



PRICE DANIEL  
ATTORNEY GENERAL

**THE ATTORNEY GENERAL  
OF TEXAS**

AUSTIN 11, TEXAS  
March 24, 1949

Affirmed by W.H. 1251

*Overruled By M-68  
where conflicts*

Hon. Arnold W. Franklin  
County Attorney  
Atascosa County  
Jourdanton, Texas

Opinion No. V-790

Re: Authority of Commissioners'  
Court to abolish justice pre-  
cincts and create new precincts  
in that territory, and effect  
of such action upon elected  
officers in the old precincts.

Dear Sir:

We refer to your letter in which you submit the follow-  
ing questions:

"Does the Commissioners' Court, acting under authority of Constitutional Article V, Section 18, and Article 2351 of the Revised Civil Statutes of Texas, have the authority to abolish existing Justice Court precincts and create a new Justice Court precinct of the territory engrossed of the territory formerly consisting of the justice precincts so abolished?

"In event that the Commissioners' Court may abolish two old justice precincts and create a new one to consist of the combined limits of the two so abolished and appoint new officers for the newly created precinct, then in that event what disposition would be made to the elective officers of the old precincts? Would the officers be abolished with the abolishing of the old precincts?"

The authority of the Commissioners' Court to divide counties into justice precincts is provided in Section 18 of Article V of the State Constitution, which reads in part as follows:

"Each organized county in the State now or hereafter existing, shall be divided from time to time, for the convenience of the people, into precincts, not less than four and not more than eight. The present County Courts shall make the first division. Subsequent divisions shall be made by the Commissioners' Court, provided for by

this Constitution. In each such precinct there shall be elected at each biennial election, one justice of the peace and one constable, each of whom shall hold his office for two years and until his successor shall be elected and qualified; provided that in any precinct in which there may be a city of 8,000 or more inhabitants, there shall be elected two justices of the peace. (Emphasis added throughout)

Article 2351, V.C.S. reads in part:

"Each commissioners court shall:

"1. Lay off their respective counties into precincts, not less than four, and not more than eight, for the election of justices of the peace and constables, fix the times and places of holding justices courts, and shall establish places in such precincts where elections shall be held;  
....."

In State ex. rel. Dowlen v. Rigsby, 43 S.W. 271 (error refused), Judge Williams, writing for the Court, construing the Constitutions and statutes on the point of your inquiry, said:

"When the commissioners' court was organized, in pursuance of the constitution and the laws passed thereunder, it possessed all powers conferred by both. When the court was once established, no legislation was needed to enable it to exercise the powers given by the above provision, to divide the county into precincts. The direction is plain and simple, and without condition or restriction, except that as to the number of precincts. It is said that no procedure is prescribed by which the power is to be exercised. If any was needed, the statute supplied it, when it required that the proceedings of the court should be recorded in its minute book. Rev. St. 1895, art. 1554. This was all that was necessary. The power to divide the county into justices' precincts is also given by the statute, but not in terms so explicit as those used in the constitution. Rev. St. 1895, art. 1537. There can be no doubt that both constitution and statute confer the power, and the only question is as to its extent. It is contended that a limitation upon the power is found in the constitutional provision fixing the terms of office of precinct officers; and that, since they are to hold for two

years, it follows that the precincts cannot be changed during the terms, because the power to alter them would practically enable the court to destroy the office. The language of the constitution expresses no such limitation. The division is to be made 'from time to time.' The reason for the division is to be the convenience of the people; and the judge, both as to time and convenience, is the court. The limitation contended for by the appellant would require the insertion in the constitution of a proviso which the court cannot read into it. The only limitation imposed serves to indicate the scope of the power. That limitation requires as many as four, and does not allow more than eight, precincts. But for it the county might have been cut up into as many precincts as the court saw proper to establish. By it the intention is made more manifest that, within the limits, the court is to determine the number. As to the time of making the division, it is equally plain. The language 'from time to time, for the convenience of the people,' clearly means that the convenience of the people, as judged by the court, shall control in determining the time when a division is proper. The phrase 'from time to time' repels the idea that it was the purpose to fix any particular time.

"If it should be urged that the provisions contemplate a complete, and not a partial, division, the answer is that, in effect, they are the same. When two precincts are made out of one, or the boundaries between two are changed and defined, leaving all of the others unchanged, the effect is the same as if an order were entered setting out anew the boundaries of the unchanged precincts, as well as those changed. As no form of procedure is prescribed, there could be no substantial objection to such action. The power to establish the precincts does not necessarily conflict with the provision fixing the terms of office. They must stand together. The office is taken subject to the power to change the boundaries of the precincts. This is no anomaly in our law. All county officers whose compensation is derived from perquisites, and therefore depends to some extent on the territory in which they exercise their functions, hold their offices subject to lawful power to alter that territory. While the office is property, it is held subject

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Also see the case of Brown v. Meeks, 96 S. W. (2d) 839, to the same effect. We call your attention to the following language used in the latter case:

"The attempted nomination of a candidate for constable of new precinct No. 1 before it comes into existence is entirely void, and no one is entitled to such a nomination. On January 1, 1937, when the new precinct for the first time comes into existence, then and in that event it will be the duty of the commissioners' court to appoint new officers for the new precinct. State ex. rel. Robbins v. Parker, 147 Iowa, 69, 125 N. W. 856.

"Meeks insists that, being a resident of old precinct No. 1, and having received a

this order, is that, when the new precincts come into existence, all precinct offices will be vacant and the commissioners' court will be charged with the duty of filling these precinct offices by appointment."

In Carver v. Wheeler County, 200 S.W. 537, the Court said, in part:

"While the holder of a public office is vested with certain rights in reference thereto, being entitled to hold the same and receive the emoluments and compensations incident to the discharge of the duties of the office, and may defend his rights against others, yet the relation between the office holder and the government under which he holds office is not that of employer and employe, and their respective rights are not to be determined by the application of the general rules of contracts of employment. So that it is universally held that in the absence of some inhibition by some superior law, the governing body may abolish the office or change the compensation to be paid the office holder at any time, even during the term of the office of an incumbent, provided, of course, the changed rate of compensation cannot be made to apply to services already rendered."

In view of the foregoing we are of the opinion that the Commissioners' Court of Atascosa County is authorized to abolish existing justice precincts and create new justice precincts composed of the territory of existing precincts which are abolished at any time for the convenience of the people. But of course there must be at least four and not more than eight justice precincts in the county at all times. The terms of office of all officers of such abolished and changed precincts will ipso facto terminate and the officers of the newly created precincts must be appointed by the Commissioners' Court.

#### SUMMARY

The Commissioners' Court may abolish old justice precincts and re-divide the county into new justice precincts at any time, so long as there is a minimum of four and not more than eight justice precincts in the county. When such justice precincts are abolished the offices in the old precincts become vacant and the officers of the newly created justice precincts

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must be appointed by the Commissioners' Court.

Yours very truly,

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WTW:wb:wc

APPROVED:  
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