



**THE ATTORNEY GENERAL  
OF TEXAS**

Gerald C. Mann

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ATTORNEY GENERAL

**AUSTIN 11, TEXAS**

Hon. O. Kennedy  
County Attorney  
Bee County  
Beeville, Texas

Opinion No. O-1658  
Re: Sufficiency of petition re-  
questing local option elec-  
tion.

Dear Sir:

This will acknowledge receipt of your letter of November 6, 1939, in which you seek the opinion of this Department on the question of whether or not a proposed local option petition, a copy of which is attached to your letter, is sufficient.

You advise that Bee County is "wet" and that the sale of all liquors, including beer and wine, is now legal and that an election is to be held to determine whether such county is to remain "wet".

You further advise that the "dry forces in this county want to present to the commissioners' court a petition to order a county-wide election to submit to the voters the question of whether or not the sale of all liquors should be prohibited." We assume that such proposal contemplates the inclusion of beer, and it is upon this assumption that this opinion is based.

A review of the definitions of "alcoholic beverage" and "liquor" contained in the Texas Liquor Control Act reveals the necessity of limiting the opinion to the assumption just made.

"Alcoholic beverage" as defined by the Act "shall mean alcohol and any beverage containing more than one-half of one per cent of alcohol by volume which is capable of use for beverage purposes, either alone or when diluted."

"Liquor" as defined by the Act, "shall mean any alcoholic beverage containing alcohol in excess of four per centum by weight, unless otherwise indicated. Proof that an alcoholic beverage is alcohol, spirits of wine, whiskey, liquor, wine brandy, gin, tequilla, mescal, habenero or barreteago, shall be prima facie evidence that the same is liquor as herein defined."

Thus, it is clearly seen that alcoholic beverage includes liquor, beer, wine and all other alcoholic drinks containing alcohol of more than one-half of one per cent by volume.

The proposed petition reads:

"LOCAL OPTION ELECTION PETITION

"TO THE HONORABLE COMMISSIONERS' COURT OF  
BEE COUNTY, TEXAS:

"We, the undersigned, constituting at least ten per cent (10%) of the qualified voters of Bee County, Texas, according to the vote for Governor of the State of Texas in the general election next preceding this petition, respectfully petition your honorable body to order an election in Bee County, Texas, at which election there shall be submitted to the following question:

"For prohibiting the sale of all alcoholic liquors."

"Against prohibiting the sale of all alcoholic liquors."

Respectfully submitted,"

A close examination of the Texas Liquor Control Act does not reveal a form to be used for the petition to the commissioners' court.

Section 32 of such Act provides in part:

"The Commissioners Court of each county in the State upon its own motion may order an election to be held by the qualified voters in said county, to determine whether or not the sale of liquors shall be prohibited or legalized in such county, and such Court shall order a local option election whenever petitioned to do so by as many as ten (10) per cent of the qualified voters of said county, or of any justice precinct, city or town, taking the votes for Governor at the last preceding general election as the basis for determining the qualified voters in any such county, or political subdivision...."

Section 40 of the Act provides that the commissioners' court may, as provided in Section 32, supra, order an election for the purpose of determining whether alcoholic beverages of various types may be legalized or prohibited. The second provision of Section 40 of the Act reads:

"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 such provision there appear several propositions that may be submitted, among which is sub-section (f) and reads:

"'For prohibiting the sale of all alcoholic beverages' and 'Against prohibiting the sale of all alcoholic beverages.'"

Looking to the form of petition presented as hereinabove quoted, we believe the same to contain the requisites pointed out in Section 32, supra, with exception that the word "an" appearing in line 5 of the body of the petition should be changed to "a" and followed by "local option", so as to hereafter read "... respectfully petition your honorable body to order a local option election...." We likewise believe the propositions to be submitted, bearing in mind the assumption upon which this opinion is based, should read:

"For prohibiting the sale of all alcoholic beverages" and "Against prohibiting the sale of all alcoholic beverages."

Trusting that we have satisfactorily answered your inquiry, we are

APPROVED NOV 17, 1939  
/s/ Gerald C. Mann  
ATTORNEY GENERAL OF TEXAS

Very truly yours  
ATTORNEY GENERAL OF TEXAS  
BY /s/ Lloyd Armstrong  
Lloyd Armstrong, Assistant

APPROVED: OPINION COMMITTEE  
BY: BWB, CHAIRMAN

LA:AW:wb