

THE STATE OF TEXAS §

COUNTY OF CAMERON §

BE IT REMEMBERED on the 4th day of SEPTEMBER, 1992 there was conducted a SPECIAL Session of the Honorable Commissioners' Court of Cameron County, Texas, held jointly with the CAMERON COUNTY ELECTIONS COMMISSION, at the Courthouse thereof, in the City of Brownsville, Texas, for the purpose of transacting any and all business that may lawfully be brought before the same.

THE COURT MET AT:

1:30 P. M.

PRESENT:

**ANTONIO O. GARZA, JR.
COUNTY JUDGE**

**LUCINO ROSENBAUM, JR.
COMMISSIONER, PRECINCT NO. 1**

**CARLOS H. CASCOS
COMMISSIONER, PRECINCT NO. 2**

**ADOLPH THOMAE, JR.
COMMISSIONER, PRECINCT NO. 3**

**NATIVIDAD VALENCIA
COMMISSIONER, PRECINCT NO. 4**

**JOE G. RIVERA
COUNTY CLERK**

ABSENT:

ELECTIONS COMMISSION:

PRESENT:

**ANTONIO O. GARZA, JR.
CHAIRMAN**

**JOE G. RIVERA
VICE CHAIRMAN**

TONY YZAGUIRRE
SECRETARY

CHAIRMAN-DEMOCRATIC PARTY

FRANK MORRIS
CHAIRMAN-REPUBLICAN PARTY

ABSENT:

NOE ROBLES

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The meeting was called to order by Judge Antonio O. Garza, Jr. He then asked Ms. Tencha de la Peña, Elections Administrator, to lead the Court and the Audience in reciting the Pledge of Allegiance to the Flag.

The Court considered the following matters as posted and filed for Record in the Office of the County Clerk on September 1, 1992 at 10:20 A. M:

(1) **CONSIDERATION AND POSSIBLE APPROVAL OF WAIVER OF COMPETITIVE BIDDING PROCEDURES FOR ACQUISITION OF BALLOTS NECESSARY FOR NOVEMBER GENERAL ELECTION, AS PER REQUEST BY ELECTIONS ADMINISTRATOR TENCHA DE LA PEÑA**

Mr. Doug Wright, Cameron County Counsel, stated that there were no provisions for waiver of the State Statutes if the purchase amount was within those provisions. He said that the Elections Administrator had just now provided him some information that he had requested and that it appeared that the amount of the purchase would be less than the State requirement for competitive bidding and added that if that was the case, then the Court could waive the procedures under the \$10,000.00 limit established by the Court.

Commissioner Thomae questioned the purchase amount and Mr. Wright replied that the amount would be between \$4,000.00 and \$8,000.00, according to the figures provided to him by the Elections Administrator and that the State's limitations were \$10,000.00. He stated that apparently there had been other contracting with the vendor involved in this transaction, and added that the Statutes clearly stated that "there should be no attempt to avoid the competitive bidding statutes by entering into individual contracts".

Mr. Tony Yzaguirre, Tax-Assessor Collector, asked the reason for the waiver request and Ms. Tencha de la Peña, Elections Administrator, responded that she had written the following letter to the Court explaining her concerns regarding the Ballots for the November Election and the "site-support" services needed on Election Day:

Ms. de la Peña explained that the Firm of Texas County Printers could not provide "on-site" support because they do not have trained personnel but that the Firm of Hart Forms does have the personnel and has provided the services in the past.

Mr. Joe G. Rivera, County Clerk, stated that it was his understanding that when the Scanning Equipment was being considered that the Ballots would not be a problem and could be printed anywhere and since the equipment belonged to Hart Forms, they would provide the service. Ms. de la Peña responded that the Firm had agreed to service only two (2) elections which they have already done.

Mr. Wright explained that he had researched the matter extensively and that there was no question that the purchase of election supplies was subject to the bidding statutes and added that there was a specific Attorney General's opinion that addressed that issue. He emphasized that there is no waiver process of the State Law, and that the only excuse that could be legally justified would be that the total purchases from this vendor not exceed the amount of \$10,000.00 under State Law. He stated that the burden then would be placed on Commissioners Court to make a determination as to whether or not the Policy that the Court established, as the appropriate purchasing method, could be waived in order to allow a direct purchase.

At this time, Judge Garza reiterated the points of concern for clarification, that being (1) there are no waiver provisions for election supplies, (2) if the purchase is under \$10,000.00, there is a provision for waiver of the Policy established by the Commissioners Court and (3) there are no waiver provisions when there are multi-contract situations that will exceed \$10,000.00 with cumulative purchases of over \$10,000.00.

Mr. Wright stated that if the reviewing authority determined that the reason for the waiver was to avoid the bidding Statutes by entering into a separate Contract for the Ballots, if that were the intent or purpose, then it would be a

violation of the State Statutes. He added that if the Court determined that this situation was not the case and that the purchase was under \$10,000.00, then the Court could consider waiving the County's Policy regarding the purchase of the materials.

Judge Garza questioned what constituted the cumulative amount exceeding \$10,000.00: whether it was in the "back-up" service, equipment or other items purchased from Hart Forms over the years, and Mr. Wright stated that it was the purchases on a year-to-year basis.

Ms. de la Peña explained that her Department had not purchased over \$10,000.00 from Hart Forms as indicated by the Purchasing Department because the ballots previously purchased were for the other entities that she had contracted to service. She explained that the ballots needed are electronically coded and that not many companies are equipped to print those ballots. She stated that her Department does not have knowledge of the services provided by other vendors regarding the electronic ballots, other than the fact that they do not have the personnel to provide "on-site" support services.

Mr. Rivera questioned whether Hart Forms had indicated that they would not provide the "on-site" support service if the ballots were not purchased from them and Ms. de la Peña responded that they may not; however, she had not asked them.

Judge Garza asked if the "on-site" support service could be contracted out independently, and Ms. de Peña stated that the quote received from American Information Systems (AIS) from Omaha, Nebraska, was \$300.00 higher than Hart Forms.

Mr. Frank Morris, Republican Chairman, recommended to experiment with another type of Ballot during a smaller up-coming Election and not during the November General Election and Commissioner Thomae concurred with the suggestion.

Ms. de Peña asked the County Attorney for clarification as to whether the limit is \$10,000.00 for any one (1) company or \$10,000.00 for the whole expenditure, and Mr. Wright responded that it was cumulative expenditures for each Company. Ms. de Peña stated that she did not anticipate holding another election until next November.

Commissioner Thomae moved that the competitive bidding procedures for acquisition of ballots necessary for the November General Election be waived and that Hart Forms be contracted, as per the request and recommendation by the Elections Administrator, Tencha de la Peña.

The motion was seconded by Commissioner Rosenbaum.

At this time, Commissioner Cascos questioned whether by allowing the waiver, would the Court violate State Law, and Mr. Wright stated that it would not if the Court made the finding that the purpose was not to avoid the bidding statute. He reiterated that the jurisdiction of the State stepped in at \$10,000.00, that being the threshold amount, and added that the Court was being told that this was a single situation and that the purchases from this vendor would not exceed \$10,000.00.

Judge Garza stated that Commissioner Thomae, as part of the motion, wanted to include language to the effect that the intent of the motion was not to violate State law.

Mr. Wright emphasized that the Court could not waive State Law, but rather the Court would be waiving County Policy.

Judge Garza than repeated that the Court was waiving the County Policy, and that the Court was making a finding that the intent was not to circumvent State Law but that the intent was to acquire the Ballots, on the recommendation of the Election Administrator for the reasons outlined in her Memo to the Court.

Judge Garza noted, for the record, that should the motion carry, that it was the finding of the Court, sitting as the Commissioners Court, that the waiver was not intended to violate State Bidding Laws.

Commissioner Thomae moved that the competitive bidding procedures for acquisition of ballots necessary for the November General Election be waived, that Hart Forms be contracted as per the request and recommendation by the Elections Administrator, Tencha de la Peña, and that it was not the intent to violate State Laws.

The motion was seconded by Commissioner Rosenbaum and carried the following vote:

AYE: Commissioners Rosenbaum, Thomae and Valencia

NAY: Commissioner Cascos and Judge Garza.

At this time, Mr. Rivera indicated the need to determine whether Hart Forms will provide "on-site" support services if the ballots are obtained elsewhere.

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**(2) APPROVAL OF DESIGNATION OF ELECTION
OFFICIALS AND JUDGES FOR COUNTY
COMMISSIONER PRECINCT NO. 3**

Upon motion by Commissioner Valencia, seconded by Commissioner Thomae and carried unanimously, the following individuals were designated as Alternate Judges for County Commissioner Precinct No. 3 as follows:

(3) **APPROVAL OF ESTABLISHING PERMANENT
BRANCH OFFICES FOR EARLY VOTING FOR THE
GENERAL ELECTION OF NOVEMBER 3, 1992**

Commissioner Valencia reported that Lopez Super Market, 1221 N. 7th Street, Harlingen, Texas, had agreed to be the Branch Office for Early Voting for Precinct No. 4.

Judge Garza stated that State Statutes required that a Branch Office be established in each Commissioner Precinct. He reviewed the proposed Branch Polling Places indicating that Lopez Super Market, Brownsville, would be in Precinct No. 1, in lieu of Christ the King; the Main Courthouse, Brownsville, would be Precinct No. 2; Moody's, San Benito, Precinct No. 3, in lieu of the Cameron County Building and Wal-Mart, Port Isabel, in lieu of City Hall; and Lopez Super Market, Harlingen, for Precinct No. 4.

Ms. Tencha de la Peña, Elections Administrator, stated that the Main Office at the Cameron County Courthouse, Brownsville, was not considered a Branch Office; therefore, a Branch Office for Precinct No. 2 would have to be designated and Wal-Mart on Boca Chica, Brownsville, was suggested.

Mr. Frank Morris, Republican Chairman, questioned why the temporary locations, which were well established and well identified by the voters, were being changed and added that the purpose of the "Mobile" Branches were to augment the Permanent Branch Offices.

Ms. de la Peña reminded the Court that Early Voting was scheduled to start on October 14, 1992, that the Justice Department needs sixty (60) days to approve changes and added that she would not know what to respond if they questioned why the changes were being made.

Judge Garza asked what the rationale was in changing the "Permanent" Branch Offices and Mr. Joe G. Rivera, County Clerk, stated that the intent was to take the Polls to high traffic locations.

At this time, it appeared to be the consensus of the Court, as determined by polling, to review the current Temporary Branch Polling Places traditionally used and to re-designate new places within the County Commissioner Precincts as illustrated in the following proposed Resolution:

Ms. de la Peña stated that she had just received the Resolution with the proposed changes and could not comment on it.

Commissioner Valencia remarked that people were used to voting in certain places, that being the County Buildings; that voting patterns and traffic are well recognized at those voting places, and that those places do not need pre-clearance and do not need the sixty (60) days or a complete review as to whether they are adequate for polling. He suggested that the current Temporary Branch Polling places should be maintained, with the exception of Lopez Super Market, Harlingen, Texas, which needed to be designated for Precinct No. 4.

Commissioner Cascos stated that they should not lose sight of what they were trying to do, that being to make the voting process more accessible and more convenient, and he reminded the Court that only 10% of the voters took part in the City election the previous day. He added that the intent was to make it as easy and accessible for people to exercise the right to vote and added that all he had heard were obstacles why it could not be done.

Ms. de la Peña stated that she did not think that this was the Election to try different sites and that she did not favor changing a polling place unless there was a legitimate reason, and she asked the County Attorney for an opinion.

Mr. Doug Wright, Cameron County Counsel, responded that there were no legal issues involved on this matter and what could create a problem would be the sixty (60) days necessary before the Justice Department approved the changes, as indicated by the Elections Administrator.

Judge Garza reviewed the Elections Administrator's recommendations, that being that the current Temporary Branch Polling Places be adopted, with the addition of Lopez Super Market, Harlingen, Texas, for Precinct No. 4, subject to the applicable State Statutes and pre-clearance from the Justice Department; however, there was no action taken on the matter.

Mr. Morris reiterated that the current approved Temporary Branch Polling Places were well identified by the voters and that if the Court felt it necessary to facilitate the process of voting, then it could add other locations to the present locations.

Ms. de la Peña reviewed some suggestions presented at a "Retail Voting" Seminar and added that her Department would need to have at least (3) vehicles to transport the voting materials to the polling places.

Mr. Rivera suggested using the Permanent Branch Offices: that being the Goolsby Building in San Benito; the County Buildings in Harlingen and Los Fresnos; City Hall in Port Isabel; and Lopez Super Market in Harlingen, with the addition of the other suggested locations.

Commissioner Valencia moved to designate the current Temporary Branch Polling Places, with the inclusion of Lopez Super Market, Harlingen, Texas, for Precinct No. 4, and to designate other locations, such as Moody's, Wal-Mart, and Lopez Super Markets as other Temporary Branch Polling Places, as recommended.

The motion was seconded by Judge Garza and carried unanimously.

At this time, Judge Garza asked how "Temporary Mobile" Polling Places were defined and Mr. Rivera stated that the "Mobile" Branch Polling Places were set up for one (1) day and certain number of hours such as: at Levi's Strauss from 8:00 to 2: P. M., or after Sunday Services at the local Churches.

Ms. de la Peña outlined the approximate costs and procedures for the Retail Early Voting as detailed in the following Memo:

She suggested that the Court establish a definite schedule, including times and locations, and that she would submit those to the Justice Department for approval.

At this time, it appeared to be the consensus of the Court, as determined by polling, that Temporary Mobile Branch Polling Places should be considered, using the estimated costs for ten (10) days and ten (10) places, said amount to be allocated from the Surplus Fund.

There was some discussion concerning the cost, the need for pre-clearance and the need to establish specific locations and the suggestion was made to table the "mobile" designations in order to prepare more definite figures regarding the costs.

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There being no further business to come before the Court, upon motion by Commissioner Thomae, seconded by Commissioner Valencia and carried unanimously, the meeting was adjourned.

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APPROVED this 21st day of September, 1992.

**ANTONIO O. GARZA, JR.
COUNTY JUDGE**

ATTEST:

**JOE G. RIVERA,
COUNTY CLERK AND EX-OFFICIO CLERK
OF THE COMMISSIONERS' COURT OF
CAMERON COUNTY, TEXAS**