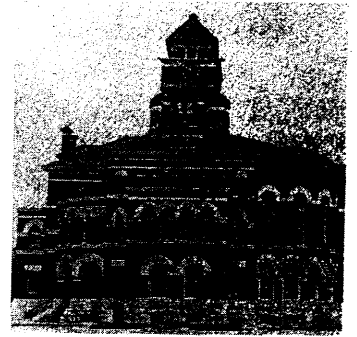


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GONZALES COUNTY
COURTHOUSE - 1895

March 11, 2003

RQ-0027-GA

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OPINION COMMITTEE

Ms. Susan Gusky
Opinion Committee Chair
Office of the Attorney General
P. O. Box 12548
Austin, Texas 78711-2548

FILE # ML-43029-03
I.D. # 43029

Re: Procedure for submitting proposals on the
ballot for stock law elections

Dear Ms. Gusky:

I am requesting that the office of the Attorney General of Texas issue an opinion in response to the following question:

“Can an election to determine if cattle are to be permitted to run at large in a county, held pursuant to Section 143.071 of the Texas Agriculture Code, be combined in a single ballot proposal along with an election to determine if horses, mules, jacks, jennets, donkeys, hogs, sheep or goats are to be permitted to run at large in a county pursuant to Section 143.021 of the Texas Agriculture Code?”

A petition in favor of the imposition of stock law, asking the Gonzales County Commissioners Court to hold an election to determine if cattle were to be permitted to run at large in Gonzales County, which petition was filed pursuant to the provisions of Section 143.071 of the Agriculture Code, was presented to the Gonzales County Commissioners Court on September 9, 2002. A copy of this petition is attached hereto as Exhibit “A”.

A separate petition in favor of the imposition of stock law, asking the Gonzales County Commissioners Court to hold an election to determine if horses, mules, jacks, jennets, donkeys, hogs, sheep or goats were to be permitted to run at large in Gonzales County, which petition was filed pursuant to the provisions of Section 143.021 of the Agriculture Code was presented to the Gonzales County Commissioners Court at the same time. A copy of this petition is attached hereto as Exhibit “B”.

In response to the petitions, an order of election was read and adopted by the Gonzales County Commissioners Court on September 9, 2002. The order set the election for November 5, 2002, to be held in conjunction with the General Election. A copy of the order of election is attached hereto as Exhibit "C".

The stock law election was held in conjunction with the General Election and was presented in the form of a single proposition which appeared on the ballot as follows:

"Adoption of the stock law prohibiting cattle, horses, mules, jacks, jennets, donkeys, hogs, sheep or goats from running at large."

The voter had a choice to vote "For" or "Against" the single proposition. A copy of the proposition as it appeared on the ballot is attached hereto as Exhibit "D". The proposition passed with 2,560 votes "for" the proposition and 757 votes "against" the proposition. I felt that I should determine the validity of the stock law prior to receiving a criminal complaint from a law enforcement agency setting out a violation of the stock law.

The Agriculture Code sets out the procedure for petitioning for stock laws in two sections. Section 143.071 covers the procedure for petitioning for a stock law for cattle (and domestic turkeys in some counties) and Section 143.021 covers the procedures for petitioning for a stock law for other animals that can be subject to such regulation. Stock laws (or the absence of stock laws) are relied upon in civil disputes and the violation of a stock law may be prosecuted as a criminal offense. The Code sets separate criminal penalties for violation of the stock laws in Section 143.034 and 143.082.

Upon examination, the form of the proposition on the ballot does not follow the structure of the local option provisions set out in the Agriculture Code. There were two separate petitions filed with the Court to call for the elections. The petitions were based on two separate sections in the Agriculture Code. There is no specific provision in Chapter 143 of the Agriculture Code that allows the combining of elections into a single ballot proposition.

I could not find a case in point, but a similar question was considered by the Court in Lock v. Morris, 287 SW2nd 500, (C.C.A. Texarkana - 1956). In that case the petitions to the Commissioners Court combined the different kinds of livestock enumerated in Articles 6930 and 6954, but stated the petitioners requested an election under Article 6930 and 6954, enumerating the kinds of livestock named in both articles. The order of the election required a separate ballot for livestock in Article 6930 and a separate ballot for cattle under Article 6954. The Court approved the use of separate

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Attorney General
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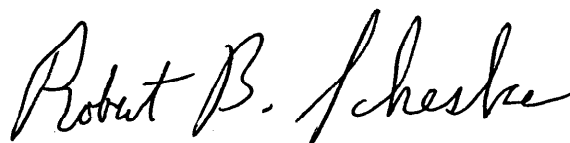
ballots. While there is probably no reason to require a separate "ballot" for each question, there should have been a separate proposition on the ballot for each question called for by the petitions.

After reviewing the petitions and the statutes, I am of the opinion that the two propositions to be determined cannot be combined into a single ballot proposition. By combining the two propositions, a person could vote only for both propositions or against both propositions. There was no way for a voter who wished to vote "for" one proposition and "against" the other to express his desires.

Should you determine that the form of the ballot used by Gonzales County in its stock law election on November 5, 2002, is improper, a second question would arise as to whether the stock law enacted by Gonzales County is valid. Also, if it is valid, would it be valid to the extent that violations of the enacted stock law could be prosecuted as criminal offenses.

Thank you for your consideration and attention to this request. Please contact my office if you require any further information.

Yours very truly,

A handwritten signature in black ink that reads "Robert B. Scheske". The signature is written in a cursive style with a large, prominent initial "R".

ROBERT B. SCHESKE

RBS:rr
Enc