



**THE ATTORNEY GENERAL
OF TEXAS
AUSTIN, TEXAS**

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ATTORNEY GENERAL

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February 5, 1948

Hon. L. A. Woods,
State Superintendent,
Department of Education,
Austin, Texas

Opinion No. V-494

Re: The validity of a
school bond elec-
tion on February
21, 1948, since the
poll tax rolls will
not be compiled be-
fore April 1st, 1948.

Dear Sir:

We refer to your letter of January 24, 1948
in which you submit the following:

"1. The Fort Worth Board of Educa-
tion has called a bond election for Feb-
ruary 21st, 1948.

"2. Certain Fort Worth attorneys
have advised the Board that such election
cannot be valid because of the absence of
a poll tax list as required by Article
2975 of the Revised Civil Statutes of
Texas. The poll tax list will be absent
because the tax office cannot complete it
before April 1st, 1948.

"3. Will the election be valid
should it be held without such a list hav-
ing been furnished by the Collector?"

You have informed us that the boundaries of
Fort Worth Independent School District do not coincide
with the boundaries of the City of Fort Worth, by reason
of which we assume that such district boundaries are not
coincident with the boundaries of the voting precincts.

The poll tax receipt and exemption records
in the office of the county tax assessor-collector of a
county contain the names of those who have paid poll tax-
es or obtained exemption certificates in each election

precinct of the county, separately. It is not stated in those records whether the poll tax payer or exemption certificate holder resides in any school district, by reason of which no certified list of the voters in the Fort Worth Independent School District, as such could be furnished to the election officials of such district by such county officer based upon the records of his office.

It is elementary that the law does not require an officer to certify that things exist or are disclosed by his records which things are not so disclosed.

The pertinent parts of Article 2955, V.C.S. read:

" . . . provided that any voter who is subject to pay a poll tax under the laws of 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; and, if said voter is exempt from paying a poll tax and resides in a city of ten thousand (10,000) inhabitants or more, he or she must procure a certificate showing his or her exemptions as required by this title. . . The provisions of this Article as to casting ballots shall apply to all elections including general, special and primary elections." (Emphasis added)

Article 2785, V.C.S., provides for elections to determine the proportion of the levy of such tax or the issuance of school bonds. The pertinent part of that article reads: ". . . said election shall be held and conducted as provided by law for general elections, except as provided herein." (Emphasis added)

Fort Worth Independent School District was created by House Bill No. 528, Chapter 230, Local and Special Laws, Acts 1925, 39th Legislature, page 674, with full powers to call and hold elections for the issuance of bonds.

There is no requirement that its election officials be furnished a list of poll tax payers.

The provisions of Articles 2955 and 2785, V.C.S. pertain to the method of conducting elections, such as casting and counting ballots and making returns.

Article 2975 requires County Tax Collectors to "deliver to the Board certified lists of citizens in each precinct who have paid their poll tax or received their certificates of exemption" before April 1st of each year.

In Schrock v. Hylton, 133 S. W. (2d) 175, the Court quoted and approved other cases as follows:

"So, for the purpose of this opinion, assuming that the election was held under and governed by the provisions of the general election laws of the State of Texas, which evidently was not the case, by virtue of the above statute, Art. 3054, supra, the burden of proof rested upon contestants to show that a poll list at the polling place would have materially changed the result of the election, or that the absence of such list did materially change the result; thus, in the absence of such showing, the failure of the election officers to have a certified list at the polling place at the time the election was held, becomes immaterial.

"In State ex rel. Paggi v. Fletcher, Tex. Civ. App., 50 S. W. 2d 450, 452, in an election-contest, among other assignments of error, the contention was made, as here, to void the election, that a list of voters was not furnished the election officers in compliance with Art. 2975, R.S. The court said: 'Because the voting lists furnished the election judges failed to furnish all the information prescribed by article 2975, appellants insist that the election was absolutely void * * * In support of their proposition appellants cite Yett v. Cook, 115 Tex. 205, 281 S.W. 837, and articles 2975, 3005, and 3012

of the Revised Statutes. While it is true that the Supreme Court, in Yett v. Cook, discussed the office of the list of voters provided for by article 2975 and in effect held that the provisions of this article were mandatory, the facts of that case have no relation to the facts of this case, and what was said there can throw but little light on the proposition before us. * * * To have relief because its provisions were not complied with, appellants rested under the burden of alleging and proving "injury," which was not done. The right to vote is a constitutional right, and while the Legislature has the power to establish rules regulating this right, such regulations should generally be given a liberal construction to effectuate the constitutional right of suffrage. Regulations which, from their very nature, are deemed absolutely essential to accomplish the purposes of constitutional suffrage, are deemed mandatory; such as, that voting shall be by ballot, that it shall take place on a certain day within certain precincts, etc. But regulations that are nothing more than mere directions for holding the election are considered merely formal in character and should be construed as directory. This is the clear holding of the Supreme Court in McKinney v. O'Connor, 26 Tex. 5, and Fowler v. State, 68 Tex. 30, 3 S. W. 255; also of this court in State (ex rel. Pace) v. Logan (Tex. Civ. App.) 5 S. W. 2d 247, and Scurlock v. Wingate (Tex. Civ. App.) 283 S.W. 307. See, also, Turner v. Teller (Tex. Civ. App.) 275 S.W. 115; Bass v. Lawrence (Tex. Civ. App.) 300 S. W. 207 . . .

"The decisions cited on the question of whether the provisions of the law, relative to election officers having a properly certified list of the qualified voters or of the polls, are mandatory or directory, are clearly in favor of the rule that, the failure of either the voters or election officers to perform their respective duties at the polls according to the letter of the statute, where such failure has not prevented a fair election, is immaterial and

not ground to set aside an election otherwise fairly held. In McCrary on Elections, 4th Ed. ¶ 724, the author says: 'The justice of this rule is apparent, and it may be said to be the underlying principle to be applied in determining this question. The requirements of the law upon the electors are in the interest of pure elections, and should be complied with at least in substance, but to disfranchise the voter because of the mistakes or omissions of election officers would be to put him entirely at the mercy of political manipulators. The performance by the election officers of the duties imposed upon them can be reasonably well secured by providing a penalty for failure so to do.'" (Emphasis added)

It will be noted that the list to be compiled by the county tax collector under the provisions of Article 2975 must be delivered before the first day of April of each year. In other words, the tax collector has until such date to deliver the list, and the statute would not be violated if such list were not delivered until the last day of March. Therefore, if an election is to be held under appropriate statutory provisions after January 31st and before April 1st, and the list has not been delivered, then Article 2975 could have no application or bearing on such election.

We are of the opinion that failure of the Assessor and Collector of Taxes for Tarrant County to furnish election officials in a school bond election in Fort Worth Independent School District with a certified list of voters in said district will not invalidate such election.

Opinions Nos. O-1178 and O-3350 by a former Attorney General, and Opinion No. V-220 by us are pertinent to your inquiry, and a copy of each of them is enclosed for your information. Said Opinion No. O-1178 holds

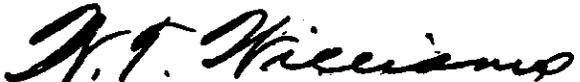
that Article 2955v, V.C.S., which requires Tax Assessors to furnish election officials with a list of property taxpayers, is void. That opinion is in accord with the cases of Lucchese v. Mauermann, 195 S.W. (2d) 422, ref. n.r.e., certiorari denied, 67 S. Ct. 633, and Border v. Abell, 111 S.W. (2d) 1186. Said Opinions Nos. O-3350 and V-220 pertain to the qualification of voters in such elections.

SUMMARY

Failure of the County Assessor and Collector of Taxes to furnish election officials in a school district bond election with a list of holders of poll tax receipts and exemption certificates in such school district will not invalidate such election.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

By 
W. T. Williams
Assistant

WTW:wb
Encls.

APPROVED:


FIRST ASSISTANT
ATTORNEY GENERAL