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Secretary of State

ELECTION ADVISORY **NO. 2023-11**

To: County Chairs, County Election Officials, and County Judges
From: Christina Worrell Adkins, Director of Elections *CWA*
Date: August 18, 2023
RE: NEW LAW: Election Precincts and Polling Places – Senate Bill 924

Introduction

This advisory is intended to advise counties of recent changes in state law relating to county election precincts and polling places. Specifically, this advisory addresses [Senate Bill 924](#) (88th Leg., R.S., effective September 1, 2023). We also provide explanations and guidance on the new law and questions that may arise from the changes.

All statutory references in this advisory are to the Texas Election Code (“the Code”), unless otherwise indicated.

Types of Election Precincts

County Election Precincts

Section 42.001 of the Code requires the commissioners court in each county to divide all the territory of the county into county election precincts. County election precincts must be compact, contiguous, and identified by a number. (Secs. 42.001, 42.004). A county election precinct is the basic unit of voter registration and is often referred to as a “voter registration precinct.”

Election Day Precincts

Generally, each election precinct must be served by a single polling place located within the boundary of the election precinct. (Sec. 43.001). County election precincts may be combined or consolidated in certain elections. The area served by a single polling place, whether it is a single

county election precinct or county election precincts that have been combined or consolidated, is often referred to as an “election day precinct.”

Counties also contain commissioners precincts, which are the territorial units served by county commissioners. (Article V, Section 18(b), Texas Constitution). In addition, counties have justice precincts, which are the territorial units served by justices of the peace and constables. (Article V, Section 18(a), Texas Constitution).

Rules Regarding County Election Precincts

Relationship to District, Justice, and Commissioners Precincts

A county election precinct, including a consolidated precinct, may not contain territory from more than one of each of the following types of territorial units:

- A commissioners court precinct;
- A justice of the peace precinct;
- A United States congressional district;
- A state representative district;
- A state senatorial district; or
- A State Board of Education district. (Sec. 42.005).

Population Requirements

A county election precinct must contain at least 100 but no more than 5,000 registered voters. (Sec. 42.006(a)). For a county with a population under 100,000, the minimum number of registered voters the precinct may contain is 50. (Sec. 42.006(b)). A county with a population under 50,000 may establish a county election precinct that contains fewer than 50 registered voters if the commissioners court receives a written petition, signed by at least 25 registered voters, requesting establishment or continuation of the county election precinct. (Sec. 42.006(c)). In calculating the number of registered voters for a county election precinct, voters on the suspense list are excluded. (Sec. 42.006(e)). To the extent of any conflict between these provisions, the prohibition on an election precinct containing territory from more than one specific type of territorial unit prevails over county election precinct population requirements. (Sec. 42.005(b)).

Combining Incorporated and Unincorporated Territory

A commissioners court may not establish a county election precinct that contains both territory inside a city with a population of 10,000 or more and unincorporated territory outside of the city. (Sec. 42.007). However, the commissioners court may establish a county election precinct containing both types of territory if the commissioners court determines that either of the two areas: (1) cannot constitute a separate election precinct of suitable size or shape that contains the permissible number of voters; or (2) cannot be combined with other territory on the same

side of the city boundary to form a suitable sized or shaped county election precinct that contains the permissible number of voters without causing another county election precinct to fail to meet those requirements. (Sec. 42.007).

Consolidating Precincts

In a special election where the use of county election precincts is required, the commissioners court may consolidate, on the recommendation of the county election board, two or more county election precincts into a single precinct if the polling place is located so it will adequately serve voters of the consolidated precinct. (Sec. 42.008(a)). Examples of special elections that require the use of county election precincts include a constitutional amendment election or an election to fill a legislative or congressional vacancy. If county election precincts are consolidated for a countywide election, at least one consolidated precinct must be situated wholly within each commissioners precinct. (Sec. 42.008(b)).

Additionally, in a primary election, the county executive committee of a party may order two or more county election precincts to be consolidated into a single precinct if the polling place is located so it will adequately serve the voters of the consolidated precinct. (Sec. 42.009).

If precincts are consolidated, the precinct election records for the consolidated precinct are reported as a single election precinct.

Senate Bill 924 and Combining Precincts

NEW LAW: Senate Bill 924 (88th Leg., R.S.) amended Section 42.0051 of the Code, effective September 1, 2023, to provide that election precincts may only be combined in counties with a population of less than 1.2 million that are not participating in the countywide polling place program (CWPP). Additionally, the bill provides that election precincts may only be combined if the commissioners court cannot secure a suitable public building as a polling place location and the combined polling location adequately serves the voters of the combined precinct. Under the bill, a combined election precinct may not contain more than 10,000 registered voters.

This means that the commissioners court in a county with a population of less than 1.2 million that does not participate in the countywide polling place program may, on the recommendation of the county election board, combine county election precincts in a general or special election for which the use of county election precincts is required if: (1) the commissioners court cannot secure a suitable public building as a polling place; and (2) the location of the combined polling place adequately serves the voters of the combined precinct. As noted above, **Senate Bill 924 authorizes the combining of election precincts only in counties with populations of less than 1.2 million that do not participate in the countywide polling place program.** Thus, counties that participate in the CWPP under Section 43.007 of the Code may no longer combine election precincts.

County election precincts may not be combined if: (1) the combined precinct results in a dilution of voting strength of a group covered by the federal Voting Rights Act; (2) the combined precinct results in a dilution of representation of a group covered by the Voting Rights Act in any political or electoral process or procedure; or (3) the combined precinct results in discouraging participation by a group covered by the Voting Rights Act in any political or electoral process or procedure because of the location of a polling place or other factors. (Sec. 42.0051(d)).

Precinct election records for a combined precinct are reported separately and separate paperwork is kept for each precinct within the combined precinct.

Combining Precincts for a Primary Election Not Authorized

Under Senate Bill 924, county election precincts may no longer be combined in a primary election or a primary runoff election. Specifically, Senate Bill 924 removed language from Section 42.0051(a) of the Code, which permitted the county executive committee of a political party conducting a primary election to combine election precincts in a county. Additionally, Section 42.0051(a-1) of the Code authorizes a commissioners court to combine election precincts only on the recommendation of the county election board. A county election board is not established for a primary election. (Sec. 51.002). As such, county election precincts may now only be combined in a general election or a special election for which use of county election precincts is required.

Combining Precincts in a County that Participates in the Countywide Polling Place Program Not Authorized

Section 43.007(f) of the Code requires counties that participate in the countywide polling place program to establish a total number of countywide polling places that is at least 50% of the number of precinct polling places that would otherwise be located in the county for a particular election. In a county's first year participating in the program, the number of required countywide polling places is at least 65% of the number of precinct polling places that would otherwise be located in the county for a particular election.

As explained above, counties that participate in the countywide polling place program under Section 43.007 of the Code may no longer combine election precincts. Previously, our office advised counties that participate in the countywide polling place program that the percentage for the minimum number of required countywide polling places could take into account combined precincts for an election. However, since counties that participate in the countywide polling place program can no longer combine precincts, those counties must now determine the percentage for the minimum number of required countywide polling places using the total number of **uncombined** precinct polling places that would have otherwise been used for that election.

Consolidating Precincts Versus Combining Precincts

As described in this advisory, combining election precincts and consolidating election precincts are two distinct procedures. The following chart identifies key differences in these procedures:

	Combining Election Precincts (Sec. 42.0051)	Consolidating Election Precincts (Secs. 42.008, 42.009)
Description	In a general election or special election requiring the use of county election precincts, commissioners court may combine election precincts on the recommendation of the county election board.	If it is a special election ordered by the Governor or a primary election, a county election precinct may be consolidated with another county election precinct.
Purpose	If a suitable public building cannot be secured as a polling place.	Avoid additional expenditures in certain elections.
Limitation	May not combine in such a manner that violates the Voting Rights Act. Only counties under 1.2 million that do not participate in CWPP may combine.	May not consolidate in such a manner that does not provide polling places that adequately serve voters.
Duration	Single election. *In March/April of odd-numbered years, commissioners court should review boundary lines.	Single election.
Elections	General Election, Special Election County election precincts cannot be combined for a primary election.	Special Election, Primary Election
Different Ballot Styles?	Yes.	No. NOTE: In special elections, there must be at least one consolidated precinct

	Combining Election Precincts (Sec. 42.0051)	Consolidating Election Precincts (Secs. 42.008, 42.009)
		wholly located in each commissioners precinct.
Records	Records must be maintained and reported by county election precinct.	Records must be maintained and reported by consolidated precinct.

Required Use of County Election Precincts

Section 42.002 of the Code requires the use of county election precincts for the following elections:

- General election for state and county officers;
- Special election ordered by the Governor;
- Primary election;
- Countywide election ordered by a county authority; and
- Election held by a political subdivision on the November uniform election date.

For political subdivisions holding their elections in November that are located in a county that participates in the countywide polling place program under Section 43.007 of the Code, the required use of county election precincts means that the political subdivision must have a presence at every countywide polling place in the county on election day, regardless of whether a polling location is within the boundaries of the political subdivision. (Secs. 42.002, 43.004, 43.007(e)). However, the political subdivision is permitted to designate only the polling places located in or near the political subdivision for any resulting runoff election. (Sec. 43.004).

Local political subdivisions holding their elections on the May uniform election date are not required to use county election precincts and county polling places, but may chose to do so. This is the case even if the county itself is also holding an election on the May uniform election date. (Secs. 42.002, 42.061, 43.004, 43.007(e)).

The following chart is helpful in determining whether county election precincts may be consolidated or combined when the county election precincts are required to be used:

Type of Election	Required Use of County Election Precincts?	Can County Election Precincts be Consolidated/Combined?
General election for state and county officers (November even-numbered year)	Yes, including elections of other political subdivisions.	Consolidate: No. May only consolidate in special/primary elections. Combine: Yes. Only counties under 1.2 million that do not participate in CWPP.
Special election ordered by the Governor (e.g., constitutional amendment election)	Yes, including elections of other political subdivisions.	Consolidate: Yes. Combine: Yes. Only counties under 1.2 million that do not participate in CWPP.
Other elections held on November uniform election date	Yes, including elections of other political subdivisions.	Consolidate: No. May only consolidate in special/primary elections. Combine: Yes. Only counties under 1.2 million that do not participate in CWPP.
Primary election	Yes.	Consolidate: Yes. Combine: No. County election precincts cannot be combined for a primary election.
Countywide election ordered by county authority	Yes.	Consolidate: Yes. Combine: Yes. Only counties under 1.2 million that do not participate in CWPP.
May uniform election	Political subdivisions not required to use county election precincts or polling places.	N/A

Type of Election	Required Use of County Election Precincts?	Can County Election Precincts be Consolidated/Combined?
Primary runoff election	Yes.	Consolidate: Yes. Combine: No. County election precincts cannot be combined for a primary election.

Designation of Polling Places

Generally, each election precinct established for an election shall be served by a single polling place located within the election precinct. (Sec. 43.001). The exceptions to this general rule are polling places established under the countywide polling place program under Section 43.007 of the Code and polling places established for consolidated or combined election precincts.

Polling Places for the General Election for State and County Officers and Special Elections

For a general or special election in which the use of county election precincts is required, the county election officer recommends the location of the election day polling place for each county election precinct. (Sec. 43.002(a)). The county election officer is the county clerk or, if applicable, the elections administrator. The commissioners court must designate the recommended location as the polling place unless there is good cause to reject the recommendation. (Sec. 43.002(a)). If the commissioners court rejects the county election officer’s recommended location, the commissioner court must designate an alternate location. (Sec. 43.002(a)). If county election precincts are consolidated, the commissioners court must designate the location of the polling place for the consolidated precinct. (Sec. 43.002(b)). In a county with a population of more than 175,000, the commissioners court may not designate a polling location that would require a voter to travel more than 25 miles from the voter’s residence to the polling place. (Sec. 43.002(c)).

Polling Places for the Primary and Primary Runoff Elections

For a primary election, the county chair designates the location of the polling place for each election precinct. However, if the precinct is consolidated, the county executive committee designates the polling location. (Sec. 43.003). If the parties conduct a joint primary under Section 172.126 of the Code, the county clerk/elections administrator must determine whether to consolidate election precincts under Section 42.009 of the Code and must designate the location of the polling place in a consolidated precinct. (Sec. 172.126(b)). To the extent possible, a polling place shall be designated that will accommodate the precinct conventions of each political party. (Sec. 172.126(b)).

The following chart is helpful in determining who selects the polling places in a particular election:

Type of Election	Who Selects Election Day Polling Places?
<p>General election for state and county officers (November even-numbered year)</p>	<p>County election officer recommends the location of the polling place for each county election precinct. Commissioners court MUST designate the recommended locations UNLESS there is good cause to reject the recommendation.</p> <p>If commissioners court rejects a location, the court designates another location.</p>
<p>Special election requiring the use of county election precincts (ordered by the Governor or countywide election ordered by county judge or commissioners court)</p>	<p>County election officer recommends the location of the polling place for each county election precinct. Commissioners court MUST designate the recommended locations UNLESS there is good cause to reject the recommendation.</p> <p>If commissioners court rejects a location, the court designates another location.</p>
<p>Other elections held on November uniform election date (elections held by a political subdivision)</p>	<p>County election officer recommends the location of the polling place for each county election precinct. Commissioners court MUST designate the recommended locations UNLESS there is good cause to reject the recommendation.</p> <p>If commissioners court rejects a location, the court designates another location.</p>
<p>Primary election and primary runoff election</p>	<p>The county chair of the political party holding the primary election designates the location of the polling place for each election precinct.</p> <p>If precincts have been consolidated for the primary, the county executive committee of the party designates the location.</p> <p>If the parties conduct a joint primary under Section 172.126 of the Code, the county clerk/elections administrator determines</p>

Type of Election	Who Selects Election Day Polling Places?
	whether to consolidate election precincts and must designate the location of the polling place in a consolidated precinct.
May Uniform Election	The governing body of each political subdivision designates the location of each polling place.

Location of a Polling Place

Each polling place must be located inside a building. (Sec. 43.031(b)). The selected building must be a public building if practicable. (Sec. 43.031(c)). An entity that owns or controls a public building must make the building available for use as a polling place in any election that covers territory where the building is located. (Sec. 43.031(c)). If more than one authority requests the use of the building for the same day and simultaneous use is impracticable, the entity that owns or controls the building shall determine which authority may use the building. (Sec. 43.031(c)).

If a suitable public building is unavailable, the polling place may be located in any other building. (Sec. 43.031(d)). However, electioneering must be permitted on the building’s premises outside of the 100-foot area. A building that prohibits electioneering outside of the 100-foot area may only be used if it is the only building available as a polling place in the election precinct.

A polling place may not be located at the residence of a candidate for elective office (including a party office) or the residence of a relative (within the third degree by consanguinity or the second degree by affinity) of a candidate for elective office. (Sec. 43.031(e)). Additionally, if a public building is unavailable for use as a polling place in a county election precinct, the commissioners court may purchase or construct a building for use as a polling place in the precinct. (Sec. 43.032).

Consideration for Use of a Public Building as a Polling Place

The entity that owns or controls a public building may not impose a charge for the use of a public building as a polling place if the day of the election is a day on which the building is normally open for business. (Sec. 43.033(a)). This includes any charge for personnel, utilities, or other expenses incurred before or after regular business hours. However, if the day of the election is a day that the building is not normally open for business, a charge may be made only for the reimbursement of actual expenses resulting from the use of the building in the election. (Sec. 43.033(a)). The reimbursing authority is entitled to an itemized statement of expenses before making remittance. (Sec. 43.033(b)).

Notice Requirements Regarding Polling Places

If county election precincts are consolidated for a given election, the authority responsible for giving notice of an election must provide a [Notice of Consolidated Precinct](#), which includes the location of the polling place in the consolidated precinct. The notice must be posted at the polling place used in the preceding general election no later than the 10th day before election day and must remain posted continuously through election day. (Sec. 4.003(b)).

In a general election or special election ordered by the Governor or the county judge, if the location of a polling place changes after the notice of election is given under Section 4.003 of the Code, the county election officer must give notice of the change in the polling place(s). (Sec. 43.061). Notice of the change must be provided no later than: (1) 24 hours after the location is changed; or (2) 72 hours before the polls open on election day, whichever is earlier. (Sec. 43.061(b)). Notice must be given by notifying each candidate whose name will appear on the ballot in the election, by notifying the county chair (in the case of an office filled by voters of more than one county), or by notifying the county judge of the county in which the change occurs (for an independent candidate). Alternatively, the county election officer may provide notice by posting in a listing used specifically to inform the public of changes to the location of a polling place on any Internet website maintained by the county to provide election information. (Sec. 43.061(c)).

If the location that will be used as a polling place for an election precinct is different from the location used for that election precinct in a previous election ordered by the same authority, the authority responsible for giving notice shall post, if possible, a [Notice of Change in Polling Place](#) at the entrance to the previous polling place that includes the location of the new polling place. (Sec. 43.062).

Per Section 43.007(o) of the Code, each countywide polling place must post a notice of the four nearest countywide polling place locations by driving distance. To that end, the Secretary of State has prescribed the following form that counties participating in the countywide polling place program may use: [Notice of Four Nearest Countywide Polling Place Locations](#).

If you have any questions or circumstances that are not covered by this advisory, please do not hesitate to contact the Elections Division toll-free at 1-800-252-2216.

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