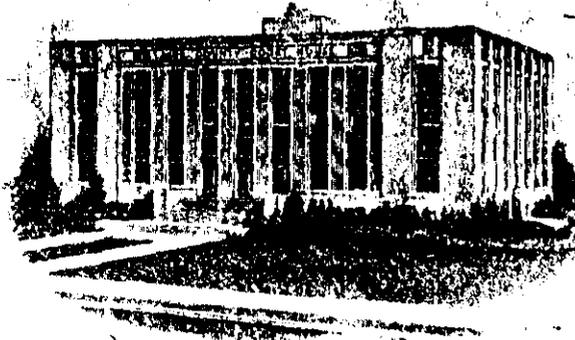


# JACK COUNTY



To # 15138  
MBJ

MICHAEL G. MASK  
COUNTY ATTORNEY

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RD-328

JACKSBORO, TEXAS

February 21, 1992

RECEIVED

FEB 28 92

Attorney General's Office  
P.O. BX 12548  
Austin, TX 78711-2548

Opinion Committee

Re: Request for Opinion on Article 5 Section 18(a) of Texas Constitution:  
Is there only 1 elected constable for each Justice of Peace Precinct?

Dear Attorney General:

## HISTORICAL/FACTUAL BACKGROUND

On April 10, 1989, the County Commissioners' Court of Jack County decided that it was in the best interest of the people of the county to abolish the old precincts wherein we had Justices of the Peace and adopt a new Justice of the Peace precinct. That plan had to be submitted to the U.S. Department of Justice for their approval prior to its enactment pursuant to 1965 Voting Rights Act.

This plan was submitted to the Justice Department in September, 1989. No issue was raised by the Justice Department as to the form, content, or method of the alterations. The plan was approved by them in November, 1989.

On November 27, 1989, the Commissioners' Court signed an Order which, among other action, abolished the old precincts and created a new "justice of the peace precinct" which had as its boundaries the respective county lines.

The apparent intention, and in fact, the clear wording of all the documents signed by the Commissioners' Court in the matter deals with the office and precinct for Justices of the Peace. Jack County never mentioned the constables. Thus Jack County would, it was believed, be served by one county-wide justice of the peace precinct and 4 constable precincts.

In 1990, Justice Nolan Dunlap ran for and was elected to the new office of Justice of the Peace, Precinct 1. The Constables' terms of those in office on November 27, 1989 would expire on December 31, 1992.

In the last few weeks, the Commissioners' Court voted to ask the assistance of a firm to assist them in the redistricting of the county's commissioner precincts. On Tuesday, February 11, 1992, the County Judge's office received the preliminary report by this firm and began to then research the steps necessary to adjust or realign the commissioner precincts. In the process of doing so the County Judge discovered by reading Article 5 Section 18 (a) in its entirety that it appeared that when the Court established one county-wide "justice of the peace precinct" they thereby also automatically reduced the number of constable positions.

Article 5, Section 18(a) of the Constitution provides in part:

Each county ... in the State with a population of less than 18,000, according to the most recent federal census, from time to time, for the convenience of the people, shall be designated as a single precinct or, if the Commissioners Court determines that the county needs more than one precinct, shall be divided into not more than four precincts ...In each such precinct there shall be elected one Justice of the Peace and one Constable [emphasis added]...

Section (c) thereof further provides:

When the boundaries of justice of the peace and constable precincts are changed, each Justice and Constable in office on the effective date of the change, ...shall serve in the precinct in which the person resides for the term to which each was elected or appointed...

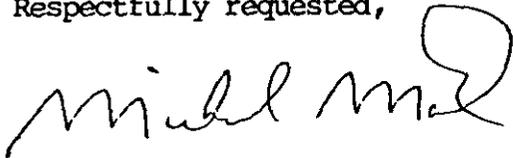
My research and that of the County Judge shows no case law specifically on this issue. However, the law on its face appears without dispute i.e., there is only 1 elected constable in a Justice of the Peace Precinct. Presently in Jack County, we have 11 candidates running for 4 Constable offices which appear to be illegal.

QUESTIONS ADDRESSED TO ATTORNEY GENERAL

- 1) Is it a correct interpretation of Texas Constitution Article 5 Section 18 (a) that only 1 elected constable exists in each Justice of the Peace Precinct?
- 2) Despite lack of desire or intention has the Commissioners' Court of Jack County created/eliminated all constable positions but one when it legally altered Justice of the Peace lines?
- 3) Can the Attorney General render an opinion of whether it is necessary to supplement or re-submit this result to U.S. Department of Justice pursuant to 1965? (Please note language of Department of Justice letter attached.)

We have already received the opinion of the Secretary of State concerning elections and ballots (see attachment).

Respectfully requested,



Michael G. Mask  
Jack County Attorney

MGM;bgm  
enclosure