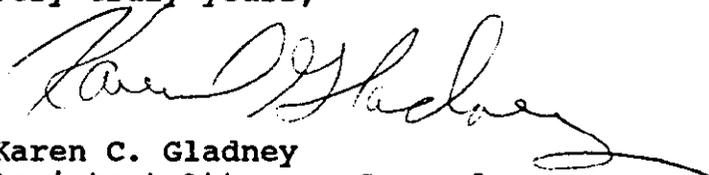
Finally, you ask about the necessity of seeking preclearance from the United States Department of Justice for "an appraisal-wide election." I am unclear about the meaning of this question. If the appraisal district has previously designated precincts and polling places for its elections and those are adopted by the commissioners court for use in this election, no change requiring submission has been made. However, if different precincts and polling places are designated, then a change requiring preclearance will have occurred. Certain other changes in election procedures would also require preclearance. It is not possible for me to address this question with more specificity without knowing the facts of the particular

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situation. I suggest that you review the applicable federal law and regulations regarding preclearance requirements.

I hope that the information I have provided will be useful to you in advising the Lampasas County Commissioners Court about the proper procedures to follow in conducting an election pursuant to section 6.26 of the Tax Code.

Very truly yours,



Karen C. Gladney
Assistant Attorney General
Opinion Committee

APPROVED: Sarah Woelk, Chief
Letter Opinion Section

KCG/er

Ref.: ID# 4506