



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

WILL WILSON
ATTORNEY GENERAL

April 16, 1962

Honorable Charles J. Lieck, Jr.
Criminal District Attorney
Bexar County Courthouse
San Antonio 5, Texas

Opinion No. WW-1311

Re: Whether the Commissioners Court of Bexar County may authorize the use of voting machines for one political party at a primary election, and the use of paper ballots for another political party.

Dear Mr. Lieck:

You have asked the following questions:

- "1. Can the Commissioners Court of Bexar County authorize the use of voting machines for one of such parties at the Primary Election and the use of paper ballots for the other of such parties?"
- "2. If such use cannot be so authorized, may the Commissioners Court authorize the use of voting machines for both parties at the populous voting precincts of the county and paper ballots for both parties in the less populous precincts?"

You have further stated in your letter:

"It is the opinion of the Commissioners Court as expressed by formal resolution of such court that the number of voting machines owned by Bexar County is insufficient to provide each party with voting machines in each precinct in Bexar County; that the expense to be incurred in the purchasing, servicing and storing of additional voting machines is prohibitive; that there is insufficient time to procure such machines for use in the Primary Election. We add that no provision has been made in the 1962 budget for the rental or additional purchase of voting machines.

"The Commissioners Court of Bexar County, Texas, in 1941, adopted voting machines for use in elections in said

County, at which time 300 machines were rented from the Automatic Voting Machine Corporation and which machines were subsequently purchased from such company. Since that time Bexar County acquired additional voting machines and now owns 448 of such machines, 441 of which are in good working order, ready for use in such Primary Election."

Sec. 3, Art. 7.14, Texas Election Code, reads in part as follows:

"The Commissioners Court of any county in the State of Texas may adopt for use in elections and primary elections in at least three (3) of the larger voting precincts in voting strength in said county, any kind of voting machine approved by the Secretary of State and may adopt such voting machine at any time for use in such additional voting precincts in the county as it may deem advisable and thereupon such voting machines shall be used at any and all elections and primary elections, municipal, county, district, or state held in that county or any part thereof.
... " / Emphasis added /

Art. 7.14, Texas Election Code is derived from Art. 2997a, V.C.S., which latter article was repealed upon passage of the Texas Election Code. Art. 2997a, V.C.S. was enacted in 1930, Acts 41st Leg., 4th Called Session, Chap. 33, page 60. Sec. 3, Art. 2997a, V.C.S. is the basis for Sec. 3, Art. 7.14, Texas Election Code. Sec. 3, Art. 2997a, V.C.S. was amended in 1937, Acts 45th Leg., 2nd Called Session, Chapter 52, page 1953. In the original version of Sec. 3 of Art. 2997a, V.C.S. in 1930, and as amended in 1937, and as it appears today in Sec. 3, Art. 7.14, Texas Election Code, are found the following words:

". . . and thereupon such voting machine shall be used at any and all elections and primary elections, municipal, county, district or state held in that county or any part thereof. . . ."

This office, in Attorney General's Opinion No. WW-55, was asked whether the Commissioners Court of Rusk County could dispense with the use of voting machines in a forthcoming Special

Senatorial Election, and use paper ballots instead, where the Commissioners Court had previously adopted the use of voting machines as provided by statute. The Opinion, after citing Sec. 3, Art. 7.14, Texas Election Code, and underscoring the words quoted above, held:

"On the basis of the foregoing statute the Commissioners Court of Rusk County is not authorized to dispense with the use of voting machines at the forthcoming special Senatorial election and use paper ballots in lieu thereof. However, the Commissioners Court would have authority to rescind its previous order adopting voting machines and thereafter paper ballots could be used at all special, primary, and general elections held in Rusk County."

We understand from your letter that the Bexar County Commissioners Court in 1941 order the use of voting machines in all precincts of the county. The use of paper ballots by one political party in its primary election would not comply with the statute which requires the use of such voting machines at any and all elections and primary elections. Certainly, there should be no discrimination between political parties in the use of voting machines. We hold, in answer to your first question, that the Commissioners Court may not authorize the use of voting machines by one political party and the use of paper ballots by another political party in conducting their respective primary elections.

In answer to your second question, we would like to point out that under the order of the Commissioners Court now in force, all parties must use the voting machines in the primary elections in all precincts. However, as held in Opinion No. WW-55, the Commissioners Court may rescind its previous order directing the use of voting machines in all precincts. When that is accomplished, the county is back where it started, using paper ballots in all precincts for all types of elections. We see no reason why the Commissioners Court may not thereafter avail itself of the provisions of Sec. 3, Art. 7.14, Texas Election Code, and adopt the use of the machines in as many precincts as the county has machines available for both political parties. This will leave all precincts not affected by the last order still using paper ballots. The status of each precinct in the county with respect to the use or non-use of the voting machines would continue at every election to be held thereafter, subject to further orders of the Commissioners Court.

Other solutions to the county's voting machines problem may be found in Subdivision 6 of Art. 7.14, Texas Election Code, and in the cases of Bexar County v. Hatley, 136 Tex. 354, 150 S.W.2d 980 (1941) and Bexar County v. Mann, 138 Tex. 99, 157 S.W.2d 134 (1941).

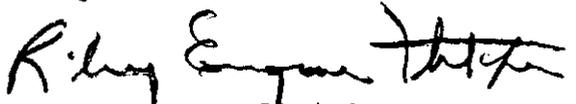
S U M M A R Y

The Commissioners Court may not discriminate between political parties in the use of voting machines.

If the procedure outlined in the opinion is followed, it will not be necessary to use paper ballots in all precincts in Bexar County. Voting machines may then be used in the more populous precincts on a non-discriminatory basis.

Yours very truly,

WILL WILSON
Attorney General of Texas

By 
Riley Eugene Fletcher
Assistant Attorney General

REF:jp

APPROVED:

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