

CAMERON COUNTY DISTRICT ATTORNEY

Luis V. Saenz

District Attorney

RECEIVED

By Opinion Committee at 2:30 pm, Aug 15, 2022

August 15, 2022

Via U.S. Mail & Electronic Mail

Office of the Attorney General
The Honorable Ken Paxton
Attention Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548
E: opinion.committee@oag.texas.gov

RQ-0472-KP

FILE# ML-49161-22

I.D.# 49161

RE: *Request for Attorney General's Opinion regarding implications of an election to modify term lengths of city leadership under Article XI, §11 of the Texas Constitution.*

Dear Attorney General Paxton:

I write to request an opinion on behalf of the Honorable Gilberto Hinojosa, City Attorney for the Combes, Texas. The issue relates to the application and implications of an election under Article XI, §11 of the Texas Constitution.

Recently, the City of Combes, Texas, held an election authorized under Texas Constitution art. XI, §11, seeking to extend the terms of office for the membership of the city council. Specifically, the ballot proposition, listed as Proposition A on the ballot, stated:

To Extend Combes Mayor & Commissioners Terms from 2 to 4 years

[] For

Cameron County Administration Building
964 E. Harrison Street ♦ Fourth Floor ♦ Brownsville, Texas 78520
Mainline: 956.544.0849 Fax: 956.544.0869

Against.

See Attachment 1, Sample Ballot from May 7, 2022 Special and General Election. A number of the members of the City Council also stood for election for their office during this election. Specifically, the ballot stated:

Commissioner,
Vote for None, One, two or Three

- Mark David
- Kenneth P. Stolar
- Olga H. Montes
- David Longoria
- Patricio Verde
- Carlos E. Cordova.

Id. Questions have arisen regarding these matters.

QUESTION PRESENTED:

1. Do the city council members elected during the same election as the art. XI, §11 matter, serve 2 or 4 year terms?
2. Was the City of Combes' 2022 Art. XI, §11 election valid given that the language approved by the voters did not have an enabling date?

DISCUSSION:

As to the first question, the members of the Combes Commission elected in the most recent 2022 election were elected to serve 2 year terms of office. They will not qualify for a 4 year term until they stand

for election in the next general election. A municipal government is permitted under Article XI, §11 to modify the terms of office of its managing body. *See* Tex. Loc. Gov't Code § 22.035 (West 2022) (stating “[t]he mayor and aldermen of the municipality are elected for a term of two years unless a longer term is established under Article XI, Section 11, of the Texas Constitution) and Loc. Gov't Code Ann. § 24.023(a) (West 2022)(stating “[t]he mayor and commissioners of the municipality serve for a term of two years unless a longer term is established under Article XI, Section 11, of the Texas Constitution. Tex.).

Tex. Const. art. XI, § 11 (a) provides that “a city, town or village operating under the general laws *may provide by majority vote of the qualified voters voting at an election called for that purpose, for a longer term of office than two (2) years for its officers, either elective or appointive, or both, but not to exceed four (4) years...*”

The Constitution further provides that “[a] municipality so providing a term exceeding two (2) years but not exceeding four (4) years for any of its non-civil service officers **must elect all of the members of its governing body by majority vote of the qualified voters in such municipality.”** Tex. Const. art. XI, § 11(b).

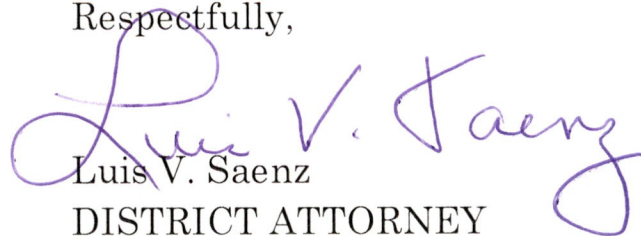
It necessarily follows that the officer holders (commissioner/alderman) must stand for election after the election extending the term of office occurs. Otherwise, the provision relating to these matters would be similar to that provided for in the changes in types of governments, Commission to Aldermanic and Commission to City Manager. *cf.* Tex. Loc. Gov't Code Ann. § 24.071(c)(West 2022) (stating “[i]f a Type C general-law municipality adopts the aldermanic form of government, the mayor and two commissioners holding office immediately before the election continue to hold office as mayor and aldermen for the remainder of their terms.”) *and* Tex. Loc. Gov't Code § 25.051(a) (West 2022) (stating “an elected officer serving at the time of the adoption of the city manager form of government may continue to serve until the expiration of the officer's term.”).

Furthermore, the Attorney General has opined on the application of Art. XI, §11 to home rule cities and provided that “Article XI, section 11(b) of the Texas Constitution requires a municipality that has lengthened its non-civil service officers' terms of office to fill a vacancy by majority vote of the qualified voters at a special election.” Op. Tex. Att’y Gen. No. GA-0585 (2007). The use of the phrase “majority vote of the qualified voters at a special election” implies that the election occurs after the change in the length in terms.

In regards to the second question, irrespective of the language associated with the art. XI, § 11 (a) election provision not having an enabling date, it is nevertheless valid and the changes authorized by said election are valid. “The common law protects the integrity of the election with a minimum standard for the ballot language.” *Dacus v. Parker*, 466 S.W.3d 820, 823 (Tex. 2015) In questioning the “sufficiency of the ballot description, the issue is whether the ballot substantially submits the question ... with such definiteness and certainty that the voters are not misled.” *Dacus v. Parker*, 466 S.W.3d 820, 826 (Tex. 2015). In the immediate case at hand, the plain meaning of the ballot provision provides notice that after the ballot measure is approved, the terms of the elected officials will be extended to 4 years. Cf. *Arredondo v. City of Dallas*, 79 S.W.3d 657, 667 (Tex.App.-Dallas 2002, pet. denied) (stating “[w]hen the construction of municipal ordinances is involved, as when statutory construction is involved, our primary duty is to carry out the intentions of the municipality's legislative body). Consequently the language does not fail.

Despite my office’s analysis of this matter, I would very much appreciate it if you could evaluate and render a response for the good people of the City of Combes, Texas.

Respectfully,


Luis V. Saenz
DISTRICT ATTORNEY

SAMPLE BALLOT
(BOLETA DE MUESTRA)

Special and General Election
(Elección General y Especial)
Cameron County, Texas
(Condado de Cameron, Texas)
May 7, 2022
(7 de mayo de 2022)
Official Ballot
(Boleta Oficial)

INSTRUCTION NOTE:

Vote for the candidate(s) / statement(s) of your choice in each race by darkening in the oval (●) provided to the left of the candidate(s) / statement(s).

(NOTA DE INSTRUCCIÓN:

Vote por el candidato(s) / declaración(s) de su preferencia en cada carrera llenando completamente el espacio ovalado (●) a la izquierda del candidato(s) / declaración(s).)

Constitutional Amendment Election
(Elección sobre Enmiendas a la Constitución)

Cameron County Venue Project
(Proyecto de sede del Condado de Cameron)

STATE OF TEXAS PROPOSITION 1
 "The constitutional amendment authorizing the legislature to provide for the reduction of the amount of a limitation on the total amount of ad valorem taxes that may be imposed for general elementary and secondary public school purposes on the residence homestead of a person who is elderly or disabled to reflect any statutory reduction from the preceding tax year in the maximum compressed rate of the maintenance and operations taxes imposed for those purposes on the homestead."

(PROPUESTA NÚMERO 1 DEL ESTADO DE TEXAS)

("La enmienda constitucional que autoriza a la legislatura a proveer la reducción del importe de la limitación sobre la cantidad total de impuestos ad valorem que pueden fijarse, para fines generales de las escuelas públicas primarias y secundarias, sobre la propiedad residencial de una persona de edad avanzada o discapacitada para reflejar cualquier reducción reglamentaria del año fiscal anterior en la tasa comprimida máxima de los impuestos de mantenimiento y operaciones fijados para esos fines sobre la propiedad".)

- For (A Favor)
 Against (En Contra)

STATE OF TEXAS PROPOSITION 2
 "The constitutional amendment increasing the amount of the residence homestead exemption from ad valorem taxation for public school purposes from \$25,000 to \$40,000."

(PROPUESTA NÚMERO 2 DEL ESTADO DE TEXAS)

("La enmienda constitucional que aumenta el importe de la exención de impuestos ad valorem de la propiedad residencial para fines de las escuelas públicas de \$25,000 a \$40,000".)

- For (A Favor)
 Against (En Contra)

Proposition A
 "Authorizing Cameron County, Texas to provide for the renovation, planning, acquisition, development, construction, equipment, and expansion of a multipurpose arena and convention center and any related infrastructure, and to authorize the use of the existing hotel occupancy tax at the rate of two percent of the price paid for a room in a hotel located in Cameron County, Texas, to authorize the use of the existing short term motor vehicle rental tax at a rate of five percent on the gross rental receipts from the rental of motor vehicles in Cameron County, Texas, and to impose an admissions tax at a rate not to exceed ten percent on the price each ticket sold as admission to an event held at the Cameron County Arena Development Project, for the purpose of financing the venue project. If approved, the maximum hotel occupancy tax rate imposed from all sources in Cameron County, Texas, would be 17% of the price paid for a room in a hotel."

(Propuesta A)

("Deberá autorizarse al Condado de Cameron, Texas para contemplar la renovación, planificación, adquisición, desarrollo, construcción, equipamiento y ampliación de un estadio multifuncional y centro de convenciones y cualquier infraestructura relacionada, y para autorizar el uso del impuesto de ocupación hotelera existente a la tasa del dos por ciento del precio pagado por una habitación en un hotel ubicado en el Condado de Cameron, Texas, para autorizar el uso del impuesto de alquiler de vehículos motorizados a corto plazo existente a una tasa del cinco por ciento sobre los ingresos brutos del alquiler de vehículos motorizados en el Condado de Cameron, Texas, e imponer un impuesto de admisión a una tasa que no exceda del diez por ciento del precio de cada boleto vendido como admisión a un evento celebrado en el Proyecto de Desarrollo del Estadio del Condado de Cameron, con el propósito de financiar el proyecto del recinto. Si se aprueba, la tasa impositiva máxima de ocupación hotelera impuesta de todas las fuentes en el Condado de Cameron, Texas sería del 17% del precio pagado por una habitación en un hotel".)

- For (A Favor)
 Against (En Contra)

SAMPLE BALLOT
(BOLETA DE MUESTRA)

PCT 88, 100

Typ:01 Seq:0110 Spl:01

Special and General Election
(Elección General y Especial)
Cameron County, Texas
(Condado de Cameron, Texas)
May 7, 2022
(7 de mayo de 2022)
Official Ballot
(Boleta Oficial)

INSTRUCTION NOTE:

Vote for the candidate(s) / statement(s) of your choice in each race by darkening in the oval (●) provided to the left of the candidate(s) / statement(s).

(NOTA DE INSTRUCCIÓN:

Vote por el candidato(s) / declaración(s) de su preferencia en cada carrera llenando completamente el espacio ovalado (●) a la izquierda del candidato(s) / declaración(s).)

| | | |
|---|---|--|
| <p>Constitutional Amendment Election <i>(Elección sobre Enmiendas a la Constitución)</i></p> | <p>Cameron County Venue Project <i>(Proyecto de sede del Condado de Cameron)</i></p> | <p>Harlingen Consolidated Independent School District <i>(Distrito Escolar Consolidado Independiente de Harlingen)</i></p> |
| <p>STATE OF TEXAS PROPOSITION 1 "The constitutional amendment authorizing the legislature to provide for the reduction of the amount of a limitation on the total amount of ad valorem taxes that may be imposed for general elementary and secondary public school purposes on the residence homestead of a person who is elderly or disabled to reflect any statutory reduction from the preceding tax year in the maximum compressed rate of the maintenance and operations taxes imposed for those purposes on the homestead." (PROPUESTA NÚMERO 1 DEL ESTADO DE TEXAS) <i>("La enmienda constitucional que autoriza a la legislatura a proveer la reducción del importe de la limitación sobre la cantidad total de impuestos ad valorem que pueden fijarse, para fines generales de las escuelas públicas primarias y secundarias, sobre la propiedad residencial de una persona de edad avanzada o discapacitada para reflejar cualquier reducción reglamentaria del año fiscal anterior en la tasa comprimida máxima de los impuestos de mantenimiento y operaciones fijados para esos fines sobre la propiedad".)</i></p> <p><input type="radio"/> For (A Favor) <input type="radio"/> Against (En Contra)</p> | <p>Proposition A "Authorizing Cameron County, Texas to provide for the renovation, planning, acquisition, development, construction, equipment, and expansion of a multipurpose arena and convention center and any related infrastructure, and to authorize the use of the existing hotel occupancy tax at the rate of two percent of the price paid for a room in a hotel located in Cameron County, Texas, to authorize the use of the existing short term motor vehicle rental tax at a rate of five percent on the gross rental receipts from the rental of motor vehicles in Cameron County, Texas, and to impose an admissions tax at a rate not to exceed ten percent on the price each ticket sold as admission to an event held at the Cameron County Arena Development Project, for the purpose of financing the venue project. If approved, the maximum hotel occupancy tax rate imposed from all sources in Cameron County, Texas, would be 17% of the price paid for a room in hotel." (Propuesta A) <i>("Deberá autorizarse al Condado de Cameron, Texas para contemplar la renovación, planificación, adquisición, desarrollo, construcción, equipamiento y ampliación de un estadio multifuncional y centro de convenciones y cualquier infraestructura relacionada, y para autorizar el uso del impuesto de ocupación hotelera existente a la tasa del dos por ciento del precio pagado por una habitación en un hotel ubicado en el Condado de Cameron, Texas, para autorizar el uso del impuesto de alquiler de vehículos motorizados a corto plazo existente a una tasa del cinco por ciento sobre los ingresos brutos del alquiler de vehículos motorizados en el Condado de Cameron, Texas, e imponer un impuesto de admisión a una tasa que no exceda del diez por ciento del precio de cada boleto vendido como admisión a un evento celebrado en el Proyecto de Desarrollo del Estadio del Condado de Cameron, con el propósito de financiar el proyecto del recinto. Si se aprueba, la tasa impositiva máxima de ocupación hotelera impuesta de todas las fuentes en el Condado de Cameron, Texas sería del 17% del precio pagado por una habitación en un hotel".)</i></p> <p><input type="radio"/> For (A Favor) <input type="radio"/> Against (En Contra)</p> | <p>For School Trustee, Place 3 <i>(Para Sindico Escolar, Lugar 3)</i> Vote for One <i>(Vote por Uno)</i></p> <p><input type="radio"/> Josue "Josh" Garza <input type="radio"/> Greg Powers</p> <p>For School Trustee, Place 7 <i>(Para Sindico Escolar, Lugar 7)</i> Vote for One <i>(Vote por Uno)</i></p> <p><input type="radio"/> Eladio Jaimez <input type="radio"/> Israel Aguilar</p> <p>City of Combes <i>(Ciudad de Combes)</i></p> |
| <p>STATE OF TEXAS PROPOSITION 2 "The constitutional amendment increasing the amount of the residence homestead exemption from ad valorem taxation for public school purposes from \$25,000 to \$40,000." (PROPUESTA NÚMERO 2 DEL ESTADO DE TEXAS) <i>("La enmienda constitucional que aumenta el importe de la exención de impuestos ad valorem de la propiedad residencial para fines de las escuelas públicas de \$25,000 a \$40,000".)</i></p> <p><input type="radio"/> For (A Favor) <input type="radio"/> Against (En Contra)</p> | <p><input type="radio"/> For (A Favor) <input type="radio"/> Against (En Contra)</p> | <p>Commissioner <i>(Comisionado)</i> Vote for None, One, Two, or Three <i>(Vote por Ninguno, Uno, Dos o Tres)</i></p> <p><input type="radio"/> Mary David <input type="radio"/> Kenneth P. Stolar <input type="radio"/> Olga H. Montes <input type="radio"/> David Longoria <input type="radio"/> Patricio Verde <input type="radio"/> Carlos E. Cordova</p> |
| <p>PCT PART 87 (IHG CCB)</p> | <p><input type="radio"/> For (A Favor) <input type="radio"/> Against (En Contra)</p> | <p>Proposition A To extend Combes Mayor & Commissioners Terms from 2 to 4 years. (Propuesta A) <i>(Ampilar Terminos al Alcalde Y Comisionados de Combes de dos años a cuatro años.)</i></p> <p><input type="radio"/> For (A Favor) <input type="radio"/> Against (En Contra)</p> <p>Typ.01 Seq:0109 Spl:01</p> |