



**THE ATTORNEY GENERAL  
OF TEXAS**

November 21, 1988

**JIM MATTOX  
ATTORNEY GENERAL**

Honorable Juan J. Hinojosa  
Chairman  
Committee on Criminal Jurisprudence  
Texas House of Representatives  
P. O. Box 2810  
Austin, Texas 78769

LO-88-129

Dear Representative Hinojosa:

Because of the tremendous increase in the volume of requests for opinions and open records decisions, we are responding to your request with the enclosed Letter Opinion or Open Records Ruling. A Letter Opinion or Open Records Ruling has the same force and effect as a formal Attorney General Opinion or Open Records Decision, and represents the opinion of the Attorney General unless and until it is modified or overruled by a subsequent Letter Opinion or Open Records Ruling, a formal Attorney General Opinion or Open Records Decision, or a decision of a court of record.

Very truly yours,

A handwritten signature in cursive script that reads "Jim Mattox".

J I M M A T T O X  
Attorney General of Texas

JAM/bc  
Enclosure



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

November 21, 1988

Honorable Juan J. Hinojosa  
Chairman  
Committee on Criminal Jurisprudence  
Texas House of Representatives  
P. O. Box 2910  
Austin, Texas 78769

LO-88-129

Dear Representative Hinojosa:

You provide with your request the text of a pauper's oath you say has been used in Gray County. Your request concerns the legality of the portion of the oath which states:

In making this declaration under oath, I acknowledge that I am a resident of Gray County, Texas and that I surrender my rights to vote as set forth in the constitution of the state of Texas (Article VI, Section 1.)

Article VI, section 1, of the Texas Constitution provides:

The following classes of persons shall not be allowed to vote in this State, to wit:

First: Persons under twenty-one (21) 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. (Emphasis added.)

The provision of article VI, section 1, that "paupers supported by the county" "shall not be allowed to vote," first appeared in the constitution of 1876 and has never been amended.

In 1940, an opinion of this office concluded that inmates of a sanitarium operated jointly by Tarrant County and the City of Fort Worth for indigent tuberculosis patients were "paupers supported by the county" under article VI, section 1, and thus disqualified to vote. Attorney General Opinion O-1809 (1940).

Braden's annotation to article VI, section 1, states that "this provision has been inoperative since Harper v. Virginia State Board of Elections, 383 U.S. 663 (1966), in which the Supreme Court struck down voter qualifications based on wealth." Braden, The Constitution of the State of Texas. Harper is the leading case declaring unconstitutional state laws conditioning the right to vote on payment of a poll tax. In the course of the majority opinion in Harper, Justice Douglas made several broad statements regarding the relation of wealth and the right to vote:

[A] State violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of any fee an electoral standard. Voter qualifications have no relation to wealth nor to paying or not paying this or any other tax.

Id. 383 U.S. at 666.

Wealth, like race, creed, or color, is not germane to one's ability to participate intelligently in the electoral process.

Id. 383 U.S. at 668.

We find only one reported case since Harper specifically addressing the pauper provision of article VI, section 1. Texas Supporters of Workers World Party Presidential Candidates v. Strake, 511 F.Supp. 149 (S.D. Texas 1981) dealt with challenges under the United States Constitution to various provisions of Texas election laws including the subsequently repealed provision of the former Texas Election Code which repeated the pauper provision of article VI, section 1. (The pauper provision in former V.T.C.S. Election Code article 5.01 was repealed by Acts 1983, 68th Leg., ch. 792.) Texas Supporters dismissed the claims regarding the pauper provision of article 5.01 because it found, inter alia, that none of the named plaintiffs were "paupers" within the highly specialized meaning of Art. 5.01."

The court elaborated in a footnote:

At the TRO hearing, the Assistant Attorney General for the State of Texas explained that this antiquated restriction refers to persons residing within county homes for the poor. He stated that no county in Texas has such an institution today. This is regarded as an 'empty' class. The State alleges it is being enforced against no one in Texas at this time.

Texas Supporters thus suggests that there are currently no "paupers supported by the county" in Texas within the meaning of article VI, section 1.

However, we believe it unnecessary to determine the precise scope of the language "paupers supported by the county" in article VI, section 1. We think that the provision cannot stand in light of the broad pronouncements of Harper that the right to vote may not, under the Fourteenth Amendment, be conditioned on wealth.<sup>1</sup>

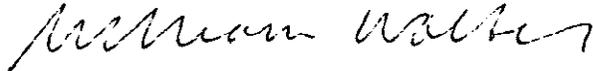
---

1. Please note, however, that we do not here address the validity of property ownership requirements for voting. See, Hill v. Stone, 421 U.S. 289, reh'g denied, 422 U.S. 1029 (1975) striking down requirement that voters on local bond elections must have rendered property for taxation. But see also, Salyer Land Co. v. Tulane Lake Basin Water Storage District, 410 U.S. 719 (1973) upholding property ownership requirement for voting for board of directors of water storage district where only landowners benefitted from district.

Honorable Juan J. Hinojosa  
November 21, 1988  
Page 4

Accordingly, we conclude that the provision of article VI, section 1, of the Texas Constitution that "paupers supported by the county" "shall not be allowed to vote" is unconstitutional and thus unenforceable.

Very truly yours,



William Walker  
Assistant Attorney General  
Opinion Committee

APPROVED: Sarah Woelk, Chief  
Letter Opinion Section

WW/SW/bc

Ref.: RQ-1584  
ID# 4860