



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

October 3, 1957

Mr. Coke R. Stevenson, Jr.
Administrator
Texas Liquor Control Board
Austin, Texas

Opinion No. WW-269

RE: In a local option election where the polls close at 7:00 P.M. would it be legal for the election judge to stand a clerk at the end of any line of voters at 7:00 P.M. and then permit all of those in line ahead of that clerk to come inside and cast their ballots as though they had been inside before the 7:00 P.M. closing time?

Dear Mr. Stevenson:

You have requested our opinion on the question of whether at the hour for closing the polls in a local option election, the presiding judge of the election may place a clerk at the end of any line of voters present and waiting to vote, and allow all those in front of the clerk to vote in the election.

The Texas Liquor Control Act, under which local option elections are held, provides that the "general election laws" are to be followed except where they conflict with the provisions of the Texas Liquor Control Act, Art. 666, Sec. 36, Vernon's Penal Code. The Texas Liquor Control Act does not provide for the hours of opening and closing the polls but the Texas Election Code, Article 2.01 provides as follows:

". . . In all elections, general, special, or primary, the polls shall be open from seven o'clock a.m. to seven o'clock p.m. in all counties having a population of one hundred

thousand (100,000) or more according to the last Federal Census and in all other counties the polls shall be opened at 8 a.m. and remaining open until 7 p.m. The election shall be held for one (1) day only."

The determination of the question which you have asked turns on what constitutes closing the polls. We have carefully researched the question and have been unable to find any decision in American Jurisprudence defining "closing the polls" which is not based upon a statutory definition.

After a careful consideration of the purposes and intents of the Texas Election Code, as set forth in Article 1.01, it is our opinion that the word "polls" as used in Article 2.01 of the Texas Election Code refers to the place in which the election is to be held. Adams v. Corwin, 118 Misc. 701, 195 N.Y.S. 41, 42 (1922). Accordingly, the provision providing that the polls shall be opened at seven a.m. means that the place where the election is to be held is to be opened for the purpose of receiving the votes of the electors, and that the building or place wherein the election is to be held shall remain open until 7 o'clock p.m. When the building or place is to be closed, i.e., the "closing of the polls," it is our opinion that all persons at the polls who are present and waiting to vote should be allowed to begin and complete the formal act of casting their ballots. We are of the further opinion that if the polling place is not sufficient to hold all persons who have presented themselves to vote at the time designated for the closing of the polls with due regard to the order and decorum of the election, the election judge may allow the overflow to remain outside, taking such precautions as necessary to see that no persons arriving after seven o'clock join the group of persons waiting to vote. One manner of preventing late-comers from joining the group would be to station a clerk outside to see that no persons who arrive after the hour for closing were allowed to vote.

SUMMARY

The closing of the polls within the meaning of the Texas Election Code means the closing of the room or building where the election is to be held, allowing all those at the polls waiting to vote, whether within or

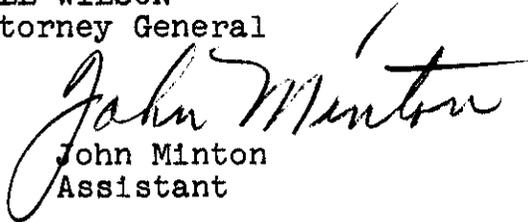
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without, to begin and complete the voting of their ballots. All other persons should be excluded, and a proper method of so doing is to station a clerk at the end of the line of voters.

Very truly yours,

WILL WILSON
Attorney General

BY


John Minton
Assistant

JM:dmp

APPROVED:

OPINION COMMITTEE:

George P. Blackburn, Chairman
C. K. Richards
Leonard Passmore
J. C. Davis

REVIEWED FOR THE ATTORNEY
GENERAL BY:

James N. Ludlum