



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

0-5516
GERALD C. MANN
ATTORNEY GENERAL

Honorable Joe P. Flack
County Attorney
Menard County
Menard, Texas

Dear Sir:

Opinion Number 0-5516

Re: Does the County Board of Trustees of Menard County have the authority to declare null and void an election held to determine if six common school districts shall be annexed to Menardville Independent School District when the election order provided that the election be held only in the independent district?

We have your request for an opinion on the questions submitted to you by Judge Franks, County Judge, in the following letter:

"Enclosed find the following:
Order for an election,
Notice of election with sheriff's return,
Publisher's affidavit of publication,
Order declaring result of election.

"An application has been filed with the County Board of School Trustees of Menard County praying that the said County Board of School Trustees declare the election held on the 19th day of June 1943, to be null and void and of no effect.

"The application recites the fact that 1 Independent School District and 6 Common School Districts were involved and that the election order

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called for only one voting place which was the regular voting place for the Independent District. And for all school elections it has been customary that a voting place be provided in each of the school districts. And that some of the voters went to the usual voting places in the said Common School Districts finding no opportunity to vote.

"With these facts before you the County Board of School Trustees of Menard County requests that you give your opinion and advice on the following questions:

"1st. Does the County Board of School Trustees have the authority to declare the election null and void at this time?

"2nd. In case the above question is answered in the affirmative then is the election legal?"

Replying to your question No. 1, you are advised that the County Board of School Trustees does not have the authority to declare the election null and void. The district court has jurisdiction of such election contests. See Article 3069 et seq.

Replying to your second question, we think the election was legal, although we have been unable to find any case on all fours with the case under consideration. A number of cases have held that a majority vote of the voters of the proposed district is all that is required. If the election had been held in each of the districts, and a majority of the voters in four out of five districts had been cast against the annexation and a majority in the fifth district in favor of annexation had been cast sufficient to overcome the majority against annexation in the other four districts, the proposition would have been legally carried in favor of annexation. As stated above, we have been unable to find a case wherein the election was held in only

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one place, and we agree with the opinion expressed by the County Attorney to the effect that it would have been better and safer to hold the election in more than one place.

See County v. Mitchell, 58 S. W. (2d) 770, County Board of School Trustees v. Mayfield, C. S. D. #22, 140 S. W. (2d) 956, Mt. View C.S.D. v. Blaine County Board of School Trustees, 149 S. W. (2d) 224.

We are assuming that the district as enlarged contains an area of more than 100 square miles.

Trusting that the above satisfactorily answers your questions, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

BY *O. F. Gibson*
O. F. Gibson
Assistant

CFG-s

of
e.c.r.

APPROVED SEP 22, 1943

Gerard C. Mann

ATTORNEY GENERAL OF TEXAS

