



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

**JOHN L. HILL  
ATTORNEY GENERAL**

April 25, 1974

The Honorable Lynn Cooksey  
District Attorney  
412 Texas Blvd.  
Texarkana, Texas 75501

Opinion No. H- 282

Re: Whether Articles 2.04b and  
2.05 of the Election Code require  
that boundaries of county election  
and commissioners precincts be  
made to conform to city ward and  
election precinct boundaries .

Dear Mr. Cooksey:

You have asked whether it is mandatory, under Articles 2.04b and 2.05 of the Election Code, Vernon's Texas Civil Statutes, for the commissioners court to change the boundaries of existing county election and commissioner precincts to conform to the boundaries of newly formed city wards and election districts within the city of Texarkana.

You advise that in August of 1969, the commissioners court re-established all election precincts of the county in accordance with Article 2.04 of the Election Code. Within the city of Texarkana, which has a population in excess of 10,000 and is divided into six city wards, four wards, because of the excessive number of qualified voters, were each divided into two county election precincts. The city councilmen were elected at large and not from one man wards or precincts.

In January, 1972, the Commissioners Court reformed commissioners precincts to conform to the one-man, one-vote mandate of the United States Supreme Court. New commissioner precinct lines were made to conform to the then existing election precinct lines.

In December of 1972, the city council of the city of Texarkana made drastic changes in the boundaries of all six of the city wards in order to absorb newly annexed areas and to give each ward an equal number in population. In February of 1973, the city council, in calling for an election

for city officers, provided for twelve new city election precincts, dividing each of the six new wards into two election precincts.

You state, "The new city election precincts bear little resemblance to the previously established county election precincts." Apparently the boundaries of nine of the twelve new city election precincts do not coincide with county election precinct boundaries and the city has requested the commissioners court to change the boundaries of the county election precincts within the city to conform to the new city wards and city election precincts.

Article 2.04 of the Election Code provides, in part:

"(a) Each county shall be divided into convenient election precincts by the Commissioners Court of the county, each of which precincts shall be differently numbered and described by natural or artificial boundaries or survey lines by an order entered upon the minutes of the Court. At any July or August term, the Court may make such changes in the election precincts as they deem proper, by such order entered upon the minutes of the Court. When such an order is entered, they shall immediately thereafter publish in some newspaper in the county for three consecutive weeks a notice of the entry of such order, giving a brief description in general terms of the changes made, without the necessity of including in such notice the field notes or other detailed description of the precinct boundaries. If there be no newspaper in the county, then copy of such order shall be posted in some public place in each election precinct in the county which is affected by the order.

"(b) No election precinct shall be formed out of two or more justice precincts or commissioners precincts, nor out of the parts of two or more justice precincts or commissioners precincts; and no election precinct shall be formed out of two or more congressional districts or

state senatorial districts or state representative districts, nor out of the parts of two or more such districts. If in September of any year there exists any election precinct in the county which does not comply with the foregoing requirements, the commissioners court shall make the necessary changes before the first day of October, either at a regular meeting or at a special meeting called for that purpose; and the order shall be published as provided in Paragraph (a) of this section. Subject to the provisions of the first sentence of this paragraph, no election precinct shall have resident therein less than 100 nor more than 2000 voters as ascertained by the number of registered voters for the last preceding presidential general election year; provided, however, that in precincts in which voting machines or devices have been adopted for use in accordance with Section 79 or Section 80 of this Code, the maximum number of voters shall be 3000. There shall be a minimum of one election precinct wholly contained within each commissioners precinct." (Acts 1973, 63rd Leg., ch. 542, p. 1408).

"(c) In cities and towns having ten thousand or more inhabitants, each ward shall constitute an election precinct unless there shall reside in said ward more than two thousand qualified voters. In such cities and towns, no precinct shall be made out of parts of two wards; and no precinct shall include territory outside the corporate limits of the city or town unless the Commissioners Court finds that adjacent unincorporated territory is so situated that it cannot be formed into or included within an election precinct wholly outside the city, of suitable size and shape and containing a suitable number of voters. If the Commissioners Court finds this condition to exist, it may include such territory in a precinct or precincts formed within the city or town, and the finding of the Commissioners Court shall be conclusive." (Acts 1967, 60th Leg., ch. 723, p. 1863).

Article 2.05 provides:

"The election precincts for municipal elections and the location of the polling place in each precinct shall be designated by the governing body of the municipality. The governing body may combine two or more county election precincts into one municipal precinct, but shall not include parts of one county precinct in more than one municipal precinct. The certified list of qualified voters for all county election precincts in which voters reside who are to vote at a polling place designated by the governing body shall be used at such polling place. In all cities and towns in which the number of voters at the last general municipal election does not exceed four hundred in number, only one polling place shall be opened at any municipal election; and all officers of such cities and towns to be elected shall be voted for at such polling place."

Also pertinent is language of Article 5, § 18, of the Texas Constitution which requires that each county in the State be divided from time to time "for the convenience of the people" into not less than four nor more than eight precincts to be occupied by a justice of the peace and a constable and, in like manner, into four commissioners precincts.

As we construe the statute, it was the intent of the Legislature that the county election precincts coincide as much as possible with the city wards. This normally would be achieved by cooperation between the two. If a cooperative effort fails to provide the needed changes, then, one must first look to the Constitutions of the United States and of this State to determine which local governmental entity is required to make the necessary adjustments.

Any scheme for districting a county into commissioners districts is subject to the mandates of Avery v. Midland County, 390 U.S. 474 (1968) in which the one-man one-vote requirement of Reynolds v. Sims, 377 U.S. 533 (1964) applied to apportionments for local government as well as state legislatures.

"Although the forms and functions of local government and the relationships among the various units are matters of state concern, it is now beyond question that a State's political subdivisions must comply with the Fourteenth Amendment . . . .

"When the State apportions its legislature, it must have due regard for the Equal Protection Clause. Similarly, when the State delegates lawmaking power to local government and provides for the election of local officials from districts specified by statute, ordinance or local charter, it must insure that those qualified to vote have the right to an equally effective voice in the election process. . . ." (390 U. S. at 480)

In Attorney General Opinion H-32 (1973) we held that the holding of Avery v. Midland County, supra, applied to the election of commissioners and that it was not permissible for the members of the commissioners court to be apportioned among single-member districts of substantially unequal population.

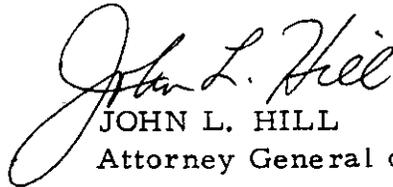
The county government also has a state constitutional duty to draw boundaries for commissioner precincts and justice of the peace precincts. Texas Constitution, Article 5, § 18. To the extent that a city election precinct crosses justice of the peace and commissioner precinct lines and thus would require the redrawing of these constitutionally mandated districts, the city is under an obligation to revise its precinct boundaries to avoid the conflict. You have not advised us whether this is the situation in Bowie County.

It is our opinion, in this case, that the city has the primary duty to draw its precinct lines to conform to those of the county. Of course, since election precincts are the building blocks on which larger districts are constructed, it may be possible that some cities whose councilmen are elected by the voters of a particular district would have a constitutional duty to alter their precinct lines in an effort to conform to the one-man, one-vote principle. According to the facts you have submitted, that is not the situation in this case.

SUMMARY

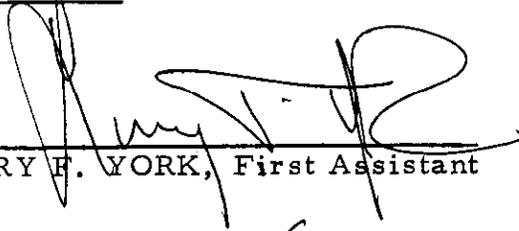
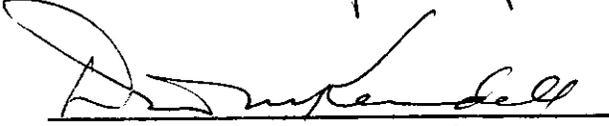
A county is not required to alter its election precincts, which were drawn in contemplation of Avery v. Midland County, to conform to the election precincts of a city which does not elect its councilmen by individual districts.

Very truly yours,



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APPROVED:

  
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