



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

September 25, 1961

Hon. Fred P. Holub
County Attorney
Matagorda County
Bay City, Texas

Opinion No. WW-1149

Re: If one justice precinct is wet and a portion of a dry precinct is merged with said wet precinct, and that part of the dry precinct merged with the wet precinct has no residents, does that portion of the dry precinct merged with the wet precinct become wet?

Dear Mr. Holub:

Your request for an opinion on the following question:

"If one justice precinct is wet and a portion of a dry precinct is merged with said wet precinct, and that part of the dry precinct merged with the wet precinct has no residents, does that portion of the dry precinct merged with the wet precinct become wet?"

has been received by this office.

The provisions covering local option elections are set out in Article 666-32 et seq. V.P.C. These statutes were enacted by the Legislature under the authority of Article 16, Section 20 of the Texas Constitution, paragraphs (b) and (c).

In Goodie Goodie Sandwich, Inc. v. State, 138 S.W. 2d 906, (Civ. App., error dismissed, judgment corrected, 1940) Chief Justice Bond, speaking for the court, held, at page 909:

"It cannot be gainsaid that the Commissioners' Court had the power and authority to define, re-define, change, or alter the boundaries of precincts within the county, and to ascertain the facts necessary to the exercise of such powers; but it does not lie within the power of the Court to detach 'dry' territory from a 'dry' precinct and attach it to a 'wet' precinct, thereby making the detached territory 'wet', and allowing the sale, barter and exchange of prohibited liquors within the detached territory, perforce of the change."

Honorable Fred P. Holub, page 2 (WW-1149)

Consistent with this are Attorney General's Opinions Nos. 0-297 and 0-6880.

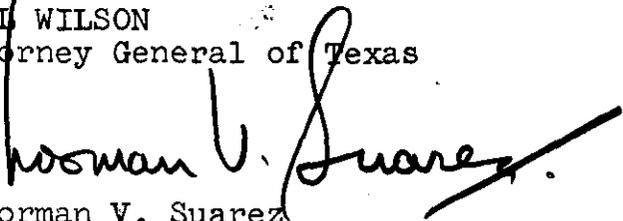
We do not believe that the absence of residents in the merged portion makes any difference as the cases uniformly hold that the status of the area at the time of the merger must remain the same until a local option election has been held as provided for in the statutes. Houchins v. Plainos, 130 Tex. 413, 110 S.W. 2d 549, (1937); Griffin v. State, 137 Tex. Crim. 231, 128 S.W. 2d 1197 (1939); Griffin v. Tucker, 102 Tex. 420, 118 S.W. 635 (1909); Goodie Goodie Sandwich, Inc. v. State, supra. See also 25 A.L.R. 2d 863.

S U M M A R Y

When one justice precinct is wet and a portion of a dry precinct is merged with said wet precinct and even though that part of the dry precinct merged with the wet precinct has no residents, the said portion of the dry precinct merged with the wet precinct remains dry.

Yours very truly,

WILL WILSON
Attorney General of Texas

By 
Norman V. Suarez
Assistant Attorney General

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APPROVED:

OPINION COMMITTEE
W. V. Geppert, Chairman

Pat Bailey
Tom Burrus
Gordon Cass

REVIEWED FOR THE ATTORNEY GENERAL
BY: Houghton Brownlee, Jr.