



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

April 17, 1939

Hon. W. A. (Bill) Morrison  
Criminal District Attorney  
Cameron, Texas

Dear Sir:

Opinion No. 0-573

Re: Proper form of ballot to be used  
in county in which there are both  
wet and dry precincts and in which  
county seeks to hold county-wide  
election to determine whether sale  
of all alcoholic beverages shall be  
prohibited.

Your request for an opinion on the following  
question:

"Whether the form of ballot to be used  
in county election called for the purpose of  
determining whether the sale of all alcoholic  
beverages of all classifications shall be pro-  
hibited shall be as is provided for in Article  
666-35(a), 'for the sale of liquor' and 'against  
the sale of liquor', or under the provisions  
of Article 666-40(f), 'for prohibiting the sale  
of all alcoholic beverages' and 'against prohibit-  
ing the sale of all alcoholic beverages', and  
whether there would exist a fatal variance be-  
tween a petition calling for this election which  
used the following words, 'to determine whether  
or not the sale of all liquors shall be prohibit-  
ed in said Milam County?'"

has been received by this office.

Article 666-40 provides that:

"A Commissioners' Court upon its own  
motion may, or upon petition as herein pro-

vided shall, as provided in Section 32, Article 1, order local option election for the purpose of determining whether alcoholic beverages of the various types and alcoholic contents herein provided shall be legalized or prohibited."

It is further provided in said article that:

"In areas where the sale of all alcoholic beverages has been legalized one or more of the following issues shall be submitted in any prohibitory election:...."

Under subdivision (f) of this article:

"for prohibiting the sale of all alcoholic beverages"

and,

"against prohibiting the sale of all alcoholic beverages"

This is clearly an election to be held where the sale of all alcoholic beverages has been legalized, therefore, the words "for prohibiting the sale of all alcoholic beverages" and "against prohibiting the sale of all alcoholic beverages" should be printed on the ballot.

Clearly, under the provisions of Article 666-40, heretofore referred to, if the area in which the local option election is to be held is wet, the proposition to be voted on is a prohibitory one. You will find the decisions in the following cases to support our opinion as herein stated:

Moyer vs. Kelley, Tex. Civ. App. 93 SW 2nd 502, writ dismisses;

Flowers vs. Shearer, Tex. Civ. App. 107 SW 2nd 1049;

Whitmire vs. State, 130 Tex. Crim. Rep. 372, 94 SW 2nd 742.

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With the use of the words as set out above, on the ballot, there will not be a fatal variance between the ballot and the petition calling for this election which uses the following words:

"To determine whether or not the sale of all liquor shall be prohibited in said Milan County."

Trusting that the foregoing clearly answers your inquiry, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

*Fred C. Chandler*

Fred C. Chandler  
Assistant

FCG:AW

APPROVED:

*Gerard E. Mauer*  
ATTORNEY GENERAL OF TEXAS