



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

JOHN BEN SHEPPERD  
ATTORNEY GENERAL

January 26, 1956

Honorable Tom Reavley  
Secretary of State  
Austin, Texas

Letter Opinion No. MS-253

Re: Proper date for holding  
election on H.J.R. 30,  
54th Legislature.

Dear Mr. Reavley:

Your request for an opinion reads as follows:

"The 54th Legislature passed nine joint resolutions proposing Constitutional amendments and providing for an election by the people on each. On eight of these resolutions, it is provided that the election shall be held on the first Tuesday following the first Monday in November, 1956 [general election day]. This will cause the day to fall on November 6, 1956. In H.J.R. No. 30, however, it was provided in Section 2 that the amendment should be submitted to the electors 'on the second Tuesday in November, 1956.' This day would fall on November 13, 1956.

"Since there would be no cause for a special election except this resolution, and since it would be extremely expensive to duplicate the elections, and since the Legislature surely intended to hold this election on the same day as the General Election, but in view of the specific language, we respectfully request your opinion on the following points:

"(1) Is it necessary for a separate election to be held on November 13, 1956 for a vote on H.J.R. No. 30?

"(2) If the first question is answered in the affirmative, may this office cause to be published, the text of H.J.R. No. 30 at the same time and in the same newspapers as the publication of the other Constitutional amendments?

"(3) If the answers to the first and second questions are in the affirmative, what type of notice are we required to make to distinguish clearly that eight of the amendments are to be voted on on one day and the ninth amendment to be voted on a week later?"

Section 1 of Article XVII of the Constitution provides in part:

"The Legislature, at any biennial session, by a vote of two-thirds of all the members elected to each House, to be entered by yeas and nays on the journals, may propose amendments to the Constitution, to be voted upon by the qualified electors for members of the Legislature, which proposed amendments shall be duly published once a week for four weeks, commencing at least three months before an election, the time of which shall be specified by the Legislature, in one weekly newspaper of each county, in which such a newspaper may be published; . . . ."

The Constitution requires that the time of the election shall be specified by the Legislature, and an election on a proposed amendment cannot be held on any other date. Cartledge v. Wortham, 105 Tex. 585, 153 S.W. 297 (1913); Att'y Gen. Op. 0-6617 (1946). So long as sufficient time is allowed for compliance with the requirement for publication commencing at least three months before the election, the Legislature has complete freedom to determine on what date the election shall be held. It is within the power of the Legislature to provide for submission of different amendments on different dates and to set a date other than general election day.

Joint resolutions are subject to the ordinary rules of statutory construction. 82 C.J.S. 560, Statutes, sec. 320. As a general rule, unambiguous provisions of a legislative act are not open to "construction" and cannot be varied to give them a meaning different from that expressed by the language used. This principle is stated in 39 Texas Jurisprudence 160, Statutes, sec. 88, as follows:

"Resort may be had to the canons of construction when necessary to determine the meaning of an ambiguous statute. But a court will not assume to construe or interpret a statute if there is no necessity for it to do so, that is, if the statute

is susceptible of but one construction. On the contrary, it is settled by many decisions that there is no room for construction when the law is expressed in plain and unambiguous language and its meaning is clear and obvious. In such a case the law will be applied and enforced as it reads, regardless of its policy or purpose, or the justice of its effect. In other words, a court is not authorized to indulge in conjecture as to the intention of the Legislature, or to look to the consequences of a particular construction, unless the meaning of the statute is doubtful."

An exception to this rule is that the substitution of one word for another is permitted where it is obvious that the word used is the result of a grammatical or clerical error. 2 Sutherland, Statutory Construction (3rd Ed. 1943) 458; sec. 4925; Chambers v. State, 25 Tex. 307 (1860); Att'y Gen. Op. V-1117 (1950). However, both under the usual conception of what constitutes a clerical error and under the rulings hereinafter discussed, the words "second Tuesday" cannot be taken as a clerical error for "first Tuesday" or "first Tuesday after the first Monday."

House Joint Resolution No. 62 of the 49th Legislature provided for submission of a proposed amendment on the first Thursday in November, 1946. The legislator who introduced the resolution brought a proceeding in the Supreme Court of Texas for a writ of mandamus ordering the Secretary of State to certify the proposed amendment to the voters on the first Tuesday in November, 1946 (which was general election day), alleging that the Legislature intended to provide for submission on that date. The petition stated that the conference committee report adopted by the Legislature was dictated and transcribed on the last day of the session, that the stenographic notes in the possession of the relator showed that the word "Tuesday" had been dictated but that it had been erroneously transcribed to read "Thursday," and that the error was not detected because there was not sufficient time to proofread the report before the Legislature voted on it. W. R. Cousins, Jr. v. Claude Isbell, Secretary of State, Cause No. A-866 (unreported) motion for leave to file petition for mandamus overruled April 17, 1946. The Supreme Court overruled the motion with the following notation: "See Williams v. Taylor, 83 Texas 667, 19 S.W. 156; Ellison v. Texas Liquor Control Board, 154 S.W. (2) 322, 326 (writ of error refused); 39 Tex. Jur. p. 121,

Hon. Tom Reavley, page 4 (MS-253)

sec. 60; 50 Am. Jur. p. 129, secs. 148-150." These authorities announce the "enrolled bill rule" to the effect that the courts will not look beyond the enrolled bill to ascertain whether it has been regularly enacted, or the terms of the statute in case of alleged discrepancies. Unlike the resolution there under consideration, there is nothing in the legislative history of H.J.R. 30 to indicate an intention to provide for submission on any day other than the one stated in the enrolled resolution; but this precedent by the Supreme Court precludes varying the language used even if there was evidence that the Legislature intended to provide for submission on general election day.

Another similar situation arose in connection with submission of H.J.R. 34 of the 25th Legislature. Section 2 of the resolution provided for an election on the first Tuesday in November, 1898. General election day in that year fell on the second Tuesday in November. In an opinion from the Attorney General's Office to the Governor, dated March 11, 1898 (Letters of Attorney General's Office, Book 95, p. 575) it was said:

"From the language in this section it is very clear that the election on this constitutional amendment is required to be held on the first Tuesday in November, 1898. There is absolutely no ambiguity in the language used with reference to the time fixed for holding said election. There is no room for construction. It therefore follows that the election provided for in said section must be held on the day therein named."

In view of the foregoing authorities, your first question is answered in the affirmative.

In answer to your second question, the text of H.J. 30 may be published at the same time and in the same newspapers as the publication of the other constitutional amendments.

In answer to your third question, no particular type of notice is required to distinguish between the eight amendments which are to be submitted on general election day and the proposed amendment in H.J.R. 30, to be submitted a week later. We suggest that the publication be made under

Hon. Tom Reavley, page 5 (MS-253)

appropriate headings showing the different election dates,  
and we think the following would be sufficient:

PROPOSED CONSTITUTIONAL AMENDMENTS  
TO BE VOTED ON AT AN ELECTION TO BE  
HELD ON NOVEMBER 6, 1956

PROPOSED CONSTITUTIONAL AMENDMENT  
TO BE VOTED ON AT AN ELECTION TO  
BE HELD ON NOVEMBER 13, 1956.

APPROVED:

John Atchison  
Reviewer

J. A. Amis, Jr.  
Reviewer

L. W. Gray  
Special Reviewer

Davis Grant  
First Assistant

John Ben Shepperd  
Attorney General

Yours very truly,

JOHN BEN SHEPPERD  
Attorney General

By *Mary K. Wall*  
Mary K. Wall  
Assistant