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OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Refugio Co
Superseded By Art 29d
T.C.S.

Honorable K. D. Hall
County Attorney
Refugio, Texas

Dear Sir:

Opinion No. O-2561

Re: Whether a county clerk
and a district clerk shall
be elected for Refugio
County in the forthcoming
general election, the
preliminary announcement
of the census showing such
county to have a popula-
tion of 10,224 persons.

You request a legal opinion from this department in answer to the above question. You state in your request letter that the official preliminary announcement of the census discloses Refugio County to have a population in excess of 9,000 persons.

Section 9 of Article V of the Constitution of Texas provides in part as follows:

"There shall be a clerk for the district court of each county, who shall be elected by the qualified voters for the state and county officers, and who shall hold his office for two years, * * *"

Corresponding to this constitutional provision is Article 1894, Revised Civil Statutes, which reads in part:

"A clerk of the district court of each county shall be elected at each general election for a term of two years. * * *"

Section 20 of Article V of the Constitution of Texas provides as follows:

"There shall be elected for each county, by the qualified voters, a county clerk, who shall hold his office for two years, who shall

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be clerk of the County and Commissioners' Courts and recorder of the county, whose duties, perquisites and fees of office shall be prescribed by the Legislature, and a vacancy in whose office shall be filled by the Commissioners' Court, until the next general election for county and State officers; provided, that in counties having a population of less than eight thousand persons there may be an election of a single clerk, who shall perform the duties of district and county clerks."

Corresponding thereto is Article 1935, Revised Civil Statutes, which reads in part:

"A clerk of the county court of each county shall be elected at each general election for a term of two years. . . ."

and Article 1903, Revised Civil Statutes, which reads:

"JOINT CLERK. - In counties having a population of less than eight thousand persons, according to the preceding federal census, only one clerk shall be elected. He shall take the oath and give the bond required of clerks of both the district and county courts, and shall have the powers and perform the duties of such clerks respectively."

The Constitution and statutes of Texas, therefore, clearly require that both the county clerk and a district clerk shall be elected by the qualified voters if the population of the county, according to the preceding federal census, is 8,000 persons or more.

It was held in the case of HOLCOMB, et al v. SPIKES, 232 SW 891, by the Amarillo Court of Civil Appeals, that a preliminary announcement of the census by the Director is an official pronouncement of which the public and all officials may take notice. The opinion in this case reads, in part, as follows:

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"It would seem when the bulletin is so published and distributed it then becomes an official pronouncement of the law, of which the public and all officials may take notice * * * . In this case the undisputed facts show the Census Bureau, under the signature of its Director, issued a bulletin showing before the election the population of Lubbock County to be 11,096. This seems to have been official. This information appears to have been given to leading papers of the state. Under the law this information could have been obtained in no other way than through the Director's official act without violating the law and subjecting the party to a charge of felony * * * ."

To the same effect is the case of *ERVIN v. STATE*, 44 SW (2d) 380, wherein it was declared:

"The opinion is expressed that the preliminary announcement of the census of the city of Abilene was an official pronouncement. This announcement was made prior to the time the jury commissioners selected the panel from which the jury was drawn. The announcement of the population in the preliminary report should have been the guide of officials whose duty it was to act with reference thereto. * * * ."

Accordingly, you are respectfully advised that Refugio County must elect both a county clerk and a district clerk in the forthcoming general election inasmuch as the official preliminary announcement of the 1940 census discloses such county to have a population of 10,224 persons.

Yours very truly

ATTORNEY GENERAL OF TEXAS

APPROVED JUL 25, 1940

Gerald B. Mann

ATTORNEY GENERAL OF TEXAS

BY

Zollie C. Steakley
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