



**THE ATTORNEY GENERAL
OF TEXAS**

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AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

April 29, 1952

*Superseded by
Amendment to
Art 1.05 Election
Code in 1963* (N)

Hon. Fred C. Brigman, Jr. Opinion No. V-1437.
County Attorney
Uvalde County
Uvalde, Texas

Re: Eligibility of a person
who will have resided
in a commissioners' pre-
cinct for four months
on the date of the first
primary to be a candi-
date for county commis-
sioner.

Dear Sir:

You have requested an opinion of this office
on the following question involving an interpretation
of Section 5 of the Texas Election Code (Acts 52nd Leg.,
R.S. 1951, ch. 492, p. 1097):

"Is a person who will have resided in
a commissioners' precinct for four months
at the date of the first primary election
but who will have resided in that precinct
for seven months at the time of the general
election eligible to have his name placed
on the primary election ballot for the of-
fice of county commissioner?"

Section 5 of the Election Code reads as fol-
lows:

"No person shall be eligible to any
State, county, precinct or municipal office
in this State unless he shall be eligible
to hold office under the Constitution of
this State, and unless he shall have resided
in this State for the period of twelve (12)
months and six (6) months in the county, pre-
cinct, or municipality, in which he offers
himself as a candidate, next preceding any
general or special election, and shall have
been an actual bona fide citizen of said
county, precinct, or municipality for six
(6) months. No person ineligible to hold
office shall ever have his name placed upon

the ballot at any general or special election, or at any primary election where candidates are selected under primary election laws of this State; and no such ineligible candidate shall ever be voted upon, nor have votes counted for him at any such general, special, or primary election. . . ."

This section is taken from Article 2927, V.C.S., and is in identical language except that Article 2927 required the candidate to have been a citizen of the county, precinct, or municipality for "more than six months," whereas the present statute reads "for six months."

The question you have presented was answered in Att'y Gen. Op. O-1964 (1940), which held that the six months' residence and citizenship requirements in Article 2927 were referable to the general or special election at which the officer was to be elected, and did not refer to primary elections for the nomination of party candidates. In the course of the opinion it was stated:

"It is observed that the term 'general or special election,' only, appears in the first sentence of the statute; whereas, thereafter in the statute touching a different but related matter appear the terms 'any general or special election, or at any primary election.' Clearly, therefore, the employment of the term 'general or special election,' pertaining to the six months residence and citizenship requirement was not intended to include primary elections. . . ."

"It has been repeatedly held by this department that, under Article 2927, supra, apart from other necessary qualifications, an individual is eligible to hold a public office if he has resided in, and been a bona fide citizen of, the county, precinct, or municipality six months prior to the general election or special elections fixed by law."

The Legislature, in re-enacting Section 5 of the Election Code in substantially the same language

used in Article 2927, is presumed to have had knowledge of the construction which had been placed on the former statute and to have intended the same meaning in the re-enactment. Stephens County v. Hefner, 118 Tex. 397, 16 S.W.2d 804 (1929); Federal Crude Oil Co. v. Yount-Lee Oil Co., 122 Tex. 21, 52 S.W.2d 56 (1932); Railroad Commission of Texas v. Texas & N. O. R. Co., 42 S.W.2d 1091 (Tex. Civ. App. 1931, error ref.).

You have called our attention to Rosette v. Reyna, 196 S.W.2d 658 (Tex. Civ. App. 1946), wherein the contention was made that a nominee for the office of county commissioner was an ineligible candidate because he had not resided in the precinct for six months on the date of the primary election at which he was nominated. Apparently the contestant was contending that the successful candidate had not been at any time a "bona fide citizen" or resident of the precinct. In affirming the judgment of the trial court, the Court of Civil Appeals held that the trial court's finding that the nominee was a resident of the precinct was binding upon the appellate court, since the evidence was such that reasonable minds might draw different inferences and conclusions therefrom. The court did not state what the length of the nominee's residence in the precinct had been, nor did it say that he must have been a resident for six months preceding the primary in order to be an eligible candidate. We do not interpret this opinion as expressing a view favorable to the contestant's contention that the statute required residence in the precinct for six months preceding the primary election.

Kamas v. Stepan, 197 S.W.2d 193 (Tex. Civ. App. 1946), involved a fact situation similar to that in Rosette v. Reyna. Here also, the contention was made that the candidate was ineligible because he had not resided in the precinct for six months next preceding the date of the primary. The issue in dispute was whether the candidate was a resident of the precinct during the time he had been temporarily absent while engaged in war work. The court's holding was that the candidate by engaging in emergency temporary war work in another county did not abandon his residence which had been definitely fixed in the precinct for a number of years before he entered upon that employment. It is evident from the opinion that the court was not concerned with the exact point of time from which the

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prior six months' residence should be computed and was not passing on that question.

We have been unable to find any other case touching upon the precise question here involved. Since it is our opinion that neither of the two cases discussed above has ruled upon this point, we adhere to the former holding of this office in Opinion O-1964, supra.

(N)

SUMMARY

A candidate for the office of county commissioner who will have resided in the commissioners' precinct for six months at the time of the general election fulfills the six months' residence requirement of Section 5, Election Code, and residence in the precinct for less than six months at the time of the primary election does not make him ineligible to have his name placed on the primary ballot.

APPROVED:

J. C. Davis, Jr.
County Affairs Division

E. Jacobson
Reviewing Assistant

Charles D. Mathews
First Assistant

MKW:wb

Yours very truly,

PRICE DANIEL
Attorney General

By *Mary K. Wall*
Mary K. Wall
Assistant