



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

GERALD C. MANN
~~XXXXXXXXXXXX~~
ATTORNEY GENERAL

Honorable F. L. Massie
County Auditor
Wilbarger County
Vernon, Texas

Dear Sir:

Opinion No. 0-4994
Re: Term of county judge under facts
stated.

Your request for opinion has been received and carefully considered by this department. We quote from your request as follows:

"Judge John Myers county Judge for the years, 1941-1942, was re-elected for the years 1943-1944, but died August 8th 1942.

"August 11th, the Executive committee named O.O. McCurdy as democratic nominee for the November Election, at which time he was elected.

"On August 8th, 1942, the Commissioners Court appointed Marvin C. Culbertson, County Judge to fill out the unexpired term of John Myers.

"The question has arisen as to the date of Expiration of the term of Marvin C. Culbertson.

"Please let me have your opinion on this point at your earliest convenience."

Section 28, Article V, of our State Constitution, provides, in part, as follows:

". . . vacancies in the office of County Judge and justice of the peace shall be filled by the commissioners court until the next general election for such offices."

Article 2355, Vernon's Annotated Texas Civil Statutes, provides:

"The Court shall have power to fill vacan-

cies in the office of: County Judge, County Clerk, Sheriff, County Attorney, County Treasurer, County Surveyor, County Hide Inspector, Assessor of Taxes, Collector of Taxes, Justices of the Peace, Constables, and County Superintendent of Public Instruction. Such vacancies shall be filled by a majority vote of the members of said Court, present and voting, and the person chosen shall hold office until the next general election."

Article 17, Vernon's Annotated Texas Civil Statutes, provides:

"After each general election those who are elected to the various county and precinct offices shall qualify by taking the official oath and entering upon and assuming the duties of their respective offices on the first day of January following the last general election, or as soon thereafter as possible. Those officers holding office at said time shall surrender their offices to their successors accordingly on said date, or as soon after such date as their successors shall have qualified and be ready to assume the duties thereof."

Article 18, Vernon's Annotated Texas Civil Statutes, provides:

"Each officer, whether elected or appointed under the laws of this State, and each Commissioner, or member of any board or commission created by the laws of this State, shall hold his office for the term provided by law and until his successor is elected or appointed and qualifies; and each, on retiring from office, shall deliver to his successor all books, papers, and documents relating to his office."

We quote from the court's opinion in the case of Anderson, et al., v. Parsley, et al., Tex. Civ. App., writ of error refused, 37 S.W. (2d) 358, as follows:

The Constitution does not provide when the newly elected commissioners shall take office or be eligible to take office. Article 17, Rev. Civ. Statutes of 1925, act of 1921, provides that the newly elected officers shall take their official oath and enter upon and assume the duties of their respective offices on the 1st day of January fol-

lowing the last general election, or as soon thereafter as possible. This provision is well within the power of the Legislature, and we can see no reason to sustain the contention that the newly elected commissioners, elected in the general election of 1930, ought to have been permitted to take the oath and qualify and enter upon their duties as commissioners prior to January 1, 1931."

It is our opinion that the Honorable O. O. McCurdy will be entitled to qualify and take office on or after January 1st, 1943. Of course if Judge McCurdy does not qualify on January 1st, 1943, then Judge Culbertson will continue to hold over until Judge McCurdy qualifies.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By s/Wm. J. Fanning
Wm. J. Fanning
Assistant

WJF:db:wc

APPROVED DEC 3, 1942
s/Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

Approved Opinion Committee by s/BWB Chairman