

Election Contracts, Joint Election Agreements & Leases For Equipment

35th Annual Election Law Seminar for Cities, Schools
and Other Political Subdivisions



Three Ways to Have an Election

- A city, school district, or other political subdivision can have an election:
 - By itself
 - By contracting for election services with the county (Ch. 31); or
 - By holding a joint election (Ch. 271).



Election Equipment

- Regardless of which path you choose, you can always contract for voting equipment with another entity.
 - *See Chapter 123.*



Practical Considerations

- The local entity must decide whether they have the time, manpower and expertise to conduct their own election.
 - Consider: Equipment (obtaining, programming, testing); ordering ballots; hiring and training workers (election day, early voting ballot board, central counting); publishing notice of election; tabulating results and canvassing election; etc.



Practical Considerations

- Deadline for entering into agreements?
 - There is no statutory deadline.
 - We suggest that local entities discuss this with their counties early in their election process so that your county has adequate notice and time to plan and allocate resources for the needs of the local entity's election
 - We suggest 4-6 months prior to election day



Contract for Election Services

Ch. 31

- A *contract for election services* is a contract between the political subdivision holding an election in the county and the **county election officer** for specific election services that the county election officer would perform in a countywide election (equipment, ballot programming, etc.).



Joint Election Agreement

Ch. 271

- A *joint election agreement* is when two political subdivisions, who are holding elections on the same day in the same county, jointly hold their elections in common precincts. The joint election agreement must be approved by the governing bodies of all participating political subdivisions.



Lease for Equipment

Ch. 123

- A political subdivision may lease election equipment from the county or may purchase or lease the equipment from any other source. (Sec. 123.032)



Contracting vs. Joint Election

	Contract for Services	Joint Election Agreement
Parties	County, Political Subdivision	Two or more political subdivisions (including county)
Approval	<ul style="list-style-type: none"> County election officer and subdivision governing body. 	<ul style="list-style-type: none"> Both governing bodies.
Duty	<ul style="list-style-type: none"> Yes, if elections administrator, except in May of even-numbered year. 	<ul style="list-style-type: none"> Education Code requires school districts to have joint elections.



Three Types of Agreements

- So, we'll discuss three types of agreements:
 - Contract for Election Services (Ch. 31)
 - Joint Election Agreement (Ch. 271)
 - Lease of Election Equipment (Ch. 123)



What We'll Discuss

- For each type of agreement:
 - Parties to the contract;
 - Whether there is a **duty to contract**;
 - How to get **approval** for the agreement;
 - **Contents** of the agreement; *and*
 - How the agreement should handle **compensation**
- Contracting vs Joint Elections
- Contracting in May vs November
- Entities in More Than One County



Contract for Election Services



Parties to the Contract *Contract for Election Services*

- The county election officer:
 - County Elections Administrator
 - County Tax Assessor-Collector (or deputy)
 - County Clerk (or deputy)
- The governing body of a political subdivision located wholly or partly in the county.

Sec. 31.092



Duty to Contract *Contract for Election Services*

- If the county election officer is:
 - County Clerk
 - County Tax Assessor-Collector
- Then there is generally no duty to contract in the Code.

Sec. 31.093



Duty to Contract *Contract for Election Services*

- If it's the County Elections Administrator:
 - They must contract to 'furnish services requested.'
 - Except:
 - Election on May uniform date in even-numbered year.
 - Training of election judges and clerks.

Secs. 31.093, 41.001(d)



Duty to Contract *Contract for Election Services*

- What if the county election officer and the local political subdivision cannot agree on contract terms?
 - The Election Code does not address this issue.



Approval of Contract *Contract for Election Services*

- Does **not** need to be submitted to the commissioners court for approval.
- The political subdivision will need to check its own laws/rules regarding contract approval.

Sec. 31.092



Contents of Contract *Contract for Election Services*

- The contract may provide for the county election officer to perform or to supervise the performance of **any or all** of the duties that the officer performs in a countywide election ordered by the commissioners court.
 - This may include testing and programming of election equipment as well as reporting results to SOS.

Sec. 31.094



Contents of Contract *Contract for Election Services*

- The contract may **not** change:
 - The filing authority for candidate applications;
 - The filing authority for Title 15 documents;
 - Or, a political subdivision's requirement to maintain office hours under 31.122.
- Political subdivisions, **including cities**, may contract for the county to be the custodian of voted ballots.

Sec. 31.096



Compensation in Contract *Contract for Election Services*

- The contract must include a cost schedule that is agreed to by both parties
- The county may only use funds for expenses **directly attributable** to the contract.
- Any advance funds over the actual expenses must be **refunded** to the political subdivision.

Sec. 31.100



Compensation in Contract *Contract for Election Services*

- The county election officer cannot:
 - Charge for duties that must be performed by law.
 - Be personally paid for services under contract.
- The county election officer can:
 - Charge up to 10% of the total amount of the contract for general supervision of the election.

Sec. 31.100



Contracting With Counties Using Countywide Polling Place Program *Contract for Election Services*

- Regardless of whether a local political subdivision contracts with the county or not, if the political subdivision is holding all or part of their election in a county that is holding an election on the November uniform election date under the countywide polling place program, then that political subdivision must hold voting at **every countywide polling place in the county on election day.**
- If the political subdivision is located wholly or partly within a countywide county and they are holding a November election, then they may wish to contract with that county to reduce costs and to ensure that they have enough voting equipment on election day.



Joint Election Agreement



Parties to the Contract *Joint Election Agreement*

- Two or more political subdivisions can enter into a joint election agreement if the election:
 - Is held on the same day.
 - Is held in all or part of same county.
- The joint election only covers precincts that can be served by common polling places.

Sec. 271.002



Parties to the Contract *Joint Election Agreement*

- A political subdivision and county may hold a joint election if the county is holding an election that:
 - Is held on the same day.
 - Is held in all or part of same county.
- The joint election only covers precincts that can be served by common polling places.

Sec. 271.002



Duty to Contract *Joint Election Agreement*

- School district must have joint election with:
 - City in the district electing governing members;
 - County electing state and county officers;
 - Public junior college district that is electing board members, if school is in district;
 - Hospital district electing board members, possibly.

Education Code 11.0581



Duty to Contract *Joint Election Agreement*

- The Election Code does *not* require a joint election in any other circumstance.
- However, other Codes and sources of law *may* require a joint election.



Approval of Contract *Joint Election Agreement*

- 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.

Sec. 271.002



Contents of Contract *Joint Election Agreement*

- Polling places:
 - County polling place can be used as common polling place.
 - An entity may use a common polling place located outside their own territory if adequately and conveniently serves affected voters and facilitates orderly election.
- Election officers:
 - If they are eligible to serve as election workers for one entity, they can serve **all** participating entities.

Secs. 271.003, 271.005



Contents of Contract *Joint Election Agreement*

- **Early voting:** Decide whether doing it jointly.
 - If jointly:
 - Appoint **one** early voting clerk as **joint** early voting clerk.
 - Must keep normal early voting locations and hours.
 - Regular early voting clerks must get **apps** for mail ballot.
 - Other mail voting procedures can be done by **either**:
 - The entity's regular early voting clerk; or
 - The joint early voting clerk.

Sec. 271.006



Contents of Contract *Joint Election Agreement*

- **Early voting:** Decide whether doing it jointly.
 - If not jointly:
 - Normal early voting laws apply.
 - Except: Early voting at common polling places.

Sec. 271.006



Contents of Contract *Joint Election Agreement*

- **Ballots:**
 - Can have a joint ballot.
 - But have separate ballots available to avoid ineligible voting or facilitate provisional voting.
- **Form and records:**
 - Can combine in any manner convenient and adequate to record and report results of election.

Secs. 271.007, 271.008, 271.009



Compensation in Contract *Joint Election Agreement*

- The expenses of a joint election are **allocated as provided** by the joint election agreement.

Sec. 271.004



Acquisition of Election Equipment



Parties to the Contract *Acquisition of Election Equipment*

- A political subdivision may lease equipment from a **county** in which it is wholly or partly situated.
- If the county doesn't have the **desired equipment**, the political subdivision may acquire certified voting system equipment by any other means from **any other source**.

Sec. 123.032



Duty to Contract *Acquisition of Election Equipment*

- If a political subdivision located wholly or partly within a county wishes to lease election equipment owned by the county, then the county **must** lease the equipment under the terms agreed to by both parties.

Sec. 123.032



Duty to Contract *Acquisition of Election Equipment*

- However, county may impose **reasonable restrictions** for:
 - Ensuring the **availability** of the equipment for an election for which the county adopted it.
 - **Protecting** the equipment from misuse or damage.

Sec. 123.032



Approval of Contract *Acquisition of Election Equipment*

- The governing body of a political subdivision must adopt the election equipment for use by **resolution, order, or other official action.**
- Must do so **regardless** of whether the equipment is being obtained by sale or lease.

Sec. 123.032



Approval of Contract *Acquisition of Election Equipment*

- Before the governing body may **enter into** a contract for voting system equipment from a source other than the county, the contract **must be approved** by the SOS.
 - The local entity doesn't need approval for a contract with the county because that equipment has already been approved by SOS
- Ensures the system and equipment comply with important requirements.

Sec. 123.035



Contents of Contract *Acquisition of Election Equipment*

- If leasing from a county, the terms of the lease must be **mutually agreed to**.
- We also **recommend** the lease address:
 - Who will program and pay for programming
 - Who will test and pay for testing
 - Who will tabulate votes and accumulate vote totals

Sec. 123.032



Compensation in Contract *Acquisition of Election Equipment*

- The county may charge the subdivision a **fee for leasing** the equipment.
- The fee may not **exceed 10%** of the purchase price of the equipment for each day of use.

Sec. 123.032



Practical Considerations

- All three types of agreements discussed today must be **in writing**.
 - Clear inference: §§ 31.099, 123.033, 172.126.
- There's **no standard** form or document for any of these agreements.



Practical Considerations

- These agreements do not fall into neat, separable categories.
 - Ex.: County and subdivision have joint election agreement, which includes lease agreement.
 - Ex.: County election officer has election services contract with two subdivisions. Contract includes lease agreement and joint election agreement because of joint ballots, workers, and polls.



Practical Considerations

- If you're having a joint election with another entity, have a backup plan in case one party to the joint election cancels their election.



Separate or Joint Election?



Separate or Joint Election?

- Local entities generally have the option to hold their election separately or to hold the election as a joint election with another entity holding their elections on the same date
 - If you are holding your election separately, you can still contract with the county to run your separate election, or you can choose to run it all on your own
 - Some entities are required to hold joint elections or to contract with the county (i.e. ISDs under Education Code 11.0581 or certain entities subject to Election Code 31.0925)



Separate or Joint Election?

- If you hold your election jointly with your local entities, you can use a joint ballot, with one single set of election workers and voting system equipment at the normal county polling places
- If you contract to run a separate election for your local entities, then you will need to set up separate check-in stations and use a separate set of election workers and voting system equipment
 - You would still need to use the county's regular polling places for an election held on the November uniform election date
- These are not all-or-nothing options, and you can decide what parts of your election will be held jointly vs separately
 - For example, you could use a joint set of election workers at a shared polling place with separate ballots
 - However, separate ballots will most likely require you to use separate voting machines as well



Separate or Joint Election?

Factors to Consider

- In deciding whether to hold your election as a separate election or jointly with another entity, these are some factors to consider:
 - Availability of election workers and equipment
 - Costs of running election separately vs jointly
 - Voter convenience
 - Requirement for local entities to use county election precincts in November elections
 - Size of polling place
 - Whether your county uses the countywide polling place program
 - Preference of local entity
 - Whether you are required by law to hold a joint election (i.e. ISDs under Texas Education Code 11.0581)



Contracting for May Elections vs November Elections



Contracting in May vs. November Election Day Polling Place Rules

- In May elections, local entities generally have the ability to draw their own precinct lines and select their own polling place locations
- In November elections, the local entity **must** use the county's election precincts and must use the county's polling places that correspond to those precincts that include the entity's voters
 - If the county uses the countywide polling place program, this means that a local entity located wholly or partly in that county **must use every single one of the county's polling places on election day**



Contracting in May vs. November Early Voting Polling Place Rules

- In May elections, local entities generally have the ability to decide where to place each of their early voting locations
- In November elections, the local entity **must** use at least one of the county's early voting locations contained in their territory, if any
 - If the entity wishes to have their own main early voting location, then they would need to have at least one temporary branch location that is shared with the county



Contracting in November Things to Consider

- If you hold your elections in November, then you will need to use the county's election day locations and share at least one of their EV locations
 - This means that you will want to communicate with your county election officials early in the election window and regularly about your plans for holding your election in that county
- If you are located in multiple counties, make sure you have a plan to set up at the required polling places in each county, and determine whether you are located in any counties that use the countywide polling place program
- If you are holding a joint election and sharing a ballot with your county, make sure they have an accurate map for your entity and that you review all the joint ballot styles that include your entity's races to catch any errors before ballots are prepared and before the equipment is programmed



Entities in More Than One County



Entities in More Than One County

- Whenever you are conducting an election, it is important to know your **exact** territory lines
 - You need to know all of the counties you are located in.
 - You need to be able to provide a map or specific territory description to your counties to get an accurate list of registered voters.
- If you are located in more than one county, then you will need to make specific plans to address your voters in both counties
 - This will always require you to get a list of registered voters from each county.
 - If the county is not running your election, you will also need to get a list of Annual ABBM voters from each county that is not running your election.
 - If you are holding a November election, this will also require you to set up polling locations in each county.
 - If you are contracting with multiple counties, have a plan to aggregate your election results from each county.



Entities in More Than One County May vs. November

- **May Elections**

- Voters may cross county lines to vote in local entity elections in May.
- You will still need to request a list of registered voters from each county you are located in.

- **November Elections**

- Voters **cannot** cross county lines to vote in local entity elections in November.
 - In November, voters are required to vote by county election precincts. Voters must vote at their precinct polling place on election day.
 - If your county has one or more early voting locations in your territory, you must use at least one of those locations for your own election.
 - Your election must be set up to report your results by county election precinct.
- You will need to request a list of registered voters from each county you are located in.



Entities in More Than One County Things to Consider

- **If you are contracting with a county...**
 - Communicate!
 - Speak to all the counties you are located in to discuss your plans to handle each portion of your election that falls within each county.
 - Tell your county what other counties you are located in, so that they can coordinate with the other counties.
 - Make sure you have a plan in place for your voters in each county, and communicate that plan to any and all counties you are contracting with.
- **If you are not contracting with a county...**
 - Set up an organized plan for each portion of your election
 - Make sure you get a list of registered voters from each county you are located in.
 - Make sure you get a list of annual ABBM voters from each county.
 - If you are holding a November election, make sure you are sharing election day polling places and early voting locations in your territory with each county



Entities in More Than One County Things to Consider

- **Remember:**
 - **You are the expert on your entity's territory.**
 - Don't assume that your county will know what your territory lines are, or that they have the most current maps.
 - Give your county the most recent version of your entity's map before each election, and communicate with them about the other counties you are located in.
 - **May Elections and November Elections have different rules, especially for entities in more than one county.**
 - Voters cannot cross county lines in November, but they can in May
 - Voters must vote at their county polling place on election day in November, so you need to set up at those locations.
 - In November, entities must share at least one of the county's early voting locations located in their territory - if you are in multiple counties, this means at least one for each county
 - In November, results must be reported by county election precinct. When you are programming your election, be sure to set it up with those precincts.



Things to Keep in Mind

- Consider reaching out to the office that will be handling the election contract process at least 4-6 months in advance from the election date.
- Be considerate of the time it takes to prepare for an election. (Notice of election, Ballot preparation, Equipment Preparation, L&A testing, etc.). Be available.
- Communication is key in having a successful election.
- The earlier you know what is required, the better. It allows time for other legal requirements and deadlines.
- Proofing recommendations. Put all confirmation of changes, corrections or approvals in writing.
- Time is critical in Elections!



Closing Reminders

- We cannot express this enough – PLEASE make sure all agreements or contracts are reviewed by your legal counsel.
- Please make sure your contract is **APPROVED** before distributing to any entity for their approval and signatures.
- **The Secretary of State's office cannot review contracts or agreements for you.**
- You may email the Secretary of State's office to request a copy of sample contracts to elections@sos.Texas.gov.

Thank you!

