



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

June 3, 1993

Honorable Dwight P. McDaniel
Sabine County Attorney
P.O. Box 1090
Hemphill, Texas 75948

Letter Opinion No. 93-45

Re: Effects of redistricting on incumbent justices of the peace in Sabine County (ID# 17260)

Dear Mr. McDaniel:

You advise that, as of the time of your request, August 31, 1992, Sabine County had five justice of the peace precincts and five justices of the peace, whose terms began in 1991. However, pursuant to article V, section 18(a) of the Texas Constitution, the commissioners court has redistricted the county into only two justice of the peace precincts, effective January 1, 1993. One of the five incumbent justices of the peace resides in new precinct one and four in new precinct two. Article V, section 18(c) of the Texas Constitution provides for incumbent justices of the peace in office at the time of redistricting serving out the terms for which they were elected. You ask whether these incumbent justices will "serve in the new boundaries, regardless of where the lines were when they were elected, or will the old lines remain in effect until the current . . . terms are completed (January 1, 1995)?"

Article V, section 18(c) of the Texas Constitution provides in relevant part:

When the boundaries of justice of the peace and constable precincts are changed, each Justice and Constable in office on the effective date of the change, or elected to a term of office beginning on or after the effective date of the change, shall serve in the precinct in which the person resides for the term to which each was elected or appointed, even though the change in boundaries places the person's residence outside the precinct for which he was elected or appointed, abolishes the precinct for which he was elected or appointed, or temporarily results in extra Justices or Constables serving in a precinct.

Article V, section 18(c) is intended to provide a procedure for the "transition in office for justices of the peace . . . each time their . . . boundaries are changed." TEX. LEGIS. COUNCIL, INFO. REP. NO. 83-4, ANALYSES OF PROPOSED CONSTITUTIONAL

AMENDMENTS APPEARING ON NOV. 8, 1983 BALLOT, at 8-10 (Aug. 1983).¹ In our opinion, the provision, on its face, requires that, when precinct boundaries are changed, each incumbent justice of the peace is to serve in the new precinct in which he "resides" "on the effective date of the change." Accordingly, the Sabine County justices of the peace who reside within the boundaries of new precinct one on January 1, 1993, would thereafter serve in new precinct one until the expiration of their terms; likewise, those justices of the peace who reside on that date within the boundaries of new precinct two, would serve in new precinct two.

You also ask what would be the effect of such an incumbent justice's moving, after the effective date of the reduction in precincts, from new precinct number two to new precinct number one. In Attorney General Opinion H-1069 (1977), this office stated:

Article 1.05, Texas Election Code², provides that a candidate for justice of the peace must have resided in the precinct for six months. However, the statutes are silent with respect to whether he must remain in the precinct after he is elected and qualifies for office. Article 16, section 14 of the Texas Constitution requires a justice of the peace to reside in the county which he serves, but makes no mention of precincts.

....
[I]t is our opinion that a justice of the peace may move to a different precinct of his county without vacating his office.

We adhere to the conclusion of Attorney General Opinion H-1069. Article XVI, section 14 of the Texas Constitution, on which it primarily relies, requires only that "county or district or county officers" "reside" "within their districts or counties." The United States Supreme Court indicated in a 1975 decision--*Harris County Comm'rs Court v. Moore*, 420 U.S. 77 (1975), n.1. at 873--that Texas "[c]ounty commissioners . . . are not required to reside in their precincts for their full terms." 420 U.S. at 80 n.1 (citing *Childress County v. Sachse*, 310 S.W.2d 414 (Tex. Civ. App.--Amarillo), *aff'd per curiam*, 312 S.W.2d 380 (Tex. 1958)); *see also Harrison v. Chesshir*, 316 S.W.2d 909 (Tex. Civ. App.--Amarillo 1958), *rev'd on other grounds*, 320 S.W.2d 814 (Tex. 1959); Attorney General Opinion O-6905 (1945). It is not apparent why justices of the peace should be treated differently under article XVI, section 14 than county commissioners--justices and

¹It appears that the proposal of the amendment was prompted in part by the Texas Supreme Court's holding the previous year, in *Tarrant County v. Ashmore*, 635 S.W.2d 417 (Tex.), *cert. denied*, 459 U.S. 1038 (1982), that so long as they were afforded some degree of due process, justices of the peace had no constitutional right to remain in office when redistricting altered the configurations of the precincts to which they had been elected.

²Article 1.05 of the Texas Election Code is now codified at Election Code section 141.001.

commissioners both being "county officers" elected from precincts. Nor do we find any law which would suggest that the rule in Attorney General Opinion H-1069 would not apply in the situation you ask about--a justice's moving his residence outside of the precinct to which he had been assigned by operation of a change in precinct lines under article V, section 18, after the effective date of such change.

We do note that we find the application of the rule--that a justice of the peace may move outside his precinct anywhere in the county without affecting his tenure in that precinct--troubling, in the situation where the move *precedes*, rather than follows, a change in precinct lines under article V, section 18. Under what we have taken in response to your first question to be the clear meaning of subsection (c) article V, section 18--that the justice of the peace serves out his term, after such a change, in the new precinct in which he "resides" on the date of the change--a justice's move preceding such a change could result in his serving in a new precinct which bore no relation to the precinct from which he was elected and later moved. Generally, applying the rule together with article V, section 18 leads to the somewhat anomalous result that a justice's moving elsewhere in the county, if there has been no redistricting, has no effect on his right to serve in the precinct in which he was elected; nor would his move after the effective date of redistricting affect his tenure in the new precinct in which he was to serve the remainder of his term by operation of article V, section 18(c). Only a move *followed* by redistricting would have an effect on where the justice was to serve: article V, section 18(c) provides that he is to then serve out the rest of his term in the new precinct whose territory he had moved to prior to redistricting and where he "resides" on the effective date of the redistricting.

It might be urged that in adopting subsection (c) the legislature and the voters had assumed that a justice would, in the event of redistricting, still reside in the precinct in which he had been elected, *i.e.*, they did not take account of the rule which would have permitted a justice to have changed his residence to anywhere else in the county. Indeed the various scenarios contemplated in the provisions of subsection (c) following the "even though" language do not include the situation where a justice has moved outside of his precinct prior to redistricting; those scenarios all contemplate situations where the precinct lines have changed but the justice's residence has not.

It might also be argued that the amendment adopting the provisions of subsection (c) impliedly overruled the rule stated in Attorney General Opinion H-1069 and the authorities on which it is based. However, we find nothing in the legislative history of the amendment indicating such an intent. *See* H.J.R. 91, Acts 1983, 68th Leg., at 6721, 6722; TEX. LEGIS. COUNCIL, INFO. REP. NO. 83-4, *supra*. Nor, by analogy with the rule that implied repeals are not favored in construing the interaction of statutes, do we think that the arguable anomalies that the application of subsection (c) of article V, section 18 together with the rule in Attorney General Opinion H-1069 may produce in certain situations, rise to a level warranting reading the former as impliedly overruling the latter. Our construction here of the constitutional provision is, we believe, amply supported by its

plain language. The rule stated in Attorney General Opinion H-1069 is, similarly, well based in prior case law and opinions of this office. We do not feel at liberty in the opinion process to depart from either construction just because the interaction of the constitutional provision and the long-standing rule that justices may move outside their precincts without affecting their jurisdictions or tenures may in certain situations lead to somewhat troubling results.

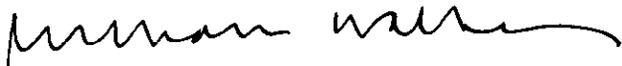
We do note finally that you do not ask about, and we do not address here, the interaction, in particular situations, of the rules stated herein with the requirements of the federal Voting Rights Act of 1965 that changes affecting voting must be approved by either the United States Justice Department or the federal judiciary. *See* 42 U.S.C. 1973c. Nor do we address other constitutional issues to which the application of these rules may give rise. Resolution of such issues would in any case depend, at least in part, on the particular factual scenario in question.

S U M M A R Y

Pursuant to article V, section 18(c) of the Texas Constitution a justice of the peace in office on the effective date of a change of precinct boundaries does not lose his office but rather serves in the new precinct where the justice of the peace resides on the effective date of the change for the term to which the justice of the peace was elected or appointed.

After election or redistricting, a justice of the peace need not continue to reside in the precinct in which he serves in order to retain office in that precinct so long as he continues to reside in the county in which he serves.

Very truly yours,



William Walker
Assistant Attorney General
Opinion Committee