

RECEIVED

MAR 22 2017

OPINION COMMITTEE

William Porter
Assistant Criminal District Attorney
wporter@fanninco.net

Fannin County
Criminal District Attorney

Richard E. Glaser
reglaser@fanninco.net

FILE # ML-48133-17
I.D. # 48133

John B. Setterberg
Assistant Criminal District Attorney
jsetterberg@fanninco.net

Benjamin I. Kaminar
Assistant Criminal District Attorney
bkaminar@fanninco.net



Don Hoover
Assistant Criminal District Attorney
dhoover@fanninco.net

Phone: (903)583-7448

101 E. Sam Rayburn Drive, Suite 301
Fannin County Courthouse
Bonham, Texas 75418

Fax: (903) 583-7682

RQ-0154-KP

March 17, 2017

The Honorable Ken Paxton
Attorney General of Texas
Attn: Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Re: Request for an opinion regarding effect of stock law elections held under prior law

Dear Attorney General Paxton:

I am requesting your opinion regarding the effect of stock law elections held in 1918 in relation to the current Agriculture Code. The questions presented are:

1. Did the Legislature's 1981 adoption of a non-substantive revision and reorganization of certain statutes into the current Agriculture Code effect a legislative repeal of local stock law elections held under the predecessor statutes?
2. If not repealed, do the local stock law elections held under the predecessor statutes constitute adoption of the corresponding subchapters under the current Agriculture Code?

Background

Beginning in the early 1900s, various subdivisions within Fannin County, both municipalities and precincts, held a series of elections to determine whether or not to adopt stock laws prohibiting various specified classes of animals from running at large (i.e, becoming "closed range"). In 1918, a pair of countywide elections were held in which stock laws were adopted prohibiting various specified classes of animals from running at large. Since the 1918 elections, the Legislature has amended the statutes authorizing local stock laws, with the most recent substantive revision being the 1981 adoption of the Agriculture Code. This office has examined the commissioners' court minutes of the prior elections (copies enclosed as exhibits "A" and "B") and compared them to the stock law election statutes as they existed at the time of the elections

and conclude that they complied with the statutes at the time. The two elections prohibited the running at large of hogs, sheep, and goats in one election and horses, mules, jacks, jennets, and cattle in the other. In what has recently become an annual Fannin County tradition, this office has been repeatedly asked whether Fannin County is currently an open or closed range county. Rather than continuing this ritual in perpetuity, we now ask for an Attorney General's opinion regarding the questions presented above in hopes of finally putting the matter to rest.

Legal Arguments and Authorities

Chapter 143 of the Agriculture Code codifies the various predecessor statutes dealing with livestock and local stock laws and is further divided into subchapters dealing with specific groups of livestock. Subchapter B concerns horses, mules, jacks, jennets, donkeys, hogs, sheep, and goats while Subchapter D concerns cattle and domestic turkeys. The predecessor statutes had separate chapters dealing with different groups, with hogs, sheep, and goats being in one chapter and horses, mules, jacks, jennets, and cattle in another. The current Agriculture Code additionally contains specific ballot language that differs from that in the predecessor statutes. Throughout Chapter 143, various sections refer to adoption of a specified subchapter, including that the adoption of the specified subchapter may be a result of the election (e.g., TEX. AG. CODE. ANN. §143.024). Under the current Agriculture Code, the various enforcement sections of the stock laws are contingent upon the subchapter having been adopted at a stock law election (e.g., TEX. AG. CODE. ANN. §143.074). The statutes in effect at the time of Fannin County's stock law elections were not divided into the current subchapters and therefore do not refer to adoption of any subchapter, but did contain enforcement articles that were contingent upon the stock law being adopted.

The Code Construction Act contains a saving provision that specifies that the reenactment, revision, amendment, or repeal of a statute does not affect the prior operation of the statute or any prior action taken under it. TEX. GOVT. CODE ANN. §311.031(a)(1) (2015). As applied here, this office believes that the elections adopting stock laws under the predecessor statutes constitute actions taken under a repealed statute and are thus not affected by the repeal. If the prior elections are unaffected by the recodification and repeal of the predecessor statutes, it seems to be an absurd result that the prior elections prohibiting livestock from running at large would be valid but that the enforcement mechanisms would no longer be active.

Conclusion

I request your assistance in determining whether the local stock law elections held under the statutes in effect in 1918 are still valid and if so, whether they constitute adoption of the subsequently codified subchapters of the Agriculture Code.

I respectfully request your opinion regarding these issues.

Sincerely,



Richard E. Glaser
Fannin County Criminal District Attorney