



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 512

May 30, 2013

Whether a person who was elected to the position of justice of the peace of a particular precinct that was subsequently renumbered to a different precinct holds the office of the renumbered precinct for purposes of section 255.006 of the Election Code. (AOR-578)

The Texas Ethics Commission (“commission”) has been asked about the application of section 255.006 of the Election Code, which prohibits certain misrepresentations in political advertising and campaign communications.

The requestor states that in 2010 he was elected as justice of the peace of precinct 6, place 1, within a county that consisted of seven justice of the peace precincts at that time. Precinct 6 consisted of only one place for justice of the peace. In November 2012, pursuant to redistricting requirements, the county commissioners court issued a resolution that modified the boundaries of the precincts, including precinct 6. The resolution stated that precinct 6 was renumbered to precinct 4 and that the requestor “shall continue to serve as the Judge in the renumbered Justice of the Peace Precinct 4.” The requestor states that the new boundaries of precinct 4 include approximately 80 percent of the area that comprised the pre-existing precinct 6 and that his residence is located within that area. On December 31, 2012, the requestor was administered an oath of office as an appointed official for the position of justice of the peace of precinct 4. On January 1, 2013, the county resolution became effective.

The requestor asks whether he holds the office of justice of the peace of precinct 4 for purposes of section 255.006 of the Election Code and whether he may indicate in political advertising that he is a candidate seeking “re-election” as a candidate for justice of the peace of precinct 4 in elections to be held in 2014.

Section 255.006 of the Election Code states, in relevant part:

- (a) A person commits an offense if the person knowingly enters into a contract or other agreement to print, publish, or broadcast political advertising with the intent to represent to an ordinary and prudent person that a candidate holds a public office that the candidate does not hold at the time the agreement is made.
- (b) A person commits an offense if the person knowingly represents in a campaign communication that a candidate holds a public office that the candidate does not hold at the time the representation is made.

Election Code § 255.006.

The issue before us is whether the requestor “holds” the office of justice of the peace of the renumbered and redrawn precinct, precinct 4, for purposes of this prohibition. *See* Ethics Advisory Opinion No. 196 (1994) (stating that a person “holds” the office of district attorney for purposes of section 255.006 only by election or by appointment of the governor with the advice and consent of the senate).

The Texas Constitution requires the commissioners court of each county to divide the county into precincts, depending on the population of the county. Tex. Const. art. V, § 18(a). In each precinct there shall be elected at least one justice of the peace, each of whom shall hold the office for four years and until a successor is elected and qualified. *Id.* A commissioners court may redraw precinct boundaries as needed for the convenience of the people. *Id.* The constitution further states, in relevant part:

When the boundaries of justice of the peace ... are changed, each Justice ... in office on the effective date of the change ... *shall serve in the precinct in which the person resides for the term to which each was elected or appointed*, even though the change in boundaries places the person's residence outside the precinct for which he was elected or appointed, abolishes the precinct for which he was elected or appointed, or temporarily results in extra Justices ... serving in a precinct. When, as a result of a change of precinct boundaries, a vacancy occurs in the office of Justice of the Peace..., the Commissioners Court shall fill the vacancy by appointment until the next general election.

Id. §18(c) (emphasis added). The Local Government Code also provides that the term of office of a justice of the peace who holds office at the time a change in precinct boundaries becomes effective “is not affected by the change, regardless of whether the change places the officer’s residence outside the precinct for which the officer was elected,” and that the officer “is entitled to serve for the remainder of the term to which the officer was elected.” Local Gov’t Code § 81.021(b).

The attorney general has determined that the Texas Constitution “requires that, when precinct boundaries are changed, each incumbent justice of the peace is to serve in the new precinct in which he ‘resides’ ‘on the effective date of the change’” until the expiration of his or her term. Attorney General Letter Opinion No. 93-45 (1993). *See also* Attorney General Opinion JC-483 (2002) (stating that a justice of the peace of a precinct abolished by redistricting is entitled to serve out his or her term in the precinct in which he or she resides on the effective date of the change).

In our opinion, if a person is entitled to serve as justice of the peace of a particular precinct in accordance with article 5, section 18(c) of the Texas Constitution, then that person “holds” that office for purposes of section 255.006 of the Election Code. Based on the facts provided to us, the requestor is entitled to serve as justice of the peace of precinct 4 and “holds” that office for purposes of section 255.006 of the Election Code.¹ The requestor is concerned that the term “re-elect” would be prohibited because he was elected to precinct 6, and not precinct 4. In certain circumstances, the term “re-elect” may represent that a non-incumbent candidate holds a public office and would therefore be prohibited by section 255.006 of the Election Code. However, for purposes of that prohibition, the crucial issue is whether the candidate “holds” the particular office, which is not necessarily determined by whether the candidate acquired the office by election. The requestor would not be prohibited from stating in his political advertising that he seeks “re-election” to the office of justice of the peace of precinct 4 provided that he holds the office at the time that the representation is made.

SUMMARY

A person who is entitled to serve as justice of the peace of a particular precinct in accordance with article 5, section 18(c) of the Texas Constitution “holds” that office for purposes of section 255.006 of the Election Code and may indicate in political advertising that he holds that office for the duration of his term.

¹ The requestor states that he was appointed as justice of the peace of precinct 4 on the day before the effective date of the commissioners court order that redrew and renumbered precinct 6. The attorney general has stated that if a commissioners court establishes a new precinct in which no justice of the peace resides, then it shall fill the vacancy by appointment until the next general election, but that “[n]o vacancy exists in any precinct in which a justice of the peace resides and continues in office pursuant to article V, section 18(c) of the Texas Constitution.” Attorney General Opinion JC-483 (2002). We cannot determine in this opinion whether the appointment was necessary or had any legal effect. However, we conclude that a person who is appointed to the office of justice of the peace of a particular precinct in

accordance with article V, section 18(c), of the Texas Constitution also “holds” that office for purposes of section 255.006 of the Election Code.