

Election Contracts, Joint Election Agreements & Leases For Equipment

21st Biennial Election Law Seminar for
County Chairs



Three Ways to Have an Election

- You may have your primary election in one of three ways:
 - By contracting for election services with the county (Ch. 31);
 - By holding a joint primary election (Sec. 172.126);
 - By leasing an electronic voting system (Ch. 123).



Practical Considerations

- Decide whether you have the time, manpower and expertise to conduct your own election.
 - Consider: Equipment (obtaining, programming, testing); ordering ballots; hiring and training workers (election day, early voting ballot board, central counting); publishing notice of election; tabulating results and canvassing election; etc.



Practical Considerations

- Deadline for entering into agreements?
 - There is no statutory deadline.
 - We **recommend** the county chairs meet with the county election officer to discuss establishment of early voting ballot board, delivery of materials to the early voting ballot board, acceptance of mail ballots, and manual counting, if any, of early voting ballots by November 20, 2023.
 - Notice of this meeting must be provided by county election officer to county chair 72 hours prior to the meeting (Sec. 31.124)



Contract for Election Services

- A *contract for election services* is a contract between the county executive committee of a political party holding a primary in the county and the county election officer for specific election services that the county election officer would perform in a countywide election (equipment, ballot programming, etc.).

(Secs. 31.092, 31.093, 31.094)



Joint Primary Agreement

- A *joint primary election agreement* is when two political parties who are holding primary elections jointly hold the election in common precincts. The joint election agreement must be by written joint resolution and approved by majority vote of full commissioners court and unanimously approved by county elections officer and county chairs of participating parties.

(Sec. 172.126)



Lease for Equipment

- A county executive committee for a political party may ***lease election equipment*** from the county or any other source. (Sec. 123.033)



Contracting vs. Joint Election

	Contract for Services	Joint Primary Election Agreement
Parties	County, Party	County and Both Parties
Approval	<ul style="list-style-type: none"> County election officer and county executive committee. 	<ul style="list-style-type: none"> Majority of full commissioner's court and unanimous approval of county elections officer and participating county chairs
Duty of County to Contract	<ul style="list-style-type: none"> All county election officials are required to contract for election services in a primary if requested 	<ul style="list-style-type: none"> No duty to have a joint primary election



Three Types of Agreements

- So, we'll discuss three types of agreements:
 - Contract for Election Services
 - Joint Primary Election Agreement
 - Lease of Election Equipment



What We'll Discuss

- For each type of agreement:
 - **Parties** to the contract;
 - Whether there is a **duty to contract**;
 - How to get **approval** for the agreement;
 - **Contents** of the agreement; *and*
 - How the agreement should handle **compensation**.



Contract for Election Services



Parties to the Contract *Contract for Election Services*

- The **county election officer**:
 - County Elections Administrator
 - County Clerk (or deputy)
 - County Tax Assessor-Collector (or deputy)
- The county executive committee of a **political party** located in the county.



Duty to Contract *Contract for Election Services*

- Sec. 31.093 requires all county election officers to contract with the parties for primary and primary runoff elections if requested.



Duty to Contract

Contract for Election Services

- The **county election officer**:
 - **Must** contract to ‘furnish services requested’ for the primary
 - Except:
 - They are not required to provide for the training of election judges and clerks.
 - **Must** offer to contract on the same terms with the county executive committee of each political party holding a primary election in the county.

(Sec. 31.093)



Duty to Contract

Contract for Election Services

- What if the county election officer and the party cannot agree on contract terms?
 - The Election Code does not address this issue.
 - County election officer and party must agree on a proposed cost schedule under the contract
 - County election officer must be willing to perform the same services for both parties
 - County election officer is responsible for certain statutory duties in connection with the primary, regardless of whether a contract is agreed to with the party
 - County election officer is responsible for conducting early voting by statute, even if the party does not contract with the county



Approval of Contract

Contract for Election Services

- Does **not** need to be submitted to the commissioners court for approval.
- The parties will need to check their own laws/rules regarding contract approval.



Contents of Contract

Contract for Election Services

- The contract may provide for the county election officer to perform or to supervise the performance of **any or all** of the duties that the officer performs in a countywide election ordered by the commissioners court. This may include testing and programming of election equipment as well as reporting results to SOS.



Contents of Contract

Contract for Election Services

- The contract may **not** change:
 - The filing authority for candidate applications;
 - The filing authority for Title 15 documents;
 - Or, a political subdivision's requirement to maintain office hours under 31.122.
 - Not applicable to primary elections
- (Sec. 31.096)



Contents of Contract

Contract for Election Services

- The contract may address the selection of election day polling places
 - The county chair determines polling places for a separate primary election
 - County executive committee determines polling places for a consolidated precinct
 - The county election officer determines polling places for a joint primary election
- In order for countywide polling places to be used for either party's primary election (joint or separate), both parties must agree to the use of countywide polling places
 - If one party does not agree to the use of countywide polling places in the primary election, the other party may not use countywide polling places for their own primary
 - If the parties do not agree to the use of countywide polling places for the primary election, then both primary elections would be conducted by precinct-based voting

[Secs. 43.003, 43.007, 172.126]



Combination and Consolidation of Precincts (NEW LAW – SB 924)

- Combination is available in a general election or special election, but is not available in a primary election
 - In general or special election, can only combine precincts if county has a population less than 1.2 million and does not participate in the countywide polling place program
 - May only combine if there is no suitable building to serve as a polling place in the precinct
- Consolidation is available for primary elections or special elections
 - In separate primary, county executive committee determines whether to consolidate
 - In joint primary, county election officer determines whether to consolidate
 - Consolidated precinct must satisfy the same requirements as a single precinct
 - 42.005 - Precinct may not contain more than one commissioner precinct, JP precinct, state representative district, state senate district, or state board of education district
 - 42.006 - Precinct may not contain more than 5,000 registered voters
 - 42.007 - Precinct may not be both inside and outside of a city with a population of 10,000
 - This essentially means all precincts contained within a consolidated precinct must share the same ballot style
 - Precinct returns and check-in paperwork are prepared for the consolidated precinct as a whole
- See [Advisory 2023-11 – Election Precincts and Polling Places - Senate Bill 924](#)

[Secs. 42.005, 42.0051, 42.006, 42.007, 42.009, 172.126]



Compensation in Contract *Contract for Election Services*

- The contract must include an itemized list of estimated election expenses.
- Invoices for certain primary expenses must be submitted to SOS.
- SOS then directly pays these expenses.

[Sec. 31.093, Ch. 173, TAC 81 Subchapter F]



Compensation in Contract *Contract for Election Services*

- The **county election officer** cannot:
 - Charge for duties that must be performed by law.
 - Be personally paid for services under contract.
- The **county election officer** can:
 - Charge up to 10% of the total amount of the contract for general supervision of the election.

[Sec. 31.100]



Joint Primary Election Agreement



Parties to the Contract and Approval of Contract *Joint Primary Election Agreement*

- The decision to conduct a joint primary election must be made by written, joint resolution of a majority vote of the full membership of the commissioners court and with the unanimous approval of the county election officer and the county chair of each political party required to nominate candidates by primary election.

[Sec. 172.126]



Contents of Contract

Joint Primary Election Agreement

- **Polling places:**
 - Regular county polling places for general election for state and county officers.
 - Precincts may be consolidated by the county election officer, but county election officer shall position polling places to accommodate the needs of all parties (i.e. precinct conventions).
- **Election officers:**
 - One set of election officers conduct the joint primary at each polling location. Parties provide lists of judges/clerks to the county election officer no later than the 2nd Monday in December (December 11, 2023).
 - Judges from all parties in the primary serve as co-judges.

[Sec. 172.126]



Contents of Contract

Joint Primary Election Agreement

- **Ballots:**
 - The county election officer determines the ballot format and voting system for each precinct and provides the supplies/equipment.
 - Separate ballot boxes for each party must be maintained, except a joint ballot box may be used if voters are depositing ballots directly into automatic tabulating equipment.
- **Form and records:**
 - The list of registered voters and voter registration certificates should be stamped to show the affiliation of each voter, if applicable.
 - A separate list of registered voters shall be used for each party's primary.

[Sec. 172.126]



Compensation in Contract *Joint Primary Election Agreement*

- The joint primary resolution must include an itemized list of estimated election expenses.
- The county may only use funds for expenses **directly attributable** to the contract.
 - Counties may request to SOS that primary expenses incurred be paid directly to the county elections officer rather than the county chair.
- Any advance funds over the actual expenses must be **refunded** to the chair.

[Sec. 172.126, Ch. 173, TAC 81 Subchapter G]



Leasing of Election Equipment



Parties to the Contract *Acquisition of Election Equipment*

- The **county executive committee of a political party** may lease equipment from the **county** in which it is located.
- If the county doesn't have the **desired equipment**, the party may contract to lease it from **any other source**.

[Sec. 123.033]



Duty to Contract *Acquisition of Election Equipment*

- If a political party wishes to lease election equipment owned by the county, the county **must** lease the equipment under the terms agreed to by both parties to the leasing agreement.

[Sec. 123.033]



Duty to Contract

Acquisition of Election Equipment

- However, county may impose **reasonable restrictions** for:
 - Ensuring the **availability** of the equipment for an election for which the county adopted it.
 - **Protecting** the equipment from misuse or damage.
- The county is **not** required to provide equipment to a party for use in an election precinct in which fewer than 100 votes were cast in the party's most recent primary or runoff primary.

[Sec. 123.033]



Compensation in Contract *Acquisition of Election Equipment*

- The county may charge the political party a **fee for leasing** the equipment.
- The maximum amount that may be charged to a county executive committee leasing equipment is \$5 for each unit of electronic voting system equipment installed at a polling place and \$5 for each unit of other equipment.

[Sec. 123.033]



Practical Considerations

- All three types of agreements discussed today must be **in writing**.
 - Clear inference: §§ 31.099, 123.033, 172.126.
- There's **no standard** form or document for any of these agreements.
 - We do have sample contracts for primary election services and joint primary elections available on request



Any Questions?

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