

person shall make affidavit that he or she, has attained the age of twenty-one years on the day of such election, such person shall be entitled to vote at such election upon filing such affidavit with the judge of election. This law shall not apply to cities having a population of five thousand or more according to the preceding Federal census."

The above quoted statute clearly applies to and affects all persons, except those residing in a city of 5,000 inhabitants, or more, not subject to the payment of a poll tax because of non-age, but who are otherwise qualified electors, who will reach the age of 21 years after the first day of January and before the day of a following election at which he or she wishes to vote, and provides that such persons may vote at such election without having paid a poll tax or obtained a certificate of exemption.

Article 2968a, Revised Civil Statutes, enacted by the 44th Legislature, 1935, reads in part as follows:

"Every person not subject to the disqualifications set out in Article 2954 of the Revised Civil Statutes of 1925 who does not reside in a city of ten thousand inhabitants or more, and who is exempt from the payment of a poll tax by reason of the fact that he or she has not yet reached the age of twenty-one years on the first day of January preceding its levy, or who is exempt from the payment of a poll tax because he or she was not a resident of the State on the first day of January preceding its levy, but who shall have since become eligible to vote by reason of length of residence or age, shall, on or before the thirty-first day of January of the year in which he or she offers to vote, obtain from the Assessor and Collector of Taxes for the county of his or her residence a certificate of exemption from the payment of a poll tax, and no such person who has failed or refused to obtain such certificate of exemption from the payment of a poll tax shall be allowed to vote."

As stated above, Article 2969, Revised Civil Statutes, clearly provides that all persons, with certain exception, not subject to the payment of poll tax because of non-age, who become 21 years of age after January 1 and before the day of a following election, may vote at such election without having paid a poll tax or obtained a certificate of exemption. However, the Beaumont and the Austin Courts of Civil Appeals have held in recent decisions that under the terms and provisions of Article 2968a such persons may not vote unless they obtain a certificate of exemption on or before January 31st of the year in which they offer to vote. Rogers vs. Smith, et al., 119 S.W.(2d) 678; Clark vs. Stubbs, 131 S.W. (2d) 663.

In the case of Rogers vs. Smith, et al., supra, the Beaumont Court of Civil Appeals held that, in an election contest, the refusal on the part of the district court hearing same to count a vote by a party who became 21 years of age before an election held on April 3, 1937, and subsequent to January 1, 1937, was not error, where such voter failed to obtain from the tax assessor and collector a certificate of exemption, and that such person was not a qualified voter. As authority for this holding, the court cited Article 2968a, Vernon's Annotated Civil Statutes, Acts 1935, 44th Legislature, page 686, chapter 292, section 1.

The holding of the Austin Court of Civil Appeals in the case of Clark vs. Stubbs, supra, is the same as that of the Beaumont Court of Civil Appeals in the case of Rogers vs. Smith, et al. We quote from the opinion as follows: (at page 666)

"Appellee challenged the votes of Nell Rose Morrissey, Jess Dyer, Lillie Gibson, Wilbur Herwig, Louise Widerbrush, Mrs. Bowman Basial, Clinton Jacobs, and Willis Blackburn, because each of them became 21 years of age after January, 1938, and prior to November 6, 1938, and under the governing statute, therefore, they were not entitled to vote without an exemption certificate. Art. 2968a, Vernon's Ann. Civ. St., Acts of 1935, 44th Leg. p. 686, Chap. 292, Sec. 1, provides that each of the voters in question was required to obtain an exemption certificate before he or she would be entitled to vote. Neither of them obtained such a certificate. The statute is mandatory and these voters were not qualified to vote at the election, and the trial court correctly excluded all of such votes." (Underlining ours)

It therefore appears that Article 2968a applies to and affects all persons, except those who reside in cities having 10,000 inhabitants or more, not subject to the payment of a poll tax because of age, but who are otherwise qualified electors under the Constitution and Laws of this State, and provides that such person shall not be allowed to vote unless he or she obtains from the assessor and collector of taxes for the county of his or her residence a certificate of exemption on or before the thirty-first day of January of the year in which he or she offers to vote. In other words, regardless of the time a person becomes 21 years of age, this statute requires all persons who are not subject to the payment of a poll tax, because of non-age, to obtain a certificate of exemption on or before January 31 of the year he or she wishes to vote in order to be qualified to vote, except those residing in cities of 10,000 or more inhabitants.

Hon. J. A. Morrison, Page 4

Article 2958a, Revised Civil Statutes, also applies to and affects all persons exempt from the payment of a poll tax, because he or she was not a resident of the state on the first day of January preceding its levy. However, the questions propounded by you do not involve this class of voters, so we have dismissed them from consideration herein.

The effect of the opinions in the above cited cases is to hold that Article 2969 is in direct and irreconcilable conflict with Article 2968a. It follows therefore that Article 2969, enacted by the 29th Legislature, 1905, and amended by the 38th Legislature, 1923, is repealed by necessary implication by Article 2968a which was enacted by the 44th Legislature in 1935. *Martin vs. Sheppard*, 129 Tex. 110, 102 S.W.(2d) 1036; *Townsend vs. Terrell*, 118 Tex. 463, 16 S.W. (2d) 1063; *Begazine vs. State*, 47 Tex. Gr. R. 46, 84 S.W. 832; *St. Louis Southwestern Ry. Co. vs. Aay*, 85 Tex. 558, 22 S.W. 665; Attorney General Opinion No. O-414.

This opinion does not in any way attempt to construe Article 2968, which applies only to residents of cities having a population of 10,000 or more inhabitants.

It follows from what has been said above that in our opinion each of the questions propounded by you should be answered in the negative.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By /s/ Tom D. Rowell, Jr.

Tom D. Rowell, Jr., Assistant

TER:AMH:vd

APPROVED JUN 29, 1940
/s/ Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

APPROVED: OPINION COMMITTEE
BY: BMB, CHAIRMAN