



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**JOHN BEN SHEPPERD
ATTORNEY GENERAL**

April 10, 1953

Hon. Frank R. Nye, Jr.
County Attorney
Starr County
Rio Grande City, Texas

Letter Opinion No. MS-18

Re: Authority of the commis-
sioners' court to approve
the bond of a constable
under the submitted facts.

Dear Sir:

You have requested an opinion on the authority of the commissioners' court to approve the bond of the duly elected constable under the following facts stated in your request:

"A Mr. Alvarez was duly elected to the post of Constable for a certain precinct in Starr County, Texas, by a majority of the votes in said precinct, and it was reported so by the Canvassing board and the information was disseminated. On the 17th of December, the County Clerk mailed certificates of election to the various officers elected, and among them was the certificate of election for Mr. Alvarez. On the 30th of December, Mr. Alvarez filed his bond of office with his sworn oath. The county commissioners' court were undecided as to whether said Constable had filed his bond within the prescribed time and whether they should approve the bond. . ."

Article 6881, Vernon's Civil Statutes prescribes the bond for each person elected to the office of constable and provides for its approval by the commissioners' court. Article 6883, Vernon's Civil Statutes, provides:

"Whenever any person elected constable shall neglect or refuse to give bond and take the official oath within twenty days after notice of his election, the office shall be deemed vacant."

Section 118 of the Texas Election Code (Art. 8.36, Vernon's Election Code) provides:

"After the canvass of the result of an election has been made as provided for in this title,

Hon. Frank R. Nye, Jr., page 2 (MS-18)

the county judge shall deliver to the candidate or candidates for whom the greatest number of votes have been polled for county and precinct officers a certificate of election, naming therein the office to which such candidate has been elected, the number of votes polled for him and the day on which such election was held and shall sign the same and cause the seal of the county court to be thereon impressed. . ."

In construing a similar provision to Article 6883 it was held in Flaten v. State, 56 Tex. 93 (1882) that a statute requiring a party elected to office to qualify and give bond within the prescribed period of time is directory, rather than mandatory, except in cases of neglect or refusal to qualify.

Under the facts submitted in your request the constable received his notice of election on December 17th and therefore filed his bond within the time prescribed by Article 6883. In view of the foregoing you are advised that the commissioners' court of Starr County is authorized to approve the bond under the facts submitted.

Yours very truly,

JOHN BEN SHEPPERD
Attorney General

By
John Reeves
Assistant

JR:am:wb