



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

DAN MORALES
ATTORNEY GENERAL

December 14, 1994

Honorable Mike Driscoll
Harris County Attorney
1001 Preston, Suite 634
Houston, Texas 77002-1891

Letter Opinion No. 94-091

Re: Whether the Harris County Commissioners Court may place a nonbinding referendum on the ballot concerning the age of criminal responsibility (ID# 27566)

Dear Mr. Driscoll:

You have asked this office to consider whether the Harris County Commissioners Court may place a non-binding referendum on the ballot concerning the age of criminal responsibility. In your view, this question is governed by Attorney General Opinion H-425 (1974), which answers it in the negative. We concur.

The Harris County Commissioners Court wishes to determine whether the citizens of Harris County support lowering the age of criminal responsibility for juveniles who commit violent offenses. To that end, they wish to place a non-binding resolution on the ballot concerning the matter. Such a resolution would have no legal force or effect, since as you correctly point out only the Texas Legislature has the power to set the age of criminal responsibility.

Further, you note that in Attorney General Opinion H-425, this office held that a commissioners court could not hold a non-binding referendum to test public opinion in the absence of specific statutory authority. That opinion rested on two well-established principles: first, that a commissioners court has only those powers conferred upon it by the Texas Constitution and statutes of the state, *Canales v. Laughlin*, 214 S.W.2d 451 (Tex. 1948); and second, that elections may be held only by virtue of some legal authority, and an election held without such authority or contrary to a material provision of the law is a nullity, *Smith v. Morton Indep. Sch. Dist.*, 85 S.W.2d 853 (Tex. Civ. App.--Amarillo 1935, writ dismissed); *Williams v. Glover*, 259 S.W. 957 (Tex. Civ. App.--Waco 1924, no writ). The principles of Attorney General Opinion H-425 have been reaffirmed by this office in recent years. See Attorney General Opinion DM-172 (1992) (Sabine County has no power to call election based on petition materially modifying scheme of Optional County Road System); Letter Opinion No. 89-98 (1989) (Upper Guadalupe River Authority had no power to conduct non-binding referendum on sewage services).

You inform us that you know of no statutory authority for the proposed referendum at issue. Absent such authority, the Commissioners Court of Harris County may not place such a referendum on the ballot.

The commissioners court seems by your account to be of the view, based on the last paragraph of Attorney General Opinion H-425, that it may provide for such a referendum if private funds are used. Attorney General Opinion H-425 states:

If private funds can be found to finance the referendum in whole, it is our opinion that any group of persons may call for it and hold it as an unofficial act. But even with donated funds, the Commissioners Court has no authority to call for the referendum officially.

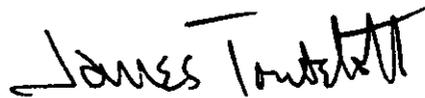
Attorney General Opinion H-425 at 3 (emphasis added).

As the last sentence makes clear, the commissioners court may not call for a referendum as an official act. Nor may county funds be expended for it, nor (it follows therefrom) may county resources such as, *inter alia*, official ballots and voting booths be used for this purpose. An unofficial canvass of the views of the electorate by any group of persons—including, should they wish, the commissioners in their individual capacities—is of course permissible, as Attorney General Opinion H-425 makes clear. Such a canvass, however, is not an election, and on the familiar principles outlined in Attorney General Opinion H-425 may not be treated as an election.

S U M M A R Y

Absent specific statutory authority permitting it to do so, the Harris County Commissioners Court may not place a non-binding referendum concerning the age of criminal responsibility on the ballot.

Yours very truly,



James Tourtelott
Assistant Attorney General
Opinion Committee