
CONTRACTS FOR ELECTION SERVICES, JOINT ELECTION AGREEMENTS, AND ACQUISITION OF ELECTION EQUIPMENT

NEW LAW: House Bill 1136, 82nd Legislature, provides that each county elections office must hold a meeting to discuss for the primary and November general elections the party list for early voting workers, ballot board members, delivery procedures and processing of early voting ballots (in person early and by mail).

I. STATUTORY AUTHORIZATION

NEW LAW: Per Senate Bill 100, 82nd Legislature, county elections administrators no longer have to contract to hold elections if the election is held on a May uniform election day in even-numbered years.

A. Entities That May Contract for Election Services

1. Under that part of the Texas Election Code (“TEC”) governing contracts for election services, the “county election officer” is defined as the county elections administrator in counties having that position, the county tax assessor-collector in counties in which the county clerk’s election duties and functions have been transferred to the tax assessor-collector, and the county clerk in other counties. The “contracting authority” is defined as the governing board of a political subdivision or the county executive committee of a political party. [T.E.C. § 31.091(1), (3)]
2. If a county does not have a county elections administrator, the county clerk or county tax-assessor-collector, as appropriate, may delegate to the deputy in charge of the officer’s elections division, the authority to enter into election services contracts and to supervise their performance. [T.E.C. § 31.095(b)]
3. The county election officer is authorized to contract with the contracting authority of a political subdivision (such as cities, school districts, water districts, etc.) situated wholly or partly in the county served by the officer to perform election services in any one or more elections ordered by the contracting authority. [T.E.C. § 31.092(a)] Chapter 31 of the Texas Election Code is the exclusive authority for such contracts. Tex. Op. Att’y Gen. No. DM-134 (1992).
4. The election officer is also authorized to contract with the county executive committee of a political party holding a primary election in the county to perform election services in the general primary election or runoff primary election, or both. [T.E.C. § 31.092(b)]
5. A local political subdivision does not have the authority to contract to conduct an election for another local political subdivision, unless they are in the same county, their elections are held on the same day, and they conduct the election under a joint agreement. See Section I., B., below.

B. Entities That May Enter Joint Election Agreements

1. Two or more political subdivisions are authorized to enter into an agreement to hold a joint election if (a) their elections are ordered to be held on the same day, (b) their territories are located in all or part of the same county, and (c) their election precincts can be served by common polling places. [T.E.C. § 271.002(a)]
2. The county and one or more political subdivisions are authorized to enter into an agreement to hold a joint election, if an election ordered by the governor and the elections ordered by the authorities of one or more political subdivisions are to be held on the same day in all or part of the same county in the election precincts that can be served by common polling places. [T.E.C. § 271.002(b)]
3. Two or more political subdivisions are authorized to hold a joint election if another law requires joint elections to be held and the elections will be held on the same day in all or part of the same county. [T.E.C. § 271.002(c)]
4. Conducting joint elections does not relieve the participants from following the general provisions of the Texas Election Code.

C. Joint Primary Agreements

Political parties in a county may conduct a joint primary. [T.E.C. § 172.126(a)]

D. Acquisition of Election Equipment

1. A political subdivision, other than a county, may contract to acquire the equipment necessary for operating a voting system by leasing the equipment from a county in which the political subdivision is wholly or partly situated. If the desired equipment is not available from the county, the political subdivision may acquire it by purchase, lease, or other means from any other source. [T.E.C. § 123.032(b)]
2. A political party's county executive committee may contract to lease equipment from the county. If the equipment desired is not available from the county, the county executive committee may contract to lease it from any other source. [T.E.C. § 123.033(b)]

II. DUTY TO CONTRACT

A. Contracts for Election Services

1. If requested by a contracting authority, the **county elections administrator must** enter into a contract to furnish the election services requested. However, the administrator is not required to contract to conduct training for election judges and clerks. [T.E.C. § 31.093]
2. **NEW LAW:** Per Senate Bill 100, 82nd Legislature, county elections administrators no longer have to contract to hold elections if the election is held on a May uniform election day in even-numbered years.
3. There is no similar contracting duty placed upon other county election officers, such as the county clerk or the county tax assessor-collector.
4. The governing body of a political subdivision in Hidalgo County must contract with the county elections administrator if it is requested to do so by a petition signed by a number of registered voters equal to at least 1% of the votes cast in

its last general election. A petition must be submitted to the clerk of the political subdivision before January 1 of the year in which the election to be administered under the requested election services contract will be held. [T.E.C. § 31.0925]

B. Joint Election Agreements

1. A school district, in an election for trustees of an independent school district, must hold its election on the same day as and must hold a joint election with (a) a municipality located in the school district having an election for members of the governing body, (b) the county having a general election for state and county officers, or (c) the hospital district having an election for members of the governing body if (i) the district is wholly or partly located in a county with a population of less than 30,000 that is adjacent to a county with a population of more than 3,000,000, and (ii) held its election for trustees jointly with the election for the members of the hospital district's governing body before May 2007. [Texas Education Code § 11.0581(b)]
2. There are no other statutory provisions in the Texas Election Code that require a joint election. There may be provisions in laws relating to special districts that require joint elections.

C. Joint Primary Agreements

There is no statutory requirement to hold a joint primary election. However, the General Appropriations Act provides that county executive committees may not be reimbursed for amounts that exceed the costs to conduct a joint primary election.

D. Acquisition of Equipment

1. If a political subdivision located wholly or partly within a county wishes to lease election equipment owned by the county, the county must lease the equipment, provided that the availability of the equipment in elections for which the commissioners court adopted the voting system is ensured and that the equipment is protected from misuse or damage. [T.E.C. § 123.032(b), (c)]
2. If a county executive committee wishes to lease election equipment owned by the county, the county must lease the equipment under terms agreed to by the parties, provided that the availability of the equipment in elections for which the commissioners court adopted the voting system is ensured and that the equipment is protected from misuse or damage. A county is not required to provide a county executive committee with equipment for use in an election precinct in which fewer than 100 votes were cast in the political party's most recent general or runoff primary. [T.E.C. § 123.033(b), (c), (d)]

III. APPROVAL OF CONTRACTS, JOINT AGREEMENTS, AND ACQUISITIONS

A. Contracts for Election Services

1. A contract for election services need not be submitted to commissioners court for approval. However, the county election officer must file copies of the contract with the county treasurer (or with the county judge, if there is no treasurer) and with the county auditor (or with the county judge, if there is no auditor). [T.E.C. §§ 31.092(c), 31.099(a)]

2. The county election officer must file a copy of the contract with the county executive committee. [T.E.C. §§ 31.092(b), 31.099(b)]
NOTE: Per House Bill 2817, 82nd Legislature, the contract between the county elections office and the county executive committee no longer has to be approved in writing by the Secretary of State.
3. The Texas Election Code does not address whether it is the county chair or the county executive committee that must approve the contract for election services entered into between the county election officer and the political party. *See, e.g.*, T.E.C. §§ 172.082(b) (county executive committee or primary committee conducts drawing for ballot placement), 172.083 (primary committee reviews and approves primary ballot), 172.111(b) (county executive committee supervises overall conduct of primary). The authority to approve contracts on behalf of the county political party may appear in the local party rules.
4. While the Texas Election Code does not address this, it is certain that other Texas laws require the governing body of a political subdivision to approve a contract for election services entered into between the county election officer and the political subdivision.
5. Per House Bill 2817, 82nd Legislature, the Secretary of State is not longer required to mediate and prescribe the terms of the contract.

B. Joint Election Agreements

The terms of a joint election agreement must be stated in an order, resolution, or other official action adopted by the governing body of each participating political subdivision. [T.E.C. § 271.002(d)]

C. Joint Primary Agreements

The decision to conduct a joint general primary election or runoff primary election, as applicable, must be made by majority vote of the full membership of the county commissioners court and with the unanimous approval of the county clerk (or county elections administrator, as applicable, T.E.C. § 31.043) and the county chair of each political party required to nominate candidates by primary election. [T.E.C. § 172.126(a)]

D. Acquisition of Election Equipment

The governing body of a political subdivision must approve the acquisition of election equipment whether by sale or lease. [T.E.C. §§ 123.001, 123.031, 123.032, 123.035]

IV. SERVICES INCLUDED IN CONTRACTS/AGREEMENTS/ACQUISITIONS

A. Contracts for Election Services

1. The contract may provide for the county election officer to perform or to supervise the performance of **any or all** of the corresponding duties and functions that the officer performs in connection with a countywide election ordered by commissioners court, except as provided in Section V., A., below. [T.E.C. § 31.094]
2. The county election officer may assign deputies to perform any of the contracted services. [T.E.C. § 31.095]

3. The contract may provide that the county election officer's deputies may serve as deputy early voting clerks even if the officer is not to serve as the early voting clerk or supervise early voting. [T.E.C. § 31.097(a)]
4. The contract may authorize the county election officer to contract with third persons for election services and supplies and may provide that the officer will pay the claims for those election expenses or that the contracting authority will make payments directly to the claimants. [T.E.C. § 31.098]
 - (a) If the contracting authority is to pay the claims of third persons, the county election officer becomes the agent of the authority and may contract with third persons in the name of the authority with respect to election expenses within the scope of the contracting officer's duties and the officer is not liable for the authority's failure to pay a claim.
 - (b) If the county election officer is to pay the expenses, the contracting authority is not liable for the officer's failure to pay a claim.
5. The contract must include an itemized list of estimated election expenses. [T.E.C. § 31.100(c)]

B. Joint Election Agreements

1. The agreement should state whether early voting will be conducted jointly, and, if so, appoint one of the early voting clerks as the early voting clerk for the joint early voting. [T.E.C. § 271.006(a)] The agreement should also cover whether voting by mail will be conducted by the joint early voting clerk or by the regular early voting clerk of each participating local political subdivision. [T.E.C. § 271.006(c)]
2. The agreement should address what happens in the event one or more of the participating entities cancels its election.
3. The agreement should provide for the allocation of expenses. [T.E.C. § 271.004]
4. The agreement should address (a) from where the necessary voting equipment will be obtained; (b) how accessible voting equipment will be obtained to comply with Section 61.012 of the Texas Election Code; (c) who is responsible for tabulating or accumulating the votes under Subchapters E and F of Chapter 127 and Section 129.001(a) of the Texas Election Code; and (d) who is responsible for testing the voting equipment under Subchapter D of Chapter 127 and Sections 127.022 and 129.023 of the Texas Election Code.
5. The following provisions do not need to be contained in the agreement, but they are applicable to joint elections by statute:
 - (a) A regular county polling place may be used for a common polling place in a joint election. Voters of a particular election precinct or political subdivision may be served in a joint election by a common polling place located outside the boundary of the election precinct or political subdivision, if the location can adequately and conveniently serve the affected voters and will facilitate the orderly conduct of the election. [T.E.C. § 271.003]

- (b) A person who is eligible to serve as an election officer in an election of any participating political subdivision is eligible to serve in the same office in a joint election. An election officer for a joint election may be appointed to serve more than one of the participating political subdivisions. [T.E.C. § 271.005]
- (c) A single ballot containing all the offices or propositions stating measures to be voted on at a particular polling place may be used in a joint election, but a voter may not be permitted to select a ballot containing an office or proposition stating a measure on which the voter is ineligible to vote. [T.E.C. § 271.007]
- (d) One set of ballot boxes may be used at a common polling place in a joint election for the deposit of all ballots for each of the participating political subdivisions. [T.E.C. § 271.008]
- (e) Joint early voting must be conducted at the early voting polling place or places at which and during the hours, including any extended or weekend hours, that the early voting clerk regularly conducts early voting for the clerk's political subdivision. [T.E.C. § 271.006(b)]
- (f) The regular early voting clerk for each political subdivision participating in the joint early voting shall receive applications for early voting ballots to be voted by mail. The other mail ballot procedures may be completed either by the regular early voting clerk or by the joint early voting clerk, at the discretion of the governing body of each political subdivision participating in the joint early voting. [T.E.C. § 271.006(c)]
- (g) The forms used and records maintained at a common polling place in a joint election may be combined in any manner convenient and adequate to record and report the results of the election for each of the participating political subdivisions. [T.E.C. § 271.009]
- (h) The general custodian of election records for elections ordered by an authority of any one of the political subdivisions participating in a joint election may be appointed as the general custodian of election records for the joint election if (i) the election records for a common polling place are combined, or (ii) the ballots for more than one of the participating political subdivisions are deposited by the voters in a single ballot box. [T.E.C. § 271.010]

C. Joint Primary Agreements

1. The SOS makes available a simple form that must be signed by the county chairs and the county election officer and passed as a resolution by a majority of the full county commissioners court to implement a joint primary election. The terms of a joint primary agreement are set forth in Section 172.126 of the Texas Election Code and Title 1, Part 4, Sections 81.145-81.157 of the Texas Administrative Code.
2. The county election officer supervises the overall conduct of the joint primary election, notwithstanding anything else in the Texas Election Code. [T.E.C. § 172.126(a)]

3. The county election officer determines whether to consolidate election precincts under Section 42.009 of the Texas Election Code and designates the location of the polling place in a consolidated precinct. To the extent possible, the polling place designated should accommodate the precinct conventions of each political party. [T.E.C. § 172.126(b)]
4. One set of election officers conducts the primary election at each polling place, and there is one early voting ballot board and one central counting station composed of and administered by one set of election officers. The county election officer appoints the election officers for each polling place. The SOS prescribes a form for determining the number of clerks that should be appointed for each party. The appointments are made from lists submitted by each county chair, nominating a co-judge and election clerks for each election precinct. [T.E.C. § 172.126(c)]
5. Each co-judge has the law enforcement duties and powers provided under Section 32.075 of the Texas Election Code. Each co-judge has the exclusive authority to handle provisional voting, tabulate the votes, and deliver the election returns in the primary of the party with which that judge is affiliated or aligned. [T.E.C. § 172.126(d)]
6. The county election officer determines the ballot format and voting system for each election precinct and shall procure the election equipment and supplies. [T.E.C. § 172.126(f)] Different colors for each party's ballot may be used, except yellow may not be one of the colors. [T.E.C. § 172.126(g)] Each county chair must deliver to the county election officer a written certification of the candidates' names and resolutions that are to appear on the primary ballot. [T.E.C. § 172.126(e)]
7. A separate set of ballot boxes or other suitable containers approved by the SOS must be used for each party's primary, except that one set of ballot boxes or other containers may be used in a joint primary using an electronic voting system in which the ballots are deposited by the voters directly into a unit of automatic tabulating equipment. [T.E.C. § 172.126(g)]
8. The lists of registered voters and the voters' registration certificates shall be marked and stamped to show the appropriate party affiliation for each voter. A separate list of registered voters must be used for each party's primary. [T.E.C. § 172.126(g)]
9. Separate election returns must be prepared for each party's primary. [T.E.C. § 172.126(h)]

D. Acquisition of Election Equipment

1. If a political subdivision leases election equipment from the county, the terms of the lease must be mutually agreed to by the county and political subdivision, except that the county may require reasonable restrictions and conditions to (a) ensure the availability of equipment for elections for which commissioners court adopted the voting system, and (b) protect the equipment from misuse or damage. [T.E.C. § 123.032(c)]
2. If a county executive committee leases election equipment from the county, the terms of the lease must be mutually agreed to by the county and county executive committee, except that the county may require reasonable restrictions

and conditions to (a) ensure the availability of equipment for elections for which commissioners court adopted the voting system, and (b) protect the equipment from misuse or damage. [T.E.C. § 123.032(c)]

3. If the election equipment requires programming, it is recommended that the lease address what entity is responsible for such programming and what entity is responsible for paying for such programming.
4. If automatic tabulating equipment will be used for counting ballots, it is recommended that the lease address what entity is responsible for conducting the necessary testing and what entity is responsible for paying for such testing, including the cost of the newspaper notice of the public test. It is also recommended that the lease address which entity is responsible for tabulating the votes and/or accumulating the vote totals [T.E.C. §§ 127.091-127.100; 127.152; 129.023-129.024]

V. RESTRICTIONS AND LIMITS ON CONTRACTS/AGREEMENTS/ACQUISITIONS

A. Contracts for Election Services

1. The contract may not change
 - (a) the authority with whom candidates file applications for a place on the ballot
 - (b) the authority with whom documents are filed under Title 15 (regulating political funds and campaigns)
 - (c) the custodian of voted ballots or other election records, except that a contract with a political subdivision other than a city may provide that the county election officer will be the custodian of voted ballots. [T.E.C. § 31.096]
2. The county election officer may not be personally compensated for election services performed under a contract. [T.E.C. § 31.100(d)]
3. Salaries of personnel regularly employed by the county election officer may not be paid from the election services contract fund, except for contract duties performed outside of normal business hours. [T.E.C. § 31.100(e)]
4. Wages and salaries paid to persons temporarily employed to perform duties under a contract may be paid from the election services contract fund, but may not exceed the normal rate of pay in that locality for the same or similar services. [T.E.C. § 31.100(e)]
5. The county election officer may not charge for performing any duties that the officer is required by law to perform. [T.E.C. § 31.100(b)]
6. In a contract between the county election officer and a county executive committee, by law the county election officer is the early voting clerk for the primary election. [T.E.C. § 83.002(2)]
7. If a county election officer enters into a contract with a county executive committee, the officer must offer to contract on the same terms with the county executive committee of each political party holding a primary election in the county. [T.E.C. § 31.092(e)]

8. In an election services contract, the county election officer may not prevent the county chair or the county chair's designee from supervising the conduct of the primary election, including the tabulation of results, as required by Chapter 172 of the Texas Election Code. [T.E.C. § 31.092(d)]

B. Joint Election Agreements

See complete discussion under Section IV., B., above.

C. Joint Primary Agreements

See complete discussion under Section IV., C., above.

D. Acquisition of Election Equipment

See complete discussion under Section II., D., above.

VI. COMPENSATION/REIMBURSEMENT

A. Contracts for Election Services

New Law: Per House Bill, 1789, 82nd Legislature, a county election officer of a county with a population of 100,000 or more, who conducts a primary election via an election services contract may request reimbursement directly from the Secretary of State instead of the county chair.

1. Money paid to the county election officer under a contract for election services must be deposited in a separate fund in the county treasury, referred to as the election services contract fund. The county election officer may make expenditures from the separate fund without budgeting or appropriation by commissioners court. However, claims against the fund are subject to audit and approval in the same way as other claims against the county before they are paid. Commissioners court may not consider the availability of the separate fund in adopting the county budget for the county election officer. If there is a surplus in the fund after payment of actual expenses, the surplus may only be used to defray expenses of the county election officer in connection with election-related duties. [T.E.C. § 31.100(a), (f), (g)]
2. Only actual expenses directly attributable to an election services contract may be paid from the election services contract fund. [T.E.C. § 31.100(b)]
3. The county election officer may charge a fee of 10% of the total amount of the contract for general supervision of the election, but it may not be less than \$75. [T.E.C. § 31.100(d)]
4. If the advance payments made to an election services contract fund exceed the actual expenses, the difference must be refunded to the contracting authority. [T.E.C. § 31.100(c)]
5. Subject to legislative appropriation, state funds may be provided to pay the expenses incurred by a political party in connection with a primary election in accordance with Chapter 173 of the Texas Election Code and the rules implemented by the SOS thereunder.

B. Joint Election Agreements

The expenses of a joint election are allocated as provided by the joint election agreement. [T.E.C. § 271.004]

C. Joint Primary Agreements

Subject to legislative appropriation, state funds may be provided to pay the expenses incurred by a political party in connection with a primary election in accordance with Chapter 173 of the Texas Election Code and the rules implemented by the SOS thereunder. [T.E.C. § 173.001]

D. Acquisition of Election Equipment

1. A county may charge a political subdivision for leasing county-owned equipment in an amount not to exceed 10% of the purchase price of the equipment for each day the equipment is used. [T.E.C. § 123.032(d)]
2. A county may charge a maximum amount for leasing equipment to a county executive committee for a general or runoff primary of
 - (a) \$5 for each unit of electronic voting system equipment installed at a polling place;
 - (b) \$5 for each unit of other equipment not specified under Section 123.033 of the Texas Election Code;
 - (c) Actual expenses incurred by the county in transporting the equipment to and from the polling places;
 - (d) Actual expenses incurred by the county in preparing the equipment for use in the primary election; and
 - (e) Actual expenses incurred by the county in operating a central counting station for the primary election.