



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

GERALD C. MANN
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ATTORNEY GENERAL

April 18, 1939

Hon. Tom F. Coleman, Jr.
County Attorney
Angelina County
Lufkin, Texas

Dear Sir:

Opinion No. 0-610

Re: May the Commissioners Court of Angelina County legally pay for all the proper expenses incurred in the special election held under the authority of Articles 1133 and 1134, Revised Civil Statutes, 1925, for the incorporation of the city of Huntington?

Your request dated April 5, 1939 for an opinion from the Attorney General on the following question, has been received:

"* * * As to whether or not the Commissioners Court of Angelina County can legally pay all proper expenses incurred in the special election held under the authority of Articles 1133 and 1134, Vernon's Revised Civil Statutes, for the incorporation of the city of Huntington."

Articles 1133 and 1134, R.C.S., 1925 referred to in your request, are set out in full:

"Article 1133. May be incorporated.

When a town or village may contain more than four hundred and less than ten thousand inhabitants, it may be incorporated as a town or village in the manner prescribed in this chapter."

"Article 1134. Mode of incorporation.

If the inhabitants of such town or village desire to be so incorporated, at least twenty residents thereof, who would be qualified voters under the provisions of this chapter, shall file an application for that purpose in the office of the county judge of the county in which the town or village is situated, stating the boundaries of the proposed town or village, the name by which

it is to be known when incorporated, and accompany the same with a plat of the proposed town or village including therein no territory except that which is intended to be used for strictly town purposes. If any town or village be situated on both sides of a line dividing two counties, application may be made to the county judge or either county in which a portion of said town or village is located, in manner and form as herein provided. A new election shall not be ordered in less than one year."

The election provided for in the two articles above quoted is undoubtedly a special election.

9 RULING CASE LAW, p. 978

"Any election which is not regularly held for the election of officers or for some other purpose which shall come before the electors at regular fixed intervals is a special election. It is opposed in meaning more particularly to regular than to general elections, and so where elections are classified as general and special, a regular annual municipal election cannot be included in the latter class, but must be treated as a general election. * * * Where the constitution provides for the organization of a city under general laws 'whenever a majority of the electors voting at a general election shall so determine' the election to decide the question is still a special election although decided at a general election, and a statute providing for the calling of a special election to determine the question is not inconsistent with the constitutional requirement, and this is true notwithstanding the fact that the special election is to be held on the same day as the general election. The use of the word 'special' in such a case is surplusage, as the election not being a regular recurring one could not be other than special. * * * * *"

20 CORPUS JURIS, p. 56

"A special election is one provided for by law under special circumstances. It is an election held to supply a vacancy in office before the expiration of the full term for which the incumbent was elected, or an election at

which some question or proposition is submitted to the vote of the qualified electors, or an election for some particular emergency. * * * *

The county judge has charge of the details of the election for the purpose of determining whether or not a town or village containing more than four hundred and less than ten thousand inhabitants is to be incorporated and is empowered to appoint the necessary election officers by Article 1136, which reads as follows:

"Article 1136. Election order

If satisfactory proof is made that the town or village contains the requisite number of inhabitants, the county judge shall make an order for holding an election on a day therein stated and at a place designated within the town or village for the purpose of submitting the question to a vote of the people. He shall appoint an officer to preside at the election, who shall select two judges and two clerks to assist in holding it. After a previous notice of ten days, by posting advertisement thereof at three public places in the town or village, the election shall be held in the manner prescribed for holding elections in other cases."

In view of the fact that the election for the incorporation of the city of Huntington was a special election, Article 2996 is applicable. It provides for expenses for election supplies and reads as follows:

"Article 2996. Expenses for election supplies. All expenses incurred in providing voting booths, stationery, official ballots, wooden or rubber stamps, tally sheets, polling lists, instruction cards, ballot boxes, envelopes, sealing wax and all other supplies required for conducting a general or special election shall be paid for by the county, except the cost of supplying booths for cities. All accounts for supplies furnished or services rendered shall first be approved by the Commissioners court, except the accounts for voting booths for cities."

According to the provisions of said article, all expenses connected with the mechanism of a special election for the purpose of incorporating a city within the population range of four hundred to ten thousand inhabitants shall be paid for by the county within which it is situated.

Article 2943, R.C.S. of 1925, as amended by Acts of the 45th Legislature, p. 591, chapter 295, par. 1, 1937, sets forth the scale of compensation for judges and clerks of both general and special elections. It stipulates that payment shall be made by the county treasurer of the county where the election is held upon order of the Commissioners Court. We quote the statute as amended:

"Article 2943. Pay of judges and clerks. Judges and Clerks of general and special elections shall be paid Three Dollars (\$3) a day each, and Thirty (30) Cents per hour each for any time in excess of a day's work as herein defined; provided that in all counties having a population in excess of three hundred and fifty-five thousand (355,000) inhabitants, according to the last preceding or any future Federal Census, such Judges and Clerks shall be paid Five Dollars (\$5) a day each, and Fifty (50) Cents per hour each for any time in excess of a day's work as herein defined. The Judge who delivers the returns of election immediately after the votes have been counted shall be paid Two Dollars (\$2) for that service, provided the polling place of his precinct is at least two (2) miles from the courthouse, and provided also he shall make returns of all election supplies not used when he makes return of the election. Ten (10) working hours shall be considered a day within the meaning of this Article. The compensation of Judges and Clerks of general and special elections shall be paid by the County Treasurer of the county where such services are rendered upon order of the Commissioners Court of such county."

Since an election for the incorporation of a city within the four hundred to ten thousand population range is a special election, and since articles 2996 and 2943 provide for payment of expenses of materials and services used in such special election by the county, it is our opinion that there is statutory authorization for the payment of the expenses of the election for the incorporation of the city of Huntington by the county of Angelina.

We have noted Article 2997, R.C.S. which says that "The expense of all city elections shall be paid by the city in which same are held." It is our opinion that this article does not govern the situation of a special election under the supervision of county authorities where the question of incorporation itself is being voted upon by the citizens of a given area within the county. In this case the area to be incorporated, subsequently the city of Huntington, was not a city within the purview of

Article 2997 prior to the time of the election. Article 2997 is applicable to municipal elections only, and the city of Huntington was not subject to the provisions of said article until after the incorporation election.

The expenses incurred in the election held for the purpose of incorporating the city of Huntington were incurred by the county under articles 1133, 1134 and 1136, R.C.S., 1925.

We hold, therefore, that Articles 2943 and 2996 are controlling and that the county of Angelina may legally pay all proper expenses incurred in the special election held under the authority of Articles 1133 and 1134, R.C.S., 1925, for the incorporation of the city of Huntington.

Trusting that the above fully answers your inquiry,
we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By s/ Dick Stout
Dick Stout
Assistant

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APPROVED:
s/Gerald C. Mann
ATTORNEY GENERAL OF TEXAS