



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS
February 2, 1962

This Opinion
Affirms Opinion

V-248

WILL WILSON
ATTORNEY GENERAL

Honorable Don Cain
County Attorney
Gray County
Pampa, Texas

Opinion No. WW-1251

Re: Whether it is mandatory that there be two justice courts within Precinct Two of Gray County, Texas, and related questions.

Dear Sir:

We are in receipt of your letter dated January 26, 1962, in which you ask our opinion on the above captioned subject.

Your letter states that Pampa, a city of some 24,303 residents according to the 1960 census, is entirely within Precinct Two of Gray County, Texas. By proper order of the Commissioners' Court entered many years ago, Precinct Two was given two Justices of the Peace, being Place One and Place Two. Recently the Justice of the Peace of Place One died, and since that time, the Justice of Place Two is performing the functions of both Places within the Precinct. You further state that the Commissioners' Court has declined to appoint a successor to the Justice for Place One and have entered an order abolishing such office, finding that it was not necessary for the convenience of the people. Accordingly, the salary of the Justice of Place Two was increased.

The specific questions asked by you are stated as follows:

"A. Is it mandatory that there be two Justice Courts within Precinct Two of Gray County, Texas?

"B. Is it within the power and discretion of the Commissioners' Court, where they find that the convenience of the people does not necessitate, or justify the continuation of, the office of Justice of the Peace, Precinct Two, Place One, to abolish said office?

"C. In the event there need be only one Justice of the Peace for Precinct Two, should the persons running for election, and re-election, thereto file and seek election to the post of Justice of the Peace, Precinct Two, Place Two, when in fact there would then be no office of Place One; or, if there need be only one Justice

for Precinct Two, should the persons seeking election thereto (including the present incumbent of Place Two if he desires to seek re-election) file and seek election to the office of Justice of the Peace, Precinct Two, Place One; or, if there need be only one Justice for Precinct Two, should persons seeking election thereto simply file and seek election to the office of Justice of the Peace, Precinct Two (without stating a place)?

"D. In the event that there must be two Justice Courts within Precinct Two and that the Commissioners' Court cannot abolish the office of Justice of the Peace, Precinct Two, Place One, and a person should be elected in the General Election of 1962 to such office, does the Commissioners' Court have discretion in setting the salary for the office of Place One to the extent that it could set no salary therefor, or set the salary at \$1.00 per year, or at some figure much lower than the salary set for Place Two while the salary for the Justice of Place Two remained fixed at the same figure as now or as before the death of the former Justice of Place One?"

Section 18 of Article V of the Constitution of Texas states as follows:

"Each organized county in the State now or hereafter existing, shall be divided from time to time, for the convenience of the people, into precincts, not less than four and not more than eight. Divisions shall be made by the Commissioners Court provided for by this Constitution. In each such precinct there shall be elected one Justice of the Peace and one Constable, each of whom shall hold his office for four years and until his successor shall be elected and qualified; provided that in any precinct in which there may be a city of 8,000 or more inhabitants, there shall be elected two Justices of the Peace. Each county shall in like manner be divided into four commissioners precincts in each of which there shall be elected by the qualified voters thereof one County Commissioner, who shall hold

his office for four years and until his successor shall be elected and qualified. The County Commissioners so chosen, with the County Judge as presiding officer, shall compose the County Commissioners Court, which 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)

Article 2375 of Vernon's Civil Statutes states also as follows:

"Where there is a city of eight thousand inhabitants or more in a justice precinct, two justices of the peace shall be elected." (Emphasis added)

This office has written numerous opinions construing the various provisions of the Constitutional provision quoted above, each of which held that the division and redistricting of the counties into precincts of not less than four and not more than eight was a discretionary order on the part of the Commissioners' Court, and to be exercised "for the convenience of the people." The cases are likewise in accord, Ward v. Bond, 10 S.W.2d 590 (Civ.App. 1928), Lewis v. Harris, 48 S.W.2d 730 (Civ.App. 1932, error ref.).

The above cited cases do not extend the discretionary powers of sentence one of the constitutional provision into sentence three of that provision, particularly the phrase "provided that in any precinct in which there may be a city of 8,000 or more inhabitants, there shall be elected two Justices of the Peace." (Emphasis added). Previous opinions from this office held the language underscored to be mandatory and not discretionary. In fact the Supreme Court stated in Williams v. Castleman, 112 Tex. 193, 247 S.W. 263 (1922) at page 270 as follows:

"The commissioners' court, by a valid order, having determined that there was in justice precinct No. 1 of Stephens county, a city of over 8,000 people, upon the official announcement of such fact, and the entry of the order, the office of an additional justice of the peace for the precinct, created by the Constitution, but awaiting the determination of fact by the Commissioners' court (the agency designated by the

Constitution for such purpose), came into being, and thenceforward was an existing office. Since the office came into existence and was not filled, it was vacant. . . ."

However, the court in Meredith v. Sharp, 256 S.W.2d 870 (Civ.App. 1953, error ref., n.r.e.) held that the creation of an additional Justice Court in a precinct with a city over 8,000 was not mandatory, but to be created by the Commissioners' Court "for the convenience of the people," and therefore within the discretion of the Commissioners' Court.

We quote from the opinion at page 871 as follows:

"We are in accord with the conclusions of law as filed by the trial court that the 'Constitution confides in the Commissioners' Court the authority to create a justice of the peace court as here sought; that the convenience of the people is the basic purpose for designating such an additional justice court; and that the creation of such an additional justice of the peace court is a discretionary act of the Commissioners' Court and not a ministerial function of such court.' This record is absent any showing or any attempt to show that the creation of such an additional justice court would be for the convenience of the people. The action of the trial court in denying this application for a writ of mandamus is sustained.

"We cannot escape the import of the use of the term 'for the convenience of the people' in Sec. 18, supra; 16 C.J.S., Constitutional Law, Sec. 23. The latitude so granted the Commissioners' Court to create not less than four and not more than eight such precincts, and the power to change the boundaries of such precincts from time to time emphasizes the intent to vest discretionary powers in the Commissioners' Court in determining whether or not the creation of such additional court would be for the convenience of the people, that is suitable, appropriate or advisable to meet the needs of the people. This discretionary power on the part of the Commissioners' Court is fully recognized in Williams v. Castleman, 112 Tex. 193, 247 S.W. 263, . . ."

Honorable Don Cain, page 5 (WW-1251)

We feel that if the Commissioners' Court is not required to create a new office of Justice of the Peace in precincts with a city of 8,000 or more, if not "for the convenience of the people," that, likewise, it may abolish such offices. Your question A is therefore answered in the negative.

The language in the constitutional provision that each county "shall be divided from time to time, for the convenience of the people, into precincts," has been held by this office in Attorney General's opinion No. V-790 to mean that the Commissioners' Court may abolish any Justice Precinct that they desired to. We hereby re-affirm the holding of that opinion, enclosed, as follows:

"The Commissioners' Court may abolish old justice precincts and re-divide the county into new justice precincts at any time, so long as there is a minimum of four and not more than eight justice precincts in the county. When such justice precincts are abolished the offices in the old precincts become vacant and the officers of the newly created justice precincts must be appointed by the Commissioners' Court."

In your situation therefore, Place One may properly be abolished and the precinct "re-districted", containing the same territory, but with only one Justice of the Peace. Question B is answered affirmatively.

Since the Commissioners' Court of Gray County abolished the office of Justice of the Peace, Precinct Two, Place One and desires only one Justice within this Precinct, there would then be no reason for a Place One or Place Two on the election ballot, and the political aspirant would only need to file for the office of Justice of the Peace of Precinct Two, Gray County, Texas.

Our decision makes it unnecessary to reach your question D.

S U M M A R Y

It is not mandatory that there be two justice courts within the precinct of a county containing a city with a population of 8,000 or more. The Commissioners' Court may abolish any justice court

Honorable Don Cain, page 6 (WW-1251)

within such precinct if they find that such justice court is not justified for the convenience of the people within such precinct, provided that such precinct still has one justice of the peace.

Yours very truly,

WILL WILSON
Attorney General of Texas.



By Fred D. Ward
Assistant

APPROVED:

OPINION COMMITTEE

W. V. Geppert, Chairman
John Reeves
Norman Suarez
Bob Shannon

REVIEWED FOR THE ATTORNEY GENERAL
BY: Houghton Brownlee, Jr.