



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable Dan W. Jackson  
District Attorney  
Houston, Texas

*Harris Co,*

Dear Sir:

Opinion Number O-1178  
Re: Qualifications of voters  
in bond elections.

Your request for an opinion on the following ques-  
tions has been received by this office. We quote from your  
letter as follows:

"A question has arisen as to who are qualified  
voters to vote in an election involving bond issues.  
The City of Houston now has under way a bond issue  
calling for street bonds but is holding the election  
up pending a determination as to what persons are  
qualified to vote at the election. The particular  
question involved is the correct interpretation of  
Article 6, Section 3a, of the Constitution and Arts.  
2955a and 2955b of the Revised Civil Statutes of  
1925.

\* \* \* \* \*

"Therefore, this office would like an opinion from  
the Attorney General:

"First, as to whether or not the voter must have  
himself or through his agent rendered the property,  
or whether it is sufficient that the property be  
assessed by the Tax Assessor;

"Second, whether either real or personal property  
is sufficient; and

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**"Third, whether, under Article 2955b, the failure of the Tax Assessor to furnish a list of the property owners will invalidate the election."**

In reply to your first two questions we call your attention to Section 3a of Article 6 of the Constitution of Texas, and Article 2955a of the Revised Civil Statutes of Texas (by which said amendment to the Constitution was placed in our statutory law); *Campbell vs. Wright*, 95 S. W. (2d) 149 (No writ of error applied for); and *Texas Public Utilities Corporation vs. Holland*, 123 S. W. (2d) 1028 (Writ of error dismissed for want of jurisdiction).

In the case of *Campbell vs. Wright* the San Antonio Court of Civil Appeals held that a property owner was qualified to vote if his property was rendered for taxes by himself or his agent or assessed for taxation by the Tax Assessor.

In the case of *Texas Public Utilities Corporation vs. Holland*, the Fort Worth Court of Civil Appeals held that all persons who had paid their poll tax and who owned taxable property, either real or personal, were qualified to vote if their property was rendered by them personally or through an agent or was assessed by the Tax Assessor if the property owner had failed to render the property. This we believe to be the law in this State at this time and have so held on several occasions. However, we call your attention to the fact that there is now pending before the Supreme Court a certified question in the case of *Gus A. Markowaky et al vs. J. T. Newman et al*, from the Galveston Court of Civil Appeals as to the correct interpretation of these statutes. We have read the brief of the appellants in this case and they present a very strong and able argument attacking the soundness of *Campbell vs. Wright* and *Texas Public Utilities Corporation vs. Holland*, but we feel that until the Supreme Court acts on this matter, the opinions of the Court of Civil Appeals, cited above, is the law of this State and should be followed in giving your instructions to the election officials.

In reply to your third question, this department has several times ruled that Article 2955b is unconstitutional, for the reason that it limits qualified voters to those who

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have duly rendered real property for taxation, contrary to the express language in Section 3a of Article 6 of the Constitution. The Galveston Court of Civil Appeals has also intimated that the statute was unconstitutional in the case of Border vs. Able, 111 S. W. (2d) 1186, though not directly so holding. That case also held that the failure of a county tax collector to furnish election judges a certified list of real estate owners, in an election to determine if certain bonds should be issued, did not invalidate the election, in the absence of allegations of fraud or misconduct, or that failure to furnish such list affected a fair result of the election. We do not believe, therefore, that it is necessary to prepare the list provided for in this article. However, we do feel that the Tax Collector should furnish the election judges a certified list of the persons who had duly rendered property for taxation (as defined in Texas Public Service Corporation vs. Holland) so that this list might be used by the election judges to help them to determine the qualification of the voters.

Trusting that this answers your questions, we remain

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Claud O. Boothman*  
 Claud O. Boothman  
 Assistant

COB-s

APPROVED OCT 10, 1939

*acting* *Robert H. Keiser*  
 ATTORNEY GENERAL OF TEXAS

