

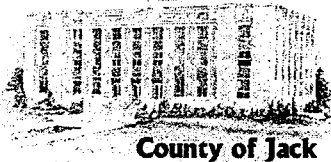
FILED FOR RECORD

_____ O'CLOCK _____ M.

DEC 22 2014

JANICE ROBINSON, County Clerk
JACK COUNTY, TEXAS

BY _____ DEPUTY



County of Jack

Memorandum -- County Judge's Office

Date: 19 December, 2014

To: All Commissioners

PC: Jan Robinson, County Clerk; Sharon Robinson, Tax Assessor/Collector; Ronda Lewis, Deputy Tax Assessor/Collector, Acting County Voting Registrar

Re: Report on submitted *Petition for Local Option Election to Legalize the Sale of Alcoholic Beverages for Off-Premises Consumption*, issued on September 15, 2014

As you may know, the County Clerk received as per law an application for issuance of a *Petition for Local Option Election to Legalize the Sale of Alcoholic Beverages for Off-Premises Consumption*. That application, and duplicate originals, was granted and a petition was issued on September 15, 2014.

The petition must set forth area in which the issue would apply (county, JP precinct, or municipality) and set forth the issue, *e.g.*, what will be sold.

That petition is governed by provisions of the Alcohol Beverage Code and the Election Code.

Process Summary (per Secretary of State's Website): The Petitions (each numbered) are delivered to, in this case, one applicant. The petitions must be returned by no later than the 60th day following its issuance. The Petition in its multipage format are delivered to the Voter Registrar to review and determine the total number of "valid signatures" present. The Registrar then reports to the Commissioners Court the number of qualified voters* signing the petition.

* It is not enough to just sign the Petition. The signor must be qualified to count, *e.g.* someone could sign the Petition but no be **qualified to vote** since they had not been registered more than 30 prior to the time the Petition was issued.

If the required number of signatures has signed the Petition, the Commissioners Court must then order an election [see attached].

In this instance, the County Clerk has calculated per the statute the number of **qualified voters** needed to sign the Petition here to be at least **837**.

Evaluation of Petition(s) by Voter Registrar: The Voter Registrar review all signatures on the various 84 pages. Criterion used on each is set forth in § 501.031 of the Election Code (see attached).

A signature may not be counted unless it is the actual signature of the purported signer and the petition contains in addition to the signature:

- signer's printed name;
- signer's date of birth;
- territory from which signatures must be obtained is situated in more than one county, the county of registration [not relevant here];
- signer's residence address; and
- date of signing; and
- compliance with any other applicable requirements prescribed by law.

It is my understanding that every effort would be made to find each to be a qualified signer.

Attached following is a chart showing the relevant numbers compiled by the County Clerk and the Voter Registrar showing that the signatures of 677 signatures were found in summary on the Petitions rather than the 837 or more required by law.

I suggest also a reading of a summary of the local option process at the website of the Texas Secretary of State found at: <http://www.sos.state.tx.us/elections/laws/liquorelections.shtml> (see attachment).

Thank you for your cooperation in this. Let me know if you have any questions.

MGD

Election Code § 501.032, Requirements to Order Election

states:

(a) The commissioners court, at its next regular session on or after the 30th day after the date the petition is filed, shall order a local option election to be held on the issue set out in the petition if the petition is filed with the voter registrar not later than the 60th day after the date the petition is issued and bears the actual signatures of a number of qualified voters of the political subdivision equal to at least:

(1) 35 percent of the registered voters in the subdivision who voted in the most recent gubernatorial election for a ballot issue that permits voting for or against:

- (A) "The legal sale of all alcoholic beverages for off-premise consumption only.";
- (B) "The legal sale of all alcoholic beverages except mixed beverages.";
- (C) "The legal sale of all alcoholic beverages including mixed beverages."; or
- (D) "The legal sale of mixed beverages.";

(2) 25 percent of the registered voters in the political subdivision who voted in the most recent general election for a ballot issue that permits voting for or against "The legal sale of wine on the premises of a holder of a winery permit."; or

(3) 35 percent of the registered voters in the political subdivision who voted in the most recent gubernatorial election for an election on any other ballot issue.

(b) Voters

Election Code § 501.031. Verification of Petition

(a) The voter registrar of the county shall check the names of the signers of petitions and the voting precincts in which the signers reside to determine whether the signers were qualified voters of the county, justice precinct, or municipality at the time the petition was issued. The political subdivision may use a statistical sampling method to verify the signatures, except that on written request from a citizen of the political subdivision for which an election is sought, the political subdivision shall verify each signature on the petition. The citizen making the request shall pay the reasonable cost of the verification. The registrar shall certify to the commissioners court the number of qualified voters signing the petition.

(b) A petition signature may not be counted unless the signature is the actual signature of the purported signer and the petition:

(1) contains in addition to the signature:

- (A) the signer's printed name;
- (B) the signer's date of birth;
- (C) if the territory from which signatures must be obtained is situated in more than one county, the county of registration;
- (D) the signer's residence address; and
- (E) the date of signing; and

(2) complies with any other applicable requirements prescribed by law.

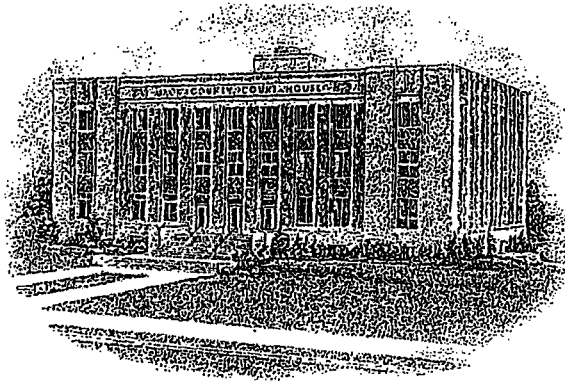
(c) The use of ditto marks or abbreviations does not invalidate a signature if the required information is reasonably ascertainable.

(d) The omission of the state from the signer's residence address does not invalidate a signature unless the political subdivision from which the signature is obtained is situated in more than one state. The omission of the zip code from the address does not invalidate a signature.

(e) The signature is the only entry on the petition that is required to be in the signer's handwriting.

(f) A signer may withdraw the signer's signature by deleting the signature from the petition or by filing with the voter registrar an affidavit requesting that the signature be withdrawn from the petition. A signer may not withdraw the signature from a petition on or after the date the petition is received by the registrar. A withdrawal affidavit filed by mail is considered to be filed at the time of its receipt by the registrar. The withdrawal of a signature nullifies the signature on the petition and places the signer in the same position as if the signer had not signed the petition.

JACK COUNTY



JANICE ROBINSON
County Clerk
100 N. Main St., Ste. 208
Jacksboro, Texas 76458
940-567-2111

JACKSBORO, TEXAS

ACCORDING TO SECTION 501.032 OF THE TEXAS ALCOHOLIC BEVERAGE CODE
35% OF THE VOTERS WHO VOTED IN THE LAST GUBERNATORIAL ELECTION
WITHIN THE POLITICAL SUBDIVISION IS THE NUMBER OF SIGNATURES REQUIRED
FOR YOUR PETITION:

2391 VOTERS VOTED IN THE NOVEMBER 2, 2010 GENERAL ELECTION

35% OF 2391= 837 REQUIRED SIGNATURES

ISSUE DATE: SEPTEMBER 15, 2014

DUE ON OR BY: NOVEMBER 17, 2014

SERIAL #14-01 THROUGH #14-85

IF YOU HAVE ANY QUESTIONS PLEASE FEEL FREE TO CALL

OFFICE 940-567-2111



Janice Robinson, Jack County Clerk

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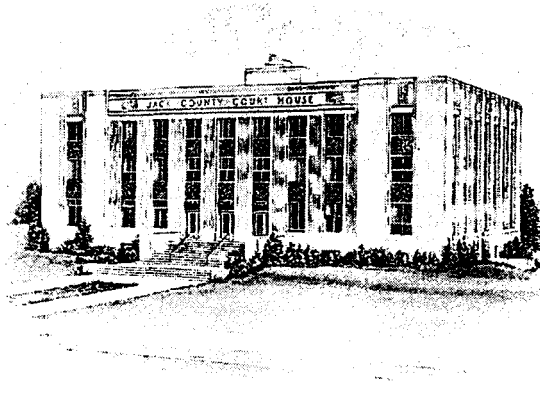
_____ O'CLOCK _____ M.

SEP 15 2014

JANICE ROBINSON, County Clerk
JACK COUNTY, TEXAS

BY _____ DEPUTY

JACK COUNTY



JACKSBORO, TEXAS

SHARON ROBINSON, RTA
TAX ASSESSOR-COLLECTOR
100 N. MAIN ST., ROOM # 209
JACKSBORO, TEXAS 76458
(940) 567-2352
FAX (940) 567-5322

December 17, 2014

To Commissioner's Court,

This letter is to advise you of the results concerning the signatures on the Local Liquor Option petition:

677 signatures are registered voters	and were counted
229 signatures are not registered voters	and were not counted
37 signatures were not registered in time	and were not counted
14 people signed it twice	and the second signature was not counted
1 person asked by an affidavit for their signatures to be removed from the petition.	

As per the letter from the County Clerk's office when the petition was issued, the total number of registered voter signatures required is 837.

Thank you,

Ronda

Ronda Lewis
Jack County Voter Registration

November 17, 2014

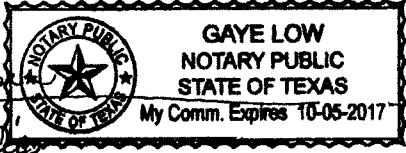
9:45 A.M.

I, Raymond Chester Hyles, request that my name be withdrawn from the liquor petition that I signed.

Raymond Chester Hyles

Subscribed and sworn to before me this the 17th day of Nov, year 2014.

Gaye Low
Notary Public



Jack
County, Texas

TALLY SHEET: PETITION FOR LOCAL OPTION ELECTION TO LEGALIZE SALE OF ALCOHOLIC BEVERAGES

PAGE #	COUNT	PAGE #	COUNT	PAGE #	COUNT	PAGE #	COUNT
14-01	10	14-41		14-81	10	14-121	10
14-02	10	14-42	0	14-82	10	14-122	10
14-03	10	14-43	0	14-83	9	14-123	10
14-04	10	14-44	10	14-84	10	14-124	10
14-05	10	14-45	9	14-85	10	14-125	2
14-06	10	14-46	10	14-86	10	14-126	0
14-07	10	14-47	10	14-87	10	14-127	0
14-08	10	14-48		14-88	10		
14-09	2	14-49	10	14-89	10		
14-10	9	14-50		14-90	10		
14-11	7	14-51		14-91	9		
14-12	9	14-52	9	14-92	0		
14-13	10	14-53	10	14-93	10		
14-14	6	14-54	8	14-94	8		
14-15	10	14-55		14-95	8		
14-16	10	14-56	3	14-96	10		
14-17	10	14-57		14-97	8		
14-18	10	14-58	10	14-98	8		
14-19	0	14-59	10	14-99	+		
14-20	10	14-60	10	14-100			
14-21	9	14-61	9	14-101	8		
14-22	6	14-62	10	14-102	10		
14-23	10	14-63	10	14-103			
14-24	10	14-64	7	14-104	$\frac{7}{8}$	6	
14-25	10	14-65	10	14-105	$\frac{3}{4}$	3	
14-26	10	14-66	10	14-106	10		
14-27	10	14-67	10	14-107			
14-28	9	14-68	10	14-108	2		
14-29	9	14-69	9	14-109	10		
14-30	10	14-70		14-110	10		
14-31	10	14-71	10	14-111	8		
14-32	8	14-72		14-112	10		
14-33	10	14-73	0	14-113	10		
14-34	10	14-74	2	14-114	10		
14-35	10	14-75	0	14-115	10		
14-36	10	14-76	0	14-116	10		
14-37	10	14-77	0	14-117	10		
14-38	10	14-78	10	14-118	10		
14-39	10	14-79	10	14-119	0		
14-40	10	14-80	10	14-120	10		
Sub-Total	364	Sub-Total	236	Sub-Total	307	Sub-Total	42
GRAND TOTAL SIGNATURES			249	950			

TEXAS SECRETARY OF STATE

NANDITA BERRY

Don't have a photo ID for voting? [Election Identification Certificates](#) are available from [DPS offices](#).

Election Outlook: [Election Night Returns](#)

Local Option Liquor Elections

This outline summarizes Texas local option liquor election law as currently codified. We have made every effort to ensure the accuracy of this summary outline, but this material cannot substitute for the statutory source material and relevant interpretive case law and administrative regulations. All references are to the Texas Election Code ("the Code") unless otherwise noted. References to a justice precinct mean a justice of the peace precinct, and references to a city are equivalent to a reference to "town" or "municipality." References to the county clerk should be read as a reference to the entity that is tasked with running elections for the county, be it an elections administrator, tax assessor collector, or voter registrar.

Article XVI, Section 20 of the Texas Constitution; Chapter 501, Texas Election Code; and Chapter 251, Texas Alcoholic Beverage Code are specific to local option liquor elections. For historical and public policy reasons, the procedures for these elections differ in many respects from the procedures applied to other voter-initiated elections. You should not extrapolate or apply the procedures explained here to any other type of petition-driven election.

I. Overview of Texas Laws Relating to the Sale or Prohibition of Liquor

Although Texas laws controlling the sale of liquor date back to the founding of the Republic following independence from Mexico, local option law in its current form has been largely unchanged since Article XVI, Section 20 of the Constitution was adopted in 1891. The blanket prohibition of all alcohol sales under state (and then federal) law, (along with the state prohibition on the manufacture of alcohol) merely interrupted the application of the older local option liquor law between February 1918 and August 1935.

As to the default status of territory in Texas with respect to the legal sale of alcohol, the Texas Supreme Court noted:

[T]he entire state, as such, is ... *wet as to all intoxicating liquors*; but with certain exceptions and limitations. In effect, [Article XVI, § 20, Texas Constitution] contains provisions which make any county, justice's precinct, or city, or town dry which was dry at the time it became effective. In other words, this amendment preserves the status quo as to dry areas as they existed at the time it became effective. It therefore preserved as dry any county, justice's precinct, or city, or town which was dry when it went into effect. Of course, any such area has the right to become wet by so voting at an election legally ordered and held for that purpose under present local option statutes. Houchins v. Plains, 110 S.W.2d 549, 553 (Tex. 1937) (emphasis added).

Notwithstanding the underlying wet status of the state, a majority of Texas counties were either entirely or partially dry after Prohibition. This fact has caused some confusion over the years by leading people to erroneously believe that the default status of all territories in Texas is dry unless otherwise noted.

Counties, cities, and justice of the peace precincts are wet except where the voters have prohibited the sale of liquor. However, at one time or another, the voters in almost every county in the state have adopted at least some local restriction on alcohol sales. Even in the absence of local option elections, some jurisdictions and parts of jurisdictions are dry as the result of pre-1891 legislative action in the form of special and local prohibitory acts that were ratified and preserved in effect when Article XVI § 20 of the state constitution was adopted.

A. TABC Resources

With a recent website redesign, the Texas Alcoholic Beverage Commission ("TABC") has dramatically expanded the amount of historical data available online to help determine the current legal status of any territory in the State of Texas. The website (<http://www.tabc.state.tx.us/>) now includes the results of every reported local option election conducted between 1939 and 2010 in the State of Texas, as well as a map showing the wet or dry status of every part of the state (current as of June 2013). The contact information for the TABC is:

Texas Alcoholic Beverage Commission
 P.O. Box 13127
 Austin, Texas 78711-3127
 512-206-3333
 Complaint Line: 800-THE-TABC (843-8222)
http://www.tabc.state.tx.us/local_option_elections/index.asp

B. Historical information

Many of the countywide prohibition elections occurred prior to the creation of the statutory predecessor to the TABC in

1935, and TABC does not maintain records for those elections (local option liquor elections conducted prior to November 16, 1935). Nor does TABC maintain records of prohibitory legislative acts enacted prior to the 1891 constitutional amendment authorizing local option elections. Nevertheless, reports of wet/dry status made by the Texas Liquor Control Board (now the TABC) have generally identified cities, J.P. precincts, and counties that were either wholly or partially wet or dry when state prohibition was repealed in 1935. While the TABC doesn't guarantee the accuracy of this material, the December 31, 1939 annual report (available as a .pdf file on the TABC website) goes a long way toward resolving the pre-Prohibition Era status of a particular territory as wet or dry.

Records of all pre-Prohibition local option liquor elections should be in the county election register for your county, but that source can sometimes be incomplete or lost. Reviews of old newspapers or historical archives can sometimes pinpoint the date and outcome of a local option election, but will not constitute official proof of the territorial status unless accepted as such by a court of law.

With respect to pre-1891 legal controls on the sale of alcohol, the index to Gammel's Law of Texas is the primary source. The University of North Texas has organized this material online (at <http://texinfo.library.unt.edu/lawsoftexas/default.htm>).

- C. **NEW LAW: House Bill 2818** (83rd Legislature, Regular Session, 2013,) amends Sections 251.72 and 251.80 of the Texas Alcoholic Beverage Code to authorize a new local option liquor election to be held using the current justice precinct boundaries. Law prior to this amendment stated that if a justice precinct holds a local option liquor election, the only way to override the status of the justice precinct was to hold a subsequent election within the same boundaries of the justice precinct as they existed at the time of the first election, even if the boundaries had changed or the precinct no longer existed. Because justice precincts are regularly redistricted, counties previously had to attempt to reconstruct old justice precinct lines and adapt voting precincts to jurisdictional boundaries that may have been decades old in order to accommodate such an election.

H.B. 2818 also provides that a subsequent local option election, if the boundaries of the justice precinct have changed since the previous status was established, will only change the local option status in the territory that is part of the justice precinct on the date of the subsequent local option election, and the status of any territory outside of the current justice precinct will remain unchanged.

II. Political Subdivisions in Which Local Option Elections Occur

- A. **What political subdivisions qualify to exercise local option?** [Secs. 501.021, 501.0211, 501.10].
 - 1. Counties,
 - 2. Justice of the peace precincts, and
 - 3. Municipalities

In 2011, Section 501.109 of the Code was amended to provide that when an election to permit or prohibit the legal sale of alcoholic beverages is to be held in a city, the election shall be conducted by the city instead of by the county. For the purposes of an election conducted by a city, a reference in Chapter 501 of the Code to: (1) the county is considered to refer to the city; (2) the commissioners court is considered to refer to the governing body of the city; (3) the county clerk or voter registrar is considered to refer to the secretary of the city or, if the city does not have a secretary, to the person performing the functions of a secretary of the city; and (4) the county judge is considered to refer to the mayor of the city or, if the city does not have a mayor, to the presiding officer of the governing body of the city. Section 501.109(c) provides that the city shall pay the expense of the election.

- B. **May a local option liquor election be held in only part of a justice precinct which is part wet and part dry?**

No. All registered voters within the boundaries of the justice precinct are eligible to vote in an election held within that justice precinct; voters who reside and are registered in a city that is contained within the justice precinct are eligible to vote in the election, regardless of whether the election will affect the local option status of the city. See Patton v. Texas Liquor Control Board, 293 S.W.2d 99 (Tex. Civ. App.—Austin 1956, writ ref'd n.r.e.).

- C. **If a justice precinct establishes a local option liquor status and its boundaries subsequently have changed, must an election to change the status of the area encompassed by the former justice precinct's boundaries be held in that area?** [Sec. 251.80, Texas Alcoholic Beverage Code].

No, due to the **NEW LAW: House Bill 2818** (83rd Legislature, Regular Session, 2013) amends Sections 251.72 and 251.80 of the Texas Alcoholic Beverage Code to authorize a new local option liquor election to be held using the current justice precinct boundaries. See I. C. above for full explanation.

- D. **Can an election be held in a justice precinct as it is currently constituted?**

Yes. **NEW LAW: House Bill 2818** (83rd Legislature, Regular Session, 2013,) amends Sections 251.72 and 251.80 of the Texas Alcoholic Beverage Code to authorize a new local option liquor election to be held using the current justice precinct boundaries. See I. C. above for full explanation.

- E. **How long must a political subdivision be in existence before it qualifies to exercise local option?** [Sec. 501.022]

A political subdivision must have been in existence at least 18 months before holding a local option election to legalize or prohibit the sale of liquor. The political subdivision must include substantially all the area encompassed by the subdivision at time of its creation and may include any other area subsequently legally annexed by or added to the political

subdivision.

- F. **If a city is in the process of annexing territory at the time an application for a local option petition is filed, is that territory included in the election?**

Section 501.1035 of the Code provides that any territory that is annexed by a city subsequent to the issuance of the petition but prior to the local option liquor election is included in that election and affected by the election outcome. However, the number of signatures needed on the petition is increased to reflect the additional population of the area pending annexation.

- G. **Can a legalization election be held in an area where some alcohol can already be legally sold? Similarly, can a prohibition election be held in an area where some alcohol is already prohibited from sale?**

Yes, in general (but see Section 501.0211 for a limited exception applicable only to the City of Abilene). Before the county clerk or city secretary can issue a petition to gather signatures, the petitioners must first apply for the petition and provide proof of publication in a newspaper of general circulation in the political subdivision.

III. Application

- A. **Is it necessary to apply for a petition?** [Sec. 501.023(a)]

Yes, in general (but see Section 501.0211 for a limited exception applicable to the City of Abilene). Before the county clerk or elections administrator can issue a petition to gather signatures, the petitioners must first apply for the petition and provide proof of publication in a newspaper of general circulation in the political subdivision.

- B. **How is an application for a petition made?** [Secs. 501.023, 501.024, 501.025]

1. **Application:** An application for a petition is made by written application by 10 or more qualified voters of the territory to be covered by the election. A "qualified voter" is a registered voter. The heading and statement required to be on the application are set out in Sections 501.024 and 501.025. **The requirements for an application should not be confused with the requirements for a petition.** The Code simply requires that the application be in writing and bear the signatures of **10 voters**. The additional information required on a petition (e.g., address, date of birth) is not necessary for an application. An application form need not be supplied by the county clerk, elections administrator, or city secretary. Any application which complies with the requirements of either Sections 501.024 or 501.025 is sufficient. Application forms are available from private printers; if the political subdivision decides to supply them to applicants, then the forms are required to be bilingual for the majority of Texas counties or cities.
2. **Notice of Publication:** When an application for a petition is filed, the petitioners must also provide proof of publication in a newspaper of general circulation.

The notice must include:

- a. The individual or entity that is applying for the petition to gather signatures for a local option liquor election;
- b. The type of local option liquor election;
- c. The name of the territory (e.g., county, justice precinct, city) in which the petition will be circulated; and
- d. The name of the person and office in which the application will be filed.

NOTE: There is no specified number of times that this notice must appear in the newspaper; therefore, the notice only has to be published once.

- C. **How does a person provide proof of publication?**

Proof of publication submitted along with an application for a petition could be made by providing the original or a copy of a portion of the paper in which the notice is published or by providing an affidavit from the editor or publisher attesting to the publication of the notice.

IV. Petition

After the application has been approved, the county clerk or city secretary, as applicable, will provide blank petition pages to the petitioners. The Secretary of State and the Texas Alcoholic Beverage Commission must be notified, in writing, by the county clerk or city secretary, as applicable, of when petitions to gather signatures have been issued by the 5th day after the issuance.

NOTE: In 2009, the Legislature authorized the City of Abilene to order citywide legalization elections by means of a municipal resolution without requiring any petition for such an election. The law is limited solely to municipalities "with a population of at least 112,000 located in a county with a population not more than 135,000," (the bracket limits the law's effect to the City of Abilene) and will expire in 2015. All other entities must receive a valid petition in order to hold a local option liquor election.

- A. **What is required to be on (each page) of the petition?** [Secs. 501.027, 501.026, 501.028]

Each page must contain:

1. The heading and statement [Sec. 501.027, 501.028];
2. The type of liquor election [Sec. 501.035];
3. The pages have to be serially numbered [Sec. 501.026]

4. The actual seal of county clerk [Sec. 501.026]; and
5. The date the petition is issued to petitioners [Sec. 501.026].

B. Does the petition have to be in English and Spanish? [Secs. 272.002, 501.035, 501.109]

Yes, Section 272.002 provides that bilingual materials printed in English and Spanish shall be used in elections in this state.

Sections 501.035 and 501.105 set out the issues to be voted on. The petition must state one and only one of these issues. The following are Spanish translations of the issues set out in Sections 501.035 and 501.105. These translations may be used in preparing both petitions and ballots for elections in the majority of Texas' counties or cities. Whether the issue in the election is legalization or prohibition of the sale of a given type or classification of alcoholic beverages, the ballot shall be prepared to permit voting For (*A Favor*) or Against (*En Contra*) one of the following:

1. The legal sale of beer for off-premise consumption only."
"La venta legal de cerveza para consumo solamente fuera del establecimiento."
2. "The legal sale of beer."
"La venta legal de cerveza."
3. "The legal sale of beer and wine for off-premise consumption only."
"La venta legal de cerveza y vino para consumo solamente fuera del establecimiento."
4. "The legal sale of beer and wine."
"La venta legal de cerveza y vino."
5. "The legal sale of all alcoholic beverages for off-premise consumption only."
"La venta legal de todas bebidas alcohólicas para consumo solamente fuera del establecimiento."
6. "The legal sale of all alcoholic beverages except mixed beverages."
"La venta legal de todas bebidas alcohólicas con exclusión de bebidas mixtas."
7. "The legal sale of all alcoholic beverages including mixed beverages."
"La venta legal de todas bebidas alcohólicas incluyendo bebidas mixtas."
8. "The legal sale of mixed beverages."
"La venta legal de bebidas mixtas."
9. "The legal sale of mixed beverages in restaurants by food and beverage certificate holders only."
"La venta legal de bebidas alcohólicas mezcladas (cocteles) en restaurantes sólo por los poseedores de un certificado de comidas y bebidas."
10. "The legal sale of wine on the premises of a holder of a winery permit."
"La venta legal de vino en establecimientos que pertenecen a poseedores de un certificado de vinería."

C. How many copies of the petition must be supplied? [Sec. 501.030]

As many as requested, but the county or city is not required to provide more than one page for every 10 registered voters in the political subdivision to be covered by the election.

D. Must the entity supplying the petition use the official petition for local option election form prescribed by the Secretary of State? [Secs. 501.027, 501.026, 501.028, 501.035]

Yes, unless the entity requests and receives written permission from the Secretary of State to use an alternate petition form that complies with the applicable sections of Chapter 501 of the Code.

E. How many signatures are needed for a valid local option liquor petition? [Sec. 501.032]

Section 501.032 provides that the number of required signatures depends on the category of local option liquor election the petitioners are seeking. The number of signatures required to be on a petition is equal to or greater than:

1. 25 percent of the registered voters in the political subdivision who voted in the most recent general election (as indicated by the official returns for that election), if the ballot issue involves voting for or against "The legal sale of wine on the premises of a holder of a winery permit."
2. 35 percent of the registered voters in the political subdivision who voted for governor in the most recent gubernatorial election (as indicated by the official returns for that election), for an election on any other local option ballot issue.

NOTE: The number of signatures required is based on turnout in the most recently held general or gubernatorial election (as applicable, see above), and is not based on the current number of registered voters in the applicable territory.

Section 501.032(b) of the Code provides that "voters whose names appear on the list of registered voters with the notation "S" or a similar notation shall be excluded from the computation of the number of registered voters of a particular territory." However this is an outdated section of the Code that was inadvertently left in place after other sections to which it applied were removed or amended, and it is not in fact applicable to the calculation of the number of signatures currently required. The authority issuing the petition does not need to take into account suspense list voters when calculating the number of voters who voted in the most recent general or gubernatorial election or the appropriate percentage of that number.

F. Who determines the total number of signatures required?

The determination of the number of signatures required on a local option liquor petition is made by the authority to whom the petition must be submitted. That entity may need to rely upon data from official records maintained by the county election official(s) or voter registrar(s)

G. What constitutes a valid signature? [Sec. 501.031]

1. For a signature to be valid, it must be accompanied by:
 - a. the signer's printed name;
 - b. the signer's date of birth;
 - c. if the territory from which signatures must be obtained is situated in more than one county, the county of registration;
 - d. the signer's residence address; and
 - e. the date of signing.
2. The signature is the only requirement that must be in the signer's own handwriting.

H. Are all the signature requirements mandatory?

The current state of law regarding restrictive petition signature requirements is uncertain. Texas Attorney General Opinion JM-501 provides that the petition signature requirements of the Code are mandatory and there is no authority to waive these requirements. *Id.* § 501.031; Op. Tex. Att'y Gen. No. JM-501 (1986).

Over time, courts have tended to strike down certain signature requirements as being unconstitutionally prohibitive, including requirements to include a signer's full residence address or date of birth.

In Fietland v. Weddington, No. A-02-CA-045-SS (W.D. Tex. Jan. 30, 2002), the U.S. District Court, Western Division struck down the voter registration number requirement for petitions in lieu of filing fee for primary elections. Also in In re Kevin H. Bell, 91 S.W.3d 784 (Tex. 2002), the Texas Supreme Court held that the inclusion of the city as part of the signer's residence address was unnecessary on the petition in lieu of filing fee, as long as the rest of the information on the petition establishes that the signer is eligible to sign the petition. In Withers v. Commissioners court of Bandera County, 75 S.W.3d 528 (Tex. App.-San Antonio 2002), the court held that the exclusion of the signer's date of birth on a rollback petition did not invalidate the signature.

Even though the above mentioned cases are fact specific, there seems to be a movement in various courts having jurisdiction in Texas to move away from a strict conformity review process and to move towards a less stringent review process to determine whether a signer is a qualified voter and eligible to sign the petition.

I. May a name be removed from a petition through the use of an affidavit? [Sec. 501.031(f)].

Yes. A local option liquor petition signature may be withdrawn by filing a written affidavit requesting the removal with the voter registrar, elections administrator, or city secretary, whichever is applicable. The withdrawal affidavit must be filed before the completed petition has been filed with the appropriate filing authority. A withdrawal request submitted by mail is considered to be filed at the time it has been received by the filing authority. A valid and timely-filed withdrawal affidavit acts as if the signer never signed the petition.

J. Who is a registered voter for purpose of signing a local option liquor petition? [Secs. 13.143, 501.031]

On the date the petition is issued, a signer must have an effective voter registration as of that date in the political subdivision (i.e., territory) in which the petition is being circulated. Thus, a petition circulator could not ask a potential signer to fill out a voter registration application and then immediately have that individual sign the petition; such a signature would be invalid since the signer's registration was not effective at the time the individual signed the petition.

K. What constitutes a valid residence address?

The Secretary of State's office has expressed the opinion that it is legally sufficient for a petitioner who does not have a street address to use either his rural route or post office box address as his or her residence address on a petition for a local option liquor election. However, if a petitioner in fact has a street address, he or she must use it and not a business street address or a post office box address as his or her residence address on the petition.

L. Is the voter's registration valid if he or she has moved within the city but has not updated his or her voter registration record?

The Code does not require the residence provided on the petition to be identical to the one listed on the official voter registration list provided to the county or city for conducting the election, as applicable; however, the person must be eligible to vote within the incorporated county's or city's boundaries. Accordingly, if the voter lists a different address from the address at which he or she is registered, the signature is valid as long as the address is still within the county, justice precinct, or city, as applicable.

M. Does the address on the petition have to list the state or zip code in order to be a valid address for the purpose of signing a local option liquor petition? [Sec. 501.031(d)]

No. The omission of the state from the signer's residence address does not invalidate a signature unless the political subdivision from which the signature is obtained is situated in more than one state. Also, the omission of the zip code from

the address does not invalidate a signature.

N. Do ditto marks or abbreviations invalidate a local option liquor petition signature? [Sec. 501.031(c)]

No. The use of ditto marks or abbreviations on a petition does not invalidate a signature so long as the required information is reasonably ascertainable.

O. How long may a petition be circulated? [Sec. 501.032, 1.006]

A petition must be filed no later than 60 days after it is issued. If the 60th day after the petition is issued falls on a Saturday, Sunday, or legal holiday, the petition may be timely filed on the next regular business day. The day after the petition is issued should be considered as day 1.

P. Is it a crime to misrepresent the purpose or effect of a local option liquor petition? [Sec. 501.029]

Yes. It is a Class B misdemeanor to misrepresent a local option liquor petition.

Q. To whom is a completed petition to be submitted? [Sec. 501.032]

Petitions for county or justice precinct local option liquor elections are to be submitted to the county voter registrar. For counties that have an elections administrator, petitions are submitted to the administrator. Petitions for citywide local option liquor elections are filed with the city secretary.

R. Who is responsible for verifying the signatures on the petition? [Sec. 501.031]

County voter registrars are responsible for verifying petition signatures for county or justice precinct local option liquor elections. The city secretary is responsible for verifying the signatures in all city local option liquor elections.

Although the Code does not provide a definition of the current list of registered voters, our office recommends that the current list used for verifying signatures should be the official list that exists on the date that the petitions were issued to the petitioners.

S. Can a statistical sampling method be used when verifying a local option liquor petition? [Sec. 501.031(a)]

Yes. The political subdivision may choose to use a statistical sampling method when verifying petition signatures. A citizen from the political subdivision in which the petition is being circulated may file a written request that each signature be verified. The citizen making the request is responsible for the cost of verifying each signature. If a valid request is made, the voter registrar, elections administrator, or city secretary, as applicable, shall verify each signature.

T. If the petition is not valid, does it still have to be presented to the commissioners court or city council, as applicable? [Sec. 501.033]

Yes. Regardless of whether the petition contains the required number of signatures, it must be recorded in the minutes of the commissioners' court or city council, as applicable. The minutes shall reflect the date a petition is filed with the voter registrar, elections administrator, or city secretary, the names of the signers, and the action taken with respect to the petition. Please note that it is the opinion of the Secretary of State that a reference to the signers' names contained on the petition is sufficient. We do not believe that it is necessary to read every signer's name into the minutes to comply with this requirement.

U. Can a circulator of a petition copy the pages provided to the circulator by the county clerk or city secretary and fax (or scan and email) them to individuals registered in the jurisdiction covered by the election, so that the individuals can sign a page and send the petition page back to the circulator, by mail or other form of transmission? [Secs. 501.026 – 501.028, 501.035]

No. The county clerk or city secretary must supply as many copies of the petition as may be required by the applicants. However, the county clerk or city secretary cannot supply more than one petition page for every 10 registered voters in the city. Additionally, each petition page must bear the actual seal of the county clerk or city secretary; the page cannot merely contain a facsimile of the seal.

V. Conducting the Local Option Liquor Election

A. When must a local option liquor election be held? [Sec. 41.001(a)]

On a uniform election date specified in Section 41.001(a) of the Code. A city may hold a local option liquor election any of the uniform election dates (the second Saturday in May in any year and the first Tuesday after the first Monday in November in any year). A county may hold an election on any of these dates **except for the second Saturday in May of an even-numbered year.**

B. Who pays for the election? [Secs. 501.107, 501.108]

The entity conducting the election is responsible for paying the expenses of the election, with very few exceptions. Thus,

the county pays for the election in a countywide election or in a justice precinct, and the city pays for the election in a citywide election. Very rarely, a deposit from the petitioners is required; a deposit is only required when the entity conducting the election has conducted an election on exactly the same issue within a one- year time period.

NOTE: Section 501.107 of the Code refers to reimbursement of expenses by a municipality. However, since the addition of Section 501.109 in 2011, requiring that a city pay for local option elections held citywide (rather than the county paying for it and receiving reimbursement from the city under certain circumstances), those portions of Section 501.107 are moot. Since the city will be running its own elections, no reimbursement to the county would be necessary. We note that of course a municipality may still contract with the county to run its election or hold a joint election with a county or other entity.

1. Under the rare circumstances where a deposit is required, Section 501.108 states that the deposit:
 - a. must be in the form of a cashier's check;
 - b. must be in the amount of 25 cents per voter listed on the current list of registered voters in the county, justice precinct, or city where the election is to be held;
 - c. is non-refundable; and
 - d. must be deposited into the county's or city's general fund.
2. The petition may not be issued until a deposit is made (when such a deposit is required).
3. Issuance of the petition without a deposit (when such a deposit is required) is a violation of Section 501.108 and is a misdemeanor offense

C. When must a local option liquor election be ordered?[Secs. 3.005, 501.032]

The last day to order a local option liquor election is the 71st day before election day, for an election to be held on a uniform election date other than the date of the general election for state and county officers. The last day to order an election to be held on the date of the general election for state and county officers (i.e., the first Tuesday after the first Monday in an even-numbered year) is the 78th day before election day.

The first day the commissioners court or city, as applicable, must order an election is at its next regular session occurring 30 days on or after the petition was filed with the voter registrar, elections administrator, or city secretary, as applicable.

D. What must be in the election order? [Sec. 501.034]

1. The order must state, both in its heading and text, whether the election is for the purpose of legalizing or prohibiting the sale of beverages as set out in the petition.
2. The order must state the issue to be voted on (which must be the same as the issue on the petition).
3. The order must state the polling place for each election precinct.
4. For city liquor elections, only the city election precincts need to be stated in the order.
5. The early voting polling places and polling hours shall be stated in the order calling the election.
6. The order must state the county clerk's, election administrator's or city secretary's, as applicable, mailing address to which ballot applications and ballots voted by mail may be sent.

E. How shall the proposition appear on the ballot?[Secs. 501.035, 501.109]

The permissible ballot propositions are set out in Sections 501.035 and 501.109. The ballot must be bilingual. For Spanish translations of the ballot propositions, see Section IV. B., above.

F. What notice must be given for a local option liquor election? [Sec. 4.003]

The notice requirements for local option liquor elections are identical to the notice requirements for most other elections; notice is provided to the public in accordance with Section 4.003, Texas Election Code.

Mandatory methods of providing notice:

The notice must be posted on the bulletin board used for open meetings postings on or before the 21st day before election day, and must be published at least once in a newspaper published in the territory covered by the election (or if there is no newspaper published in the territory, then in a newspaper of general circulation in the territory).

Optional methods of providing notice

If a city council or county commissioners' court ordering the election wishes to provide notice in addition to the mandatory methods described above, one or more of the following optional methods may be used:

1. Notice may be posted in each election precinct in which the election is to be conducted by the 21st day before election day; or
2. Notice may be mailed to each registered voter of the territory covered by the election by the 10th day before election day.

Contents of the notice

The notice must include the following information:

1. the type and date of the election;
2. the location of each polling place;
3. the hours the polls will be open;
4. the location of the main early voting polling place;

5. the regular dates and hours for early voting by personal appearance;
6. the dates and hours of any Saturday or Sunday early voting, if any, and
7. the early voting clerk's mailing address.

For Cities: Section 501.103(b) of the Code provides that in municipal local option liquor elections, the notice must also identify (by number) which county voting precincts are contained in all or in part within the territory of the city.

G. May election precincts be consolidated in a local option liquor election? [Sec. 501.103]

No. If the election is countywide or for a justice precinct, the regular county election precincts must be used. The election must be held at the customary polling place in each precinct, if available. If the election is for a city, the regular city election precincts must be used.

H. What about early voting?

The regular rules governing early voting, as set out in the Code, apply to early voting in local option liquor elections.

VI. Results of the Local Option Liquor Election

There are two types of local option liquor elections: prohibition and legalization. The legal effect of an election may vary depending on whether it was held for the purpose of legalization or prohibition. The purpose of the election, either for prohibition or legalization, must be stated in the petition and the order. It is not, however, stated on the ballot.

Section 251.73 of the Alcoholic Beverage Code provides that:

1. The status that results from a duly called election for a city prevails against the status that resulted from a duly called election in a justice precinct or county in which the city, or any part of, it is contained; and
2. The status that results from a duly called election for a justice precinct prevails against the status that resulted from a duly called election in a city in which the justice precinct is wholly contained or in a county in which the justice precinct is located.

That is, the preceding status in one jurisdiction is not changed by a subsequent election in another jurisdiction. Thus:

A. What is the effect of a successful legalization election? [Sec. 501.151]

If the proposition passes, the sale of alcoholic beverages as set out in the ballot proposition will be legalized in the territory, with some exceptions. This legalization will take effect at the time the results of the election are officially canvassed.

Exception: If a city has previously held a successful legalization election, the status of the sale of alcohol does not change unless a subsequent election is held to alter or amend that status within the city limits. That is, an election in a county or JP precinct will not supersede the existing status in the city.

Similarly, under new Law (HB 2818), if a justice precinct has established a local option status as a result of a previous local option election in the justice precinct, such status shall remain in effect until the status is changed as the result of a subsequent local option election in the justice precinct. If the boundaries of the justice precinct have changed since the status was established, a subsequent local option election will only change the local option status in the territory that is part of the justice precinct on the date of the subsequent local option election.

B. What is the effect of a successful prohibition election? [Secs. 501.151, 501.153]

If the proposition passes, the sale of alcoholic beverages as set out in the ballot proposition will be prohibited. This prohibition will take effect 30 days after the results of the election are officially canvassed. The county clerk or city secretary, within three days after the canvass, shall certify the results to the Secretary of State and to the Alcoholic Beverage Commission.

C. What is the result of an unsuccessful legalization election? [Sec. 501.151(d)]

An unsuccessful legalization election has no effect on the status of the county, justice precinct, or city, as applicable, in which the election was held. A city or justice precinct which has adopted no status of its own regarding the legalizing of alcoholic beverages takes on the status of its surrounding territory.

For example, if a city rejects a legalization proposition and the surrounding justice precinct later approves a legalization proposition, the sale of alcoholic beverages as set out in the proposition will be legalized within the city as well as all other parts of the justice precinct which had no prior local option status. The failure of a proposition to legalize the sale of alcoholic beverages has no prohibitory effect.

D. What is the result of an unsuccessful prohibition election? [Sec. 501.151(d)]

An unsuccessful prohibition election has no effect on the status of the county, justice precinct, or city, as applicable, in which the election was held. As above, the failure of a prohibition election cannot serve to legalize the sale of alcoholic beverages in a territory in which they were hitherto prohibited.

E. How does a county, justice precinct, or city, as applicable, acquire a local option status regarding the sale of alcoholic beverages?

A political subdivision of the State of Texas can acquire a local option status regarding the sale of alcoholic beverages only by a vote of the electorate of that political subdivision. A status can only be adopted by a vote *against* the sale of beverages in a prohibition election or by a vote *for* the sale of beverages in a legalization election. In other words, the rejection of a proposition either to legalize or to prohibit has no effect upon the status of a political subdivision.

F. When the results of local option elections held by different types of political subdivisions conflict with regard to the same territory, what status prevails? [Secs. 251.72, 251.73, Texas Alcoholic Beverage Code]

The status of an area as determined by an election in an incorporated city prevails over a contrary status as determined by a justice precinct or countywide election. When a justice precinct is wholly contained in an incorporated city, the status of the justice precinct prevails over that of the city. The relative dates of the elections are of no consequence. The status of an area as determined by a justice precinct election prevails over the status of an area as determined by a countywide election. The relative dates of the elections are of no consequence. To the extent that two or more local option elections held at the same voting unit level apply to the same territory, the most recent election prevails. See also Tex. Att'y Gen. Op. GA-0635 (2008); In re Davis, 269 S.W.3d 581 (Tex. 2008).

G. What effect does the annexation or detachment of territory from a political subdivision have on that territory's local option status?

The addition of territory to or detachment of territory from a city does not affect the status of the added or detached territory. The change of boundaries of a justice precinct does not affect the status of the territory formerly within the justice precinct.

H. If a wet city annexes a dry territory, does the election to change the local option status of the newly-annexed territory need to be held in the whole city or only in the annexed territory?

Unless the annexed territory is annexed after the local option petition is issued but prior to the election, a dry area annexed to a wet city retains its original dry status. Houchins v. Plainos, 110 S.W. 2d 549 (Tex. 1937). To change the annexed area's local option status, a legalization election would have to be held. The legalization election would have to be citywide, since the Code allows local option liquor elections to be held in counties, justice precincts, and cities. There is no authority in the Texas Election Code nor the Texas Alcoholic Beverage Code for a local option election to be limited to part of a city. Tex. Att'y Gen. Op. DM-44 (1991), and this remains unchanged, notwithstanding the adoption of Section 501.0211 of the Code (authorizing city local option liquor elections by resolution of the city council, rather than by petition, in cities with at least 112,000 people, if located in a county with no more than 135,000 people).

I. If the local option election, as described in question H, is held citywide and voters vote against the legalization, does that affect the wet status of the whole city?

No. Under Section 501.151(d) of the Code, a failed legalization election does not affect the local option status of the political subdivision. If a legalization election is held in a city and the issue does not pass, the city would retain its original wet status, while the newly-annexed area would remain dry.

J. After the election is held, what actions must the governing body, county clerk or city secretary take? [501.151 - 501.154]

1. On completing the canvass of the election returns, the governing body must make an order declaring the result of the election.
 - a. In a successful election to prohibit the sale of a category of alcoholic beverages, the order must state that the sale of the type(s) of beverages is prohibited effective the 30th day after the date the order is entered.
 - b. In a successful election to prohibit the sale of a category of alcoholic beverages, the county clerk or city secretary must publish the order declaring the result of the election at three public places in the political subdivision and record the posting of the order in the minutes of the governing body.
 - c. In a successful election to legalize the sale of a category of alcoholic beverages, the sale of such beverages is legal upon the entering of the court's order.
2. Not later than the third day after the canvass of the election, the county clerk or city secretary must certify the results to the Secretary of State and to the Alcoholic Beverage Commission.

K. Is there a limit on the frequency of local option liquor elections? [Sec. 501.038]

Yes. When one of the issues in Sections 501.035 and 501.109 is presented to the voters of a political subdivision, that identical issue may not be presented to them again until one year has elapsed. The important thing here is the wording on the ballot. The one-year limitation does not affect elections in which a **different ballot proposition** is presented to the voters.

See Attorney General's Opinion No. MW-12 (1979), holding that a ballot proposition may present the same issue as an earlier proposition **even when** one election is an election to legalize and the other is an election to prohibit. This limitation on election frequency applies only to elections held in the same voting unit. If an issue is submitted to the voters of a justice precinct, for example, the same proposition may be submitted to the voters in a city within the justice precinct before a year has elapsed.