

# Office of the County Attorney

Rains County, Texas

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January 9, 2001

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JAN 17 2001

RQ - 0339 - JC  
MLC-28

The Honorable John Coryn  
Attorney General  
300 W. 15<sup>th</sup> Street  
Austin, Texas 78701

OPINION COMMITTEE

Via CMRRR No. 70993220000140701313

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JAN 17 2001

OFFICE OF THE ATTORNEY GENERAL  
EXECUTIVE ADMINISTRATION

FILE # ML-41846-01

I.D. # 41846

Dear Mr. Coryn:

I, Robert Vitiow, County Attorney with Felony Responsibilities, respectfully submit the following to your office and requests on behalf of the County and request that you issue an opinion on the same.

## QUESTIONS

When a new census reflecting a population of 8,000 persons or more is released in the middle of the elected term of a county clerk which performs the duties of both a district and county clerk, is the clerk allowed to complete the term to which she was elected or is the office of the clerk required to be split immediately upon the release of the new census information?

If the office is required to be split immediately upon release of the new census, does the current clerk become the district clerk, the county clerk, or neither?

If the office is required to be split immediately upon release of the new census, is a new election required for the position vacated or is the vacated position filled by appointment?

## FACTS

The Rains County Clerk is a Joint Clerk, i.e., performs the duties of both the County and District Clerk. The present Clerk was elected to a four-year term of office which began on January 1, 1999, and will end on December 31, 2002.

It is anticipated that the results of the official census just completed will reflect a population in Rains County of at least 8,000 persons. The census results are expected to be released prior to the expiration of the Rains County Clerk's elected term.

## LAW

The Texas Constitution expressly states that an elected District Clerk "shall hold his office for four years, subject to removal by information, or by indictment of a grand jury, and conviction of a petit jury." Texas Constitution Art.

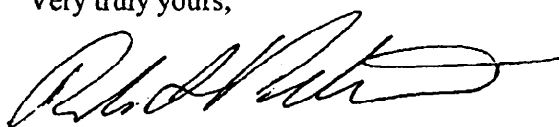
V, § 9, as Amended. The Texas Constitution further provides that an elected County Clerk shall hold his office for four years. Texas Constitution Art. V, § 20, as Amended.

The Texas Government Code mandates that “a county with a population of less than 8,000 *shall* elect a single clerk to perform the duties of the district clerk and the county clerk,” but permits separately elected offices subject to this mandate to remain separate “if a majority of the qualified voters in the county vote to keep the offices separate at an election held for that purpose.” Tex. Govt. Code § 51.501.

Section § 51.501(b) further provides that such an “election *may not prevent* a county clerk, district clerk, or joint clerk from serving the full term of office to which the clerk was elected.”  
Tex. Govt. Code § 51.501(b).

Moreover, Section § 51.501(c) further provides that “[t]he commissioners court of a county . . . *may not* take action to prevent a district clerk, county clerk, or joint clerk from serving the full term of office to which the clerk was elected. Tex. Govt. Code § 51.501(c).

Very truly yours,

A handwritten signature in black ink, appearing to read 'Robert F. Vititow', with a long horizontal flourish extending to the right.

Robert F. Vititow,  
Rains County Attorney