



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

CR 313

**JOHN L. HILL
ATTORNEY GENERAL**

October 25, 1973

The Honorable Dolph Briscoe
Governor of Texas
State Capitol
Austin, Texas

Opinion No. H- 134

Re: Governor's appointive
power under §§ 4 and 5
of Senate Bill 52, 63rd
Legislature, creating
new judicial districts

Dear Governor Briscoe:

You have asked this office for an opinion concerning your appointive powers under certain new judicial districts created by Senate Bill 52 of the 63rd Legislature, (Acts 1973, 63rd Leg., ch. 316, p. 731).

You have referred us to Sections 4 and 5 of the bill, which amend Article 199a, Vernon's Texas Civil Statutes:

Sec. 4. " " [Article 199a, Vernon's Texas Civil Statutes], is amended by adding Sections 3. 041-3. 042 to read as follows:

'Sec. 3. 041. The 213th Judicial District, composed of the County of Tarrant, is hereby created.

'Sec. 3. 042. (a) The 214th Judicial District, composed of the County of Nueces, is hereby created.

'(b) The 214th District Court shall give preference to criminal cases. '

Sec. 5. " " [Article 199a, Vernon's Texas Civil Statutes], is amended by adding Section 3. 043 to read as follows:

" ' Sec. 3. 043. (a) The 215th Judicial District, composed of Harris County, is created.

" ' (b) The 215th District Court shall give preference to civil matters. ' "

"Sec. 7

"(c) The provisions of Section 4 of this Act take effect January 1, 1975.

"(d) The provisions of Section 5 of this Act take effect January 20, 1975. "

Your letter states:

"I respectfully request an official legal opinion of your Office as to whether I have any appointive power in connection with appointment of judges to these courts and, if so, when is the proper time to make these appointments? "

Article 5, § 28, of the Texas Constitution provides in part: "Vacancies in the office of Judges of the Supreme Court, the Court of Criminal Appeals, the Court of Civil Appeals, and District Courts shall be filled by the Governor until the next succeeding General Election. . . ."

Section 2.005 of Article 199a, V. T. C. S. , provides:

"The district judge of each new district created by this Act shall be appointed by the governor in the manner prescribed by the constitution and laws of the State of Texas and shall serve in such capacity until the next succeeding general election and until his successor has been duly elected and has qualified. "

We believe that the Legislature has manifested a clear and unambiguous intention that the judicial offices established in the above quoted provisions shall not become effective until January 1, 1975, and January 20, 1975, respectively. Postponing the effective date of this legislation was clearly within the

province and power of the Legislature. Norton v. Kleberg County, 231 S. W. 2d 716 (Tex. 1950); Rudco Oil & Gas Company v. LeMasters, 146 S. W. 2d 806 (Tex. Civ. App., Eastland, 1940, error dism'd. jud. cor.).

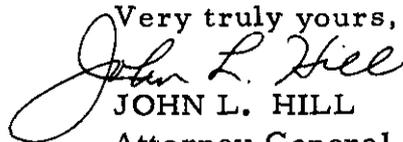
No vacancy could possibly occur in these offices until they become effective; and thus, they cannot be filled by the general election in 1974. It will be the authority and the duty of the Governor to make appointments to fill these offices when they become effective on January 1, 1975, and January 20, 1975, respectively, and to continue until the next general election, presumably in 1976.

Concerning the proper time for making such appointments, prospective appointments to these judicial offices can be announced, but they cannot be effectively made until the offices exist, which will occur at the time these office become effective on January 1 and January 20, 1975, respectively. Accordingly, your official appointments cannot be made until that time.

SUMMARY

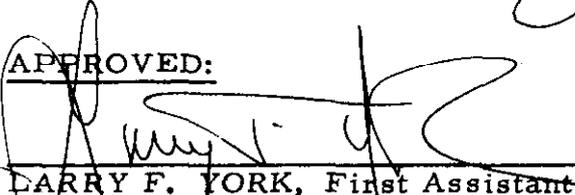
The judicial offices created by Section 4 of Senate Bill 52, 63rd Legislature, and made effective on January 1, 1975, and the judicial office created by Section 5 of Senate Bill 52, 63rd Legislature, and made effective on January 20, 1975, should be filled by appointment by the Governor, which appointment would only be effective at the time of the above-stated effective date of the offices.

Very truly yours,


JOHN L. HILL

Attorney General of Texas

APPROVED:


LARRY F. YORK, First Assistant


DAVID M. KENDALL, Chairman
Opinion Committee