



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**JOHN L. HILL
ATTORNEY GENERAL**

December 11, 1973

The Honorable Tim Curry
Criminal District Attorney
Tarrant County
Ft. Worth, Texas 76102

Opinion No. H- 181

Re: The law controlling local
option petitions issued
before, but filed after,
the effective date of new
legislation.

Dear Mr. Curry:

You have advised us that residents of five municipalities in a justice precinct which had recently voted "wet" obtained petitions from the county clerk for the purpose of calling elections to prohibit the sale of alcoholic beverages in those towns. All petitions were obtained prior to August 27, 1973, and the proponents apparently were advised they needed the signatures of only 25 per cent of the eligible voters. The petitions were "filed" with the county clerk after August 27, 1973, which was the effective date of Amendments to Article 666-32, Vernon's Texas Penal Code, (Acts 1973, 63rd Leg., ch. 219, p. 508) which, inter alia, changed the number of signatures required on a petition for a local option election from 25 per cent to 35 per cent of the eligible voters. Your first question is whether petitions issued before August 27, 1973, but returned after that date require signatures of 25 per cent or 35 per cent of the qualified voters before a local option election is required.

Article 666-32, V. T. P. C., as amended provides in part:

"The commissioners court of each county in the state, upon proper petition, shall order an election wherein the qualified voters of such county, or of any justice precinct, or incorporated city or town therein, may by the exercise of local option determine whether or

not the sale of alcoholic beverages of one or more of the various types and alcoholic contents shall be prohibited or legalized within the prescribed limits of such county, justice precinct, or incorporated city or town.

. . .

. . . When any such petition so issued shall within thirty days after the date of issue be filed with the county clerk bearing the actual signatures of as many as thirty-five percent of the qualified voters of any such county, justice precinct, or incorporated city or town, together with a notation showing the residence address of each of the said signers, together with the number that appears on his voter registration certificate, all of which information shall be in the actual handwriting of the signers of the petition, taking the vote for Governor at the last preceding general election as the basis for determining the number of qualified voters in any such county, justice precinct, or incorporated city or town, it is hereby required that the commissioners court at its next regular session shall order a local option election to be held upon the issue set out in such petition."
(emphasis added)

We are sympathetic to the situation in which the proponents of the election find themselves. However, we are not at liberty to consider the equities. Our only authority is to construe the law. And here we find ourselves faced with clear language of the statute and the precedent of Attorney General Opinion M-324 (1968). There petitions were issued before a general election, but were returned and filed after the election. In response to an inquiry concerning whether the last preceding general election was determined by reference to the date of issuance or to the date of filing, this office held that the date of filing was the appropriate date. In that opinion we said:

"In our opinion the instrument issued by the county clerk never becomes a petition signed by the voters until it is filed in the county clerk's office. The date of filing is the date that the petition becomes an official petition. It is the petition that confers the jurisdiction to call the election. cf: Powell v. Bond, County Attorney, 150 S. W. 2d 337 (Tex. Civ. App. 1941, error ref.); and see Bennett v. Moore, 157 S. W. 2d 515 (Ark. Sup. 1942), holding that it is the time of filing of a petition that will govern in determining the number of legal voters and the percentage thereof for determination of the calling of an election. Since the only petition on file was filed subsequent to the General Election of November 5, 1968, the petition must meet the test of 'twenty-five percent of the qualified voters taking the vote for Governor at the last preceding general election at which presidential electors were elected as the basis for determining the number of qualified voters in any such county, justice precinct, or incorporated city or town.' Under the facts submitted, the last presidential general election is November 5, 1968."

We believe the statutory language requiring that a petition "be filed with the county clerk bearing the actual signature of as many as thirty-five percent of the qualified voters" requires the conclusion that the law in effect on the date of filing likewise controls the percentage of voters which is required to sign the petition.

Your second question is whether the commissioners court must order an election at its next regular meeting after a petition is filed. In this regard you advise us that the county clerk often is unable to check and certify the petition before the regular meeting of the commissioners court.

Another portion of amended Article 666-32, V. T. P. C. provides:

"It shall be the duty of the county clerk to check the names of the signers of any such petition, and the voting precincts in which they reside to determine whether or not the signers of such petition were in fact qualified voters in such county, justice precinct, or incorporated city or town at the time such petition was issued, and to certify to the commissioners court the number of qualified voters signing such petition. No signature shall be counted, either by the county clerk or the commissioners court, where there is reason to believe it is not the actual signature of the purported signer, or that the voter registration certificate number is not correct or in the actual handwriting of the signer, or that it is a duplication either of name or of handwriting used in any other signature on the petition, and no signature shall be counted unless the correct residence address of the signer is shown in the actual handwriting of the signer and unless it is signed exactly as the name of the voter appears on the official copy of the current list of registered voters for the voting year which the petition is issued.

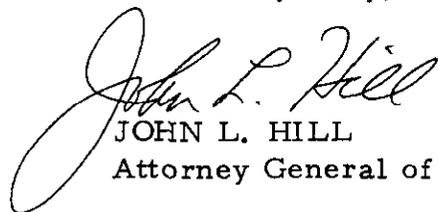
"The minutes of the commissioners court shall record the date any such petition is presented, the names of the signers thereof, and the action taken with relation to the same."

The commissioners court is required to order an election only on presentation of a proper petition. The statute provides guidelines for the county clerk and the commissioners court to use in ascertaining the authenticity of the signatures. We believe the commissioners court must order an election at its first regular meeting after the petition is certified by the county clerk. Ellis v. Vanderslice, 486 S. W. 2d 155 (Tex. Civ. App. Dallas, 1972, no writ).

S U M M A R Y

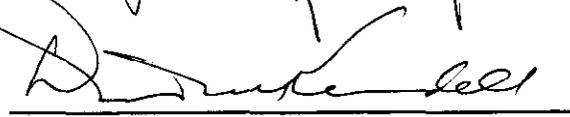
The law which is effective on the date a local option petition is filed determines the number of signatures required. If the petition is in the correct form and contains the required number of signatures, the commissioners court must order an election at its first regular meeting after the county clerk certifies the number of qualified voters signing the petition.

Yours very truly,


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