



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

September 10, 1949

Hon. J. M. Williams
County Auditor
Tarrant County
Fort Worth, Texas

Opinion No. V-899

Re: Validity of an optional
county road law election
order without the peti-
tion prescribed by law.

Dear Mr. Williams:

Your request for an opinion relating to Section 2 of the Optional County Road Law of 1947 is substantially as follows:

"Is the filing of the petition for the election with the Commissioners Court a condition precedent to the exercise of power to call the election?"

Section 2 of Article 6716-1, Vernon's Civil Statutes, a portion of the Act commonly referred to as the Optional County Road Law of 1947, is as follows:

"By a majority vote of its qualified voters, any county in this state, at an election held for that purpose, may adopt the provisions of this Act for the construction and maintenance of county roads and bridges and for the expenditure of the County Road and Bridge Fund. Such question shall be submitted to the qualified voters of such county at a general or special election by the Commissioners Court of such county, upon petition of a number of qualified voters of such county equal to ten (10) per cent of the number voting for Governor at the last preceding general election in such county, not less than thirty (30) days nor more than sixty (60) days after the petition is filed with the Commissioners Court. The ballot for such election shall read:

"'For the Optional County Road Law of 1947'; or

"'Against the Optional County Road Law of 1947.'

"If there be a favoring vote at such election, the provisions of this Act shall become effective with the official proclamation of the results of such election. In like manner, a county having voted to come under the provisions of this Act, may vote to abandon the provisions of this Act, but no election on the questions of adopting or abandoning the provisions of this Act shall be held oftener than every two (2) years."

The Commissioners' Court, being a court of limited jurisdiction, may not adopt the provisions of the Optional County Road Law of 1947 except by compliance with such Act. One of the requirements of said Act is that an election be held for the purpose of determining if a particular county is to participate. A prerequisite to the election is a petition therefor of a number of qualified voters equal to ten percent of the number voting for Governor at the last general election.

"Where a statute authorizes an election on specific questions when petitioned for, the presentation of such a petition, signed by the prescribed number of qualified voters and containing the proper averments, is a condition precedent to holding the election." 29 C.J.S. 92, Elections, Sec. 69.

In the case of Coffee v. Leib, 107 S.W.2d 406 (Tex.Civ.App.1937), at page 410, the court stated:

". . . the presentation of such petition is a condition precedent to holding the election and unless signed by the number of qualified electors prescribed by the statutes, the election will be void. The petition must contain all the averments necessary to give jurisdiction to call the election."

Hon. J. M Williams, page 3 (V-899)

This office in opinion No. 0-2750, dated October 1, 1940, stated:

"If a county comes within the provisions of Article 4478, this department construes that article to mean that a petition is a necessary prerequisite to the calling of an election for the purpose of voting bonds for the purposes enumerated in this statute."

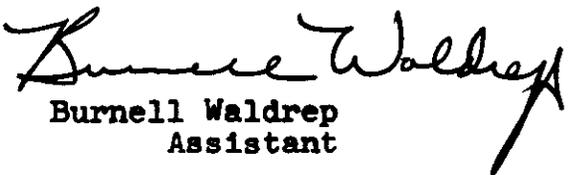
Inasmuch as the statute expressly requires the submission of a petition for an election, it is our opinion that the clear provisions of the Act makes the filing of such petition a condition precedent for such election.

SUMMARY

The filing of a petition of a number of qualified voters of a county equal to ten per cent of the number voting for Governor in the preceding general election is a condition precedent to the exercise of power to call an election pursuant to the Optional County Road Law of 1947. Art. 6716-1, V.C.S.

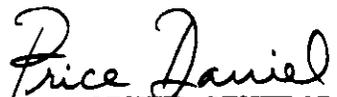
Yours very truly,

ATTORNEY GENERAL OF TEXAS

By 
Burnell Waldrep
Assistant

BW:eb:mw

APPROVED


PRICE DANIEL
ATTORNEY GENERAL