



**THE ATTORNEY GENERAL
OF TEXAS**

Gerald C. Mann

AUSTIN 11, TEXAS

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ATTORNEY GENERAL

Hon. B. M. Whiteacre
County Auditor
Grayson County
Sherman, Texas

Opinion O-969

Re: Is it necessary for citizens of an incorporated city or town (which said city or town levies a poll tax) to possess a poll tax in the city or town in order for them to qualify as voters in a county prohibition election?

Dear Sir:

Your request for an opinion on the above stated question has been received by this office.

Sections 1 and 2 of Article 6 of the State Constitution read as follows:

"Sec. 1. The following classes of persons shall not be allowed to vote in this state; to wit:

"First: Persons under twenty-one years of age.

"Second: Idiots and lunatics.

"Third: All paupers supported by any county.

"Fourth: All persons convicted of any felony, subject to such exceptions as the Legislature may make.

"Fifth: All soldiers, marines and seamen, employed in the service of the Army or Navy of the United States. Provided that this restriction shall not apply to officers of the National Guard of Texas, the National Guard Reserve, the Officers Reserve Corps of the United States, nor to enlisted men of the National Guard, the National Guard Reserve, and the Organized Reserves of the United States, nor to retired officers of the United States Army, Navy and Marine Corps, and retired warrant officers and retired enlisted men of the United States Army, Navy, and Marine Corps.

"Sec. 2. Every person subject to none of the foregoing disqualifications, who shall have attained

the age of twenty-one years and who shall be a citizen of the United States and who shall have resided in this State one year next preceding an election and the last six months within the district or county in which such person offers to vote, shall be deemed a qualified elector; provided, that electors living in any unorganized county may vote at any election precinct in the county to which such county is attached for judicial purposes; and provided further, that any voter who is subject to pay a poll tax under the laws of the State of Texas shall have paid said tax before offering to vote at any election in this State and hold a receipt showing that said poll tax was paid before the first day of February next preceding such election. Or if said voter shall have lost or misplaced said tax receipt, he or she, as the case may be, shall be entitled to vote upon making affidavit before any officer authorized to administer oaths that such tax receipt has been lost. Such affidavit shall be made in writing and left with the judge of the election. The husband may pay the poll tax of his wife and receive the receipt therefor. In like manner the wife may pay the poll tax of her husband and receive the receipt therefor. The Legislature may authorize absentee voting. And this provision of the Constitution shall be self-enacting without the necessity of further legislation.

Article 1630, Revised Civil Statutes, reads as follows:

"The City Council shall have power to levy and collect an annual poll tax, not to exceed One (\$1.00) Dollar of every inhabitant of said city over the age of twenty-one (21) and under sixty (60) years, those persons exempt by law from paying the State Poll Tax excepted, who is a resident thereof at the time of such annual assessment."

Article 2955, Revised Civil Statutes, reads in part as follows:

"Every person subject to none of the foregoing disqualifications ... shall be deemed a qualified elector ...; provided that any voter is subject to pay a poll tax under the

Hon. B. M. Whiteacre, page 3.

laws of this State or ordinances of any city or town in this State, shall have paid said tax before offering to vote at any election in this state and holds a receipt showing that said poll tax was paid before the first day of February next preceding such election"

Article 1030, supra, authorizes cities to levy an annual poll tax of One Dollar (\$1.00) and Article 2955, supra, expressly provides that a voter must pay his city poll tax in order to qualify as a voter in any election. These two articles when considered together, disqualify all voters in all elections who fail to pay their city poll taxes in the manner and at the time provided by law.

We quote from the case of T. E. Powell et al vs. City of Beard et al, decided by the Supreme Court May 31, 1939 (not yet reported) as follows:

"Under the Constitution and laws of this state, a voter subject thereto must pay his city poll tax at the time required by law, in order to qualify as a legal voter in any election in this state."

We quote from the case of Savage vs. Umphries, 118 S.W. 893, as follows:

"It is true that where the Constitution of a state fixes the qualifications, and determines who shall be deemed qualified voters, in direct, positive, and affirmative terms, these qualifications cannot be added to by legislative enactments, yet, as the constitutional provision in section 2, Art. 6, hereinbefore quoted, required that 'any voter who is subject to pay a poll tax under the laws of the state of Texas shall have paid the tax before he offers to vote at any election in this state,' it cannot be said that this qualification is added to by the legislative enactment which requires the payment of a city poll tax by a voter who is subject to its payment; for such tax is required under the laws of the state of Texas, though it be a municipal tax, for no tax can be levied by a city unless it is done under the laws of the state. McCormick vs. Jester (Tex.Civ.App.) 115 SW 278; People vs. Teague, 106 N.C. 576, 11 S.E. 665."

Hon. B. M. Whiteacre, page 4

Also see the cases of Linger vs. Balfour, 149 SW 795 and Bonham vs. Fuchs, 228 SW 1112.

In view of the foregoing authorities, you are respectfully advised that it is the opinion of this department that any voter subject to the payment of a city poll tax must pay his city poll tax at the time required by law, in order to qualify as a legal voter in a county prohibition election or in any election in this state. All opinions of this department holding the contrary are expressly overruled.

Trusting that the foregoing answers your inquiry, we remain

Yours very truly

ATTORNEY GENERAL OF TEXAS

By /s/ Ardell Williams
Ardell Williams, Assistant

APPROVED JUN 21, 1939
/s/ Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

APPROVED: OPINION COMMITTEE
BY: DDM, Chairman

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