



OFFICE OF THE SECRETARY OF STATE

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July 27, 1982

The Honorable R. Y. Eckels
County Commissioner, Precinct Three
Harris County
Harris County Administration Building
1001 Preston
Houston, Texas 77002

Election Law Opinion DAD-42
Re: Whether U.S. Justice
Department preclearance
on proposal to vote
outside precinct bound-
aries preempts Texas
Election Code.

Dear Commissioner Eckels:

This is in answer to your letter of July 2, 1982. You asked several questions concerning the designation of polling places for an upcoming August 14, 1982 special election.

This official election law opinion is rendered by me as chief election officer of the state in accordance with V.A.T.S. Election Code, art. 1.03, subd. 1.

There are three applicable Texas Election Code provisions relevant to this discussion. In V.A.T.S. Election Code, art. 2.02, subd. (h), it states:

All election precincts, by whatever authority established, shall be described by natural or artificial boundaries or survey lines, and shall be designated by name or number. There shall be one polling place, and no more, for each election precinct, and the notice of the election shall state the location of the polling place in each precinct.

V.A.T.S. Election Code, art. 2.03, states in pertinent part:

In all cases where it is practicable to do so, all elections--general, special, or primary--shall be held in some schoolhouse, fire station, or other public building within the limits of the election precinct in which such election is being held.

V.A.T.S. Election Code, art. 5.02, subd. (a), provides in pertinent part:

No person may vote in an election held by a county, municipality, or other political subdivision unless he is a resident of the subdivision on the day of the election; and, except, as expressly permitted by some other provision of this code or another statute of this state, no person may vote in an election precinct other than the one in which he resides. (Emphasis added.)

It is clear from the above-cited Election Code provisions that (1) there must be only one polling place per election precinct, (2) the polling place must be a public building if at all practicable, and (3) each voter must vote in the election precinct in which he resides unless otherwise provided.

You indicate in your letter that the Harris County Commissioners Court through the Harris County Clerk has previously obtained U.S. Justice Department preclearance to designate polling places for certain precincts outside of the boundaries of those precincts. This preclearance was obtained through submission of the proposed change in procedure pursuant to Section 5 of the Voting Rights Act of 1965, as amended (42 U.S.C. Sec. 1973c). You asked whether or not Justice Department preclearance would preempt the Texas Election Code provisions governing the location of polling places and the manner in which an individual may vote.

Particularly noteworthy is the U.S. Justice Department's preclearance on December 24, 1975, of Senate Bill 1046 of the 64th Legislature which contained the text of V.A.T.S. Election Code, art. 5.02, which requires that an individual vote in the precinct of his residence. In Allen v. State Board of Elections, 393 U.S. 544 (1969), it was stated:

. . .[O]nce the State has successfully complied with the § 5 approval requirements, private parties may enjoin the enforcement of the new enactment only in traditional suits attacking its constitutionality; there is no further remedy provided by § 5.

The holding by the U.S. Supreme Court in Allen was followed in Morris v. Gressette, 432 U.S. 491 (1977). The Attorney General of the United States failed to find art. 5.02 objectionable; therefore, it stands as a valid enactment.

Additionally, the fact that the Justice Department failed to object to your submission under the Voting Rights Act of 1965 does not necessarily demonstrate that the Voting Rights Section of the Justice Department was aware of the Texas Election Code provisions which require voting within the precinct of one's residence. This is adequately illustrated by United States v. Bd. of Com'rs of Sheffield, Alabama, 435 U.S. 110 (1978) in which one of the issues concerned whether the Attorney General was aware that a particular state law would go into effect if the procedure the city submitted was not objected to. In note 28 at pg. 137 of the opinion the Court stated, in pertinent part:

The District Court's conclusion that the Attorney General should have known of this provision of Alabama law would be sustainable only if we were to take the extreme position that the Attorney General should be charged with notice of all provisions of local law.

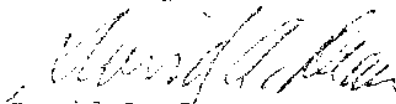
It may be concluded from the foregoing that the Texas Election Code provisions governing the location of polling places and where electors may vote are valid and enforceable. The fact that you have obtained past preclearance from the Justice Department to utilize polling places outside the boundaries of the precincts for which they are designated does not, in and of itself, demonstrate that the Justice Department was aware of the conflict of its preclearance with our Texas Election Code provisions especially in light of the Justice Department's previous preclearance of V.A.T.S. Election Code, art. 5.02.

Accordingly, it is my conclusion that present Texas law mandates that unless specifically authorized under some other Election Code provision or state statute, each voter must vote at a polling place within the precinct in which he resides. Examples of when one would be allowed to vote outside the precinct of his residence are when consolidation of election precincts is allowed under V.A.T.S. Election Code, art. 2.02, and absentee voting by personal appearance under V.A.T.S. Election Code, art. 5.05. I appreciate the difficulties that are sometimes incurred in finding a public building within each precinct pursuant to V.A.T.S. Election Code, art. 2.03, but if it is not practicable or possible to find a public building, then some suitable facility must be found in which the election may be conducted.

SUMMARY

Unless expressly authorized by a provision of the Texas Election Code or other state statute, each voter must vote in the precinct of his residence and voting must be conducted for each election precinct at a polling place within the precinct, notwithstanding the fact that the U.S. Justice Department precleared a submission proposing voting outside the precinct boundaries.

Sincerely,


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APPROVED:
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