



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

WILL WILSON
ATTORNEY GENERAL

May 7, 1957

Honorable Crawford C. Martin,
Chairman, Senate Committee on
Legislative, Congressional and
Judicial Districts,
Capitol Station,
Austin, Texas

Opinion No. WW-118.

Re: Validity of House Bill 229
of the 55th Legislature.

Dear Senator Martin:

You have requested our opinion on the validity of House Bill 229 of the 55th Legislature. You stated in your request:

"I am sending you a copy of House Bill 229 with Committee Amendment #1. You will note that Committee Amendment #1 seeks to provide that the two Congressmen from Harris County will be elected at large from the eighth and twenty-second Congressional Districts, which districts shall compose Harris County.

"A question has been raised as to whether or not it is necessary that the county be divided into two Congressional Districts or can it be done in this fashion.

"We would appreciate your advising as to whether or not a congressional redistricting bill authorizing two Congressmen from Harris County, both to be elected at large over the County, violates any provision of the Federal or State Constitution or Statutes.

"This same question is relevant in reference to Senate Bill 69 which is currently pending in the Committee.

"We would appreciate your advice on this subject at the earliest possible time."

House Bill 229 is a bill to apportion the State of Texas into congressional districts and provide for the election of a member of the Congress of the United States from each district. The bill contains only one subject, and the caption properly informs members of the Legislature and everyone concerned with House Bill 229 of the matters contained in the body of the bill. Therefore, there is no constitutional objection to the form of House Bill 229.

Under the provisions of House Bill 229 as amended by the adoption of Committee Amendment No. 1, the Eighth and Twenty-second Congressional Districts will be composed of Harris County if the provisions of House Bill 229 are enacted into law.

Section 2 of the 14th Amendment to the Constitution of the United States provides in part:

"Representatives shall be apportioned among the several states according to their respective numbers. . . ."

While Congress at one time required states to apportion its congressional districts into contiguous and compact territories containing as nearly as practical, an equal number of inhabitants 72 U.S.C.A., § 3, 37 Stat. 14 - Smiley v. Holm, 285 U.S. 355, (1932); Wood v. Bloom, 287 U.S. 1, (1932); Watts v. O'Connell, 247 S.W. 2d 531 (Kentucky, 1952)7, Congress has now provided:

"Until a State is redistricted in the manner provided by the law thereof after any apportionment, the Representatives to which such State is entitled under such apportionment shall be elected in the following manner: (1) If there is no change in the number of Representatives, they shall be elected from the districts then prescribed by the law of such State, and if any of them are elected from the State at large they shall continue to be so elected; (2) if there is an increase in the number of Representatives, such additional Representative or Representatives shall be elected from the State at large and the other Representatives from the districts then prescribed by the law of such State; (3) if there is a decrease in the number of Representatives but the number of districts in such State is equal to such decreased number of Representatives, they shall be elected from the districts then prescribed by the law of such State; (4) if there is a decrease in the number of Representatives but the number of districts in such

State is less than such number of Representatives, the number of Representatives by which such number of districts is exceeded shall be elected from the State at large and the other Representatives from the districts then prescribed by the law of such State; or (5) if there is a decrease in the number of Representatives and the number of districts in such State exceeds such decreased number of Representatives, they shall be elected from the State at large." 2 U.S.C.A. § 2a, subdivision (c).

Under the Federal Constitution and Acts of Congress, it is left up to the individual states to redistrict the state into congressional districts, and Congress has provided that additional Representatives allocated to the state under congressional reapportionment must be elected by the state at large until a new districting statute dividing the state into a number of congressional districts allocated by the reapportionment has been enacted by the state. Koenig v. Flynn, 285 U.S. 375, (1932). We know of no provision, either in the State or Federal Constitutions or Acts of Congress which requires congressional districts to be composed of contiguous territories containing an equal number of inhabitants. Therefore, it is our opinion that the Legislature has the power to provide that Harris County shall elect two members of Congress rather than dividing Harris County by metes and bounds into two congressional districts.

In view of the foregoing, it is our opinion that the provisions of House Bill 229, of the 55th Legislature as submitted are constitutional and valid.

However, we should point out that Congress is the judge of its own membership, and we are informed that there has not been an arrangement resembling this type of apportionment of a state into congressional districts for over one hundred years. Therefore, this method may be questioned in Congress.

SUMMARY

The provisions of House Bill 229 of the 55th Legislature, redistricting the State into congressional districts wherein the eighth and

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twenty-second congressional districts will be composed of Harris County if enacted into law, is constitutional as submitted.

Yours very truly,

WILL WILSON
Attorney General of Texas

By *John Reeves*
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Assistant

JR:pf

APPROVED:

OPINION COMMITTEE

H. Grady Chandler, Chairman

J. C. Davis, Jr.

Jas. H. Rogers

REVIEWED FOR THE ATTORNEY GENERAL

By: Geo. P. Blackburn