



THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

May 1, 1947

Hon. Glenn Capps
County Attorney
Mason County
Mason, Texas

Opinion No. V-178

Re: Authority of the Commissioners' Court to appoint a Justice of the Peace where there was no person elected to the office at the last General Election, and related questions.

Dear Sir:

Your request for an opinion from this office is, in part, as follows:

"On the 14th day of August, 1914, the Commissioner's Court of Mason County, Texas, divided Mason County into seven Justice of the Peace Precincts. For the past fifteen years or more no Justice of the Peace has been elected in any Justice of the Peace Precinct in Mason County, Texas, except Justice of the Peace Precinct No. One, with office in the town of Mason, Texas. At the present time the citizens of the Hilda Community in Justice of the Peace Precinct No. Seven, in Mason County, Texas, desire to have a Justice of the Peace appointed for that Precinct. They failed to nominate a Justice of the Peace for Precinct No. Seven at the Primary Election in 1946, or to elect a Justice of the Peace in and for said Precinct No. Seven at the General Election in 1946. . ."

QUESTIONS

"1. Does the fact that no Justice of the Peace was nominated or elected at the Primary or General Election held in 1946, nor for several years prior thereto in said Justice Precinct constitute a vacancy in said office as contemplated by the above cited Constitution Article 6, Section 28, and Article 2555, Vernon's Annotated Civil Statutes?

"2. Would the Commissioners' Court of Mason County, Texas, have the constitutional or Statutory

Authority to appoint a Justice of the Peace in said Justice of the Peace Precinct No. 7 or other Precincts in Mason County, where no Justice of the Peace was elected to hold office until the next General Election?

"3. Are there any Constitutional or Statutory authority whereby a Justice of the Peace could be appointed or elected by special election in said Justice Precinct or the other Justice Precincts in Mason County to hold office until the next General Election?

"4. Could the Legislature by Special Act authorize the Commissioner's Court of Mason County, Texas, to appoint a Justice of the Peace for said Precinct to hold office until the next General Election?

"5. Could the Legislature by Special Act authorize the qualified voters in said Justice Precinct to call a special election and elect a Justice of the Peace to hold office until the next General Election?"

Article V, Section 18, Constitution of Texas, provides in part as follows:

"Each organized county in the State now or hereafter existing, shall be divided from time to time, for the convenience of the people, into precincts, not less than four and not more than eight. The present County Courts shall make the first division. Subsequent divisions shall be made by the Commissioner's Court, provided for by this Constitution. In each such precinct there shall be elected at each biennial election, one justice of the peace and one constable, each of whom shall hold his office for two years and until his successor shall be elected and qualified;. . ." (Under-scoring ours)

Article V, Section 28 of our Constitution provides:

"Vacancies in the office of Judges of the Supreme Court, the Court of Criminal Appeals, the Court of Civil Appeals and District Courts shall be filled by the Governor until the next succeeding general election; and vacancies in the office of County Judge and justices of the peace shall be filled by the Commissioners Court until the next general election for such

offices." (Underscoring ours)

Article 2355, V.C.S., provides:

"The Court (Commissioners' Court) shall have power to fill vacancies in the office of: County Judge, County Clerk, Sheriff, County Attorney, County Treasurer, County Surveyor, County Hide Inspector, Assessor of Taxes, Collector of Taxes, Justices of the Peace, Constables, and County Superintendent of Public Instruction. Such vacancies shall be filled by a majority vote of the members of said Court, present and voting, and the person chosen shall hold office until the next general election." (Parenthesis and underscoring ours)

Since there was no person nominated for the Justice of the Peace, Precinct No. 7, in the primary election in 1946 and there was no person elected to said office in the general election in 1946, there now exists a vacancy in the office of Justice of the Peace of Precinct No. 7, Mason County. See *State v. Cocke*, 54 Tex. 482; *Maddox v. York*, 54 S. W. 24; 93 Tex. 275; *Dobkins v. State*, 19 S.W. 2d 574.

Section 28 of Article V of the Constitution of Texas makes it the mandatory duty of the Commissioners' Court to fill a vacancy in the office of Justice of the Peace. Moreover, there is no constitutional or statutory provision authorizing a special election in such cases.

In answer to your first question, therefore, it is our opinion that since no Justice of the Peace was elected at the general election in 1946, there exists a vacancy in said office as contemplated by Article V, Section 28, of our Constitution and Article 2355, V.C.S.

In answer to your second question, it is our opinion that the Commissioners' Court of Mason County does have the authority to appoint a Justice of the Peace in Precinct No. 7 to hold said office until the next general election.

In answer to your third question, it is our opinion that there is no authority for holding an election for the purpose of electing a Justice of the Peace to fill the vacancy that now exists in said office.

In view of our answers to your first three questions, it is unnecessary to answer your fourth and fifth questions concerning the authority of the Legislature to provide by special act for the filling of such vacancy.

SUMMARY

There exists a vacancy in the office of Justice of the Peace of Precinct No. 7 in Mason County as no person was elected to said office in the general election in 1946, and said vacancy should be filled by the Commissioners' Court of Mason County. Art. V, Sec. 28, Const. of Tex.; Art. 2355, V.C.S.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By 
John Reeves
Assistant

JR:djm

APPROVED MAY 1, 1947


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