

statutes do not require that a voter shall have resided six months within a precinct of a county to be eligible to vote, but that the six months requirement is complied with if the voter has resided such time within the county.

We quote from Opinion No. 2116 of this Department, dated July 16, 1919, as follows:

"If a voter has in fact moved into a new precinct within the same county, in good faith to reside in such precinct and to acquire a residence therein, such voter is entitled to vote at any general election held subsequent to his acquiring his new residence as aforesaid."

In view of the foregoing, you are respectfully advised that it is the opinion of this Department that a person may vote in a special election such as a local option election, who has moved into the precinct immediately before the election, on his own statement that he is a legal resident of the precinct, provided he has his poll tax receipt or certificate of exemption, if required by law, and is otherwise a qualified voter; and provided further that the facts and circumstances are such as would make him a legal resident of that particular precinct; one of which is his intention at the time he moved into such precinct. *Linger vs. Balfour*, 149 S.W. 803; *Garvey vs. Cain*, 197 S.W. 765.

However, there is an exception to this general rule when the person who is offering to vote lives in a city of 10,000 inhabitants or more. Then he must comply with Articles 2966 and 2967, V.C.S., which are as follows:

"Art. 2966. Removal to another ward.

"If a citizen in a city of ten thousand inhabitants, after receiving his poll tax receipt or certificate of exemption, removes to another ward in the same city before the next election, he may vote at any general election in the ward of his new residence by presenting his poll tax receipt or certificate of exemption to the precinct election judges, or by making affidavit that it has

been lost or misplaced; which affidavit shall be left with the judges and forwarded with the election returns. But in all such cases if the removal was to the ward of his new residence in the same city before the certified list of voters was delivered to the precinct judges, he shall appear before the tax collector not less than five days before such election or primary election and obtain a corrected receipt or certificate; and his name shall be added to the list of voters for the precinct of his new residence; and he shall not vote in that event unless his name appears on the certified list of voters."

"Art. 2967. Removal to another county or precinct.

"If a citizen after receiving his poll tax receipt or certificate of exemption, removes to another county or to another precinct in the same county, he may vote at an election in the precinct of his new residence in such other county or precinct by presenting his poll tax receipt or certificate of exemption or his affidavit of its loss to the precinct judges of election, and state in such affidavit where he paid such poll tax or received such certificate of exemption, and by making oath that he is the identical person described in such poll tax receipt or certificate of exemption, and that he then resides in the precinct where he offers to vote and has resided for the last six months in the district or county in which he offers to vote and twelve months in the State. But no such person shall be permitted to vote in a city of ten thousand inhabitants or more, unless he has first presented to the tax collector of his residence a tax receipt or certificate, not less than four days prior to such election or primary election or made affidavit of its loss and stating in such affidavit where he paid such poll tax or received such certificate

of exemption; and the collector shall thereupon add his name to the list of qualified voters of the precinct of his new residence; and, unless such voter has done this and his name appears in the certified list of voters of the precinct of his new residence, he shall not vote."

Your Question No. 2 is as follows:

"2. In case of service men or women entitled to vote without poll tax, are they required to make any showing as to whether they live in the precinct?"

This question, we think, is answered in Opinion No. 0-7034 of this Department dated January 17, 1946, in the answers to questions 7 and 8 therein, a copy of which is herewith enclosed. In this opinion this Department ruled that such persons were entitled to vote without being included on the certified lists of voters prepared by the tax assessor and collector; that the judges could require them to show by their own oaths (and if in a city or town of 10,000 or more inhabitants, by the oath of one well known resident) that they were qualified to vote and that the election officials could not require more.

Your Question No. 3 is as follows:

"3. If a person actually resides in a precinct one night preceding the election by merely staying in it overnight, and does not move his household goods, etc., and then returns to his usual residence in some other precinct, is he subject to prosecution for voting in the election?"

Here we are faced with a question of fact. You state that the person actually resides in a precinct one night, yet at the same time you say he did not move his household goods, etc. The facts on their face are not consistent with moving to a new residence with a bona fide intent of making it his permanent residence.

As stated by Justice Norvell in the case of *McBride vs. Cantu*, reported in 143 S. W. (2) 126, we find the following:

"The testimony of a witness as to his intention is, of course, not necessarily controlling. It is, however, an element which may be considered by the authority authorized to determine fact issues - the jury or the trial judge.

"In our opinion the correct rule is stated in Stratton vs. Hall, Tex. Civ. App., 90 S.W. (2) 865, 866, by the El Paso Court of Civil Appeals, wherein it was held that although the declaration of a voter as to his intention is not controlling, it is an element which may be considered. In other words, the question of the residence of a married person for voting purposes under Article 2958, is one which must be determined by reference to the actual facts and circumstances; one of which will be his intentions."

Therefore, since your question is one of fact, this Department cannot pass upon the same.

Question No. 4 of your request is as follows:

"4. Is there a different regulation for voters of rural and city precincts, as to their qualifying to vote in a precinct into which they have moved? Are both required to make affidavit that they have removed to the precinct where they offer to vote? Is there a time limit for either or both, preceding the election? What is it?"

In answer to this question and in view of the foregoing authorities, it is the opinion of this Department that there is not a different regulation for voters of rural and city precincts, as to their qualifying to vote in a precinct into which they have moved unless the city in which they are voting is one which has a population of more than 10,000 inhabitants.

In either instance the voter must make an affidavit that he has removed to the precinct where he offers to vote if required to do so by the election judges

In the case of Yett vs. Cook, reported in 281 S.W. 839, Chief Justice Cureton said:

"The purity of the ballot in Texas has been safeguarded by many constitutional and statutory provisions. Const. art. 16, § 2; article 6, §§ 4, 5, 2; article 7, § 3. See, generally, also, Revised Statutes 1925, arts. 2954 to 3173, and Pen. Code 1925, art. 206 to 280.

"Among other provisions having for their purpose the purity of the ballot are those relating to the payment of poll taxes and evidence thereof for use at elections. Tax collectors are compelled to prepare and furnish poll tax lists to election boards for distribution to the precinct election officers. These lists constitute part of the election supplies, and the number of ballots to be furnished each voting precinct is ascertained by reference thereto. Revised Statutes 1925, arts. 2975, 2984. In the case of municipal elections the election board is composed of the mayor and others, whose duty it is to obtain election supplies, including the poll lists referred to, and furnish them to election officers. Revised Statutes 1925, arts. 2997, 2996, 2992, 2993. Supplemental lists of the voters who have paid their poll taxes must be furnished 'not less than four days prior to any * * * general election.' Revised Statutes 1925, art. 2975. If all lists are not furnished the presiding judges of the various election precincts 'at least three days before election,' it is their duty to send for and procure them. Revised Statutes 1925, art. 2993. These poll lists are used on the day of election as a means of identifying those who appear for the purpose of voting. Describing the actual method of voting, article 3005 declares that, when the voter presents himself to vote, he shall 'announce his name, and the judge after comparing the appearance of the party with the description given in the certified list of qualified voters of the precinct made out by the county collector, and being satisfied that it accords therewith, shall pronounce in an audible voice the name of the voter, and his number as given in the lists of qualified voters.' (Underscoring ours)

"It can serve no good purpose to make reference to the many statutes which show that the poll lists are one of the things which cannot be dispensed with if a lawful election is to be held. Since the statutes contemplate that the poll lists shall be used as an active and efficient aid towards securing the purity of the ballot, they necessarily mean that complete poll lists shall be used; that is to say, the lists should contain the names of every voter who may pay his poll tax prior to the close of January 31st each year. We think it quite evident that the poll lists in a city like Austin could not properly be prepared and distributed and the statutes in other important respects be complied with between the hour of midnight January 31st and the hour of the morning when an election would be held on February 2d. But, aside from what might be done, the law is that the supplemental lists must be prepared at least four days before the election day, and that the poll lists must be in the hands of the precinct judges at least three days before election day. Revised Statutes 1925, arts. 2975, 2993.

"Construing the various statutes bearing on the subject in the light of the Constitution shows conclusively that the provisions relating to poll tax lists are mandatory. . . ." (Underscoring ours)

It is clearly seen from the foregoing authorities that it is mandatory that the tax assessor and collector of the county furnish a poll tax list to the Board, before the first day of April of every year. If in a county which contains a city of more than 10,000 inhabitants the tax collector shall also furnish to said Board not less than four days prior to any Primary or General Election supplemental lists in the form herein prescribed, of all poll taxpaying voters who have, since paying their poll tax, removed to each voting precinct in each such city or town in the county from another county or in other precincts in the same county. In turn the Board shall furnish each presiding Judge of a precinct the certified lists and supplemental lists of voters of his precinct at the time when it

furnishes other election supplies.

If said list or supplemental list is not furnished said Board, it is then incumbent upon said Board to demand the same since it is absolutely necessary and mandatory that the election judges have said lists three days before said election in order to ascertain who are qualified voters; and if they do not receive same, they should make demand for them. It is only in this respect that there is a difference in regulations for voters of rural and city precincts.

It necessarily follows from what has been said that if a person moves from one precinct to another precinct in the same county and in a city or town of more than 10,000 inhabitants, subsequent to the time that the supplemental lists have been made out by the tax collector and delivered to the Board, he could be denied the right to vote. Whereas, if he removed to another precinct in the same county even after the poll list had been made by the tax assessor and collector and delivered to said Board but not being in a town or city of more than 10,000 inhabitants, he could not be denied the right to vote regardless of when he moved to his new precinct, if he was otherwise qualified to vote.

We are familiar with the principle that the Courts of Texas throughout the years have liberally construed the statutory regulations affecting the right of a voter freely to cast his vote in the expression of his choice at an election and, in the absence of statutory command, will not disfranchise him. Yet, since it is mandatory that the supplemental lists be furnished to the election judges, in cities of more than 10,000 inhabitants, if a person moves to such city after the supplemental poll list has been delivered, or moves from one precinct to another precinct in such city, the election judge could refuse him a ballot because his name would not appear on said list as required by law.

The first part of Question No. 5 of your request, that is: "When a person casts an absentee vote, what is the duty of the County Clerk as to ascertaining the legal residence of such voter?", we think, is answered in Opinion No. O-7069 of this Department, dated February 23, 1946, a copy of which is herewith enclosed.

The last part of Question No. 5 is as follows:

"What is the duty of the election officials of a precinct when a person offers to vote and presents an affidavit that he has removed his residence to that precinct?"

Articles 206 to 280, V.P.C., are other provisions having for their purpose the purity of the ballot and which set out some of the duties of the election judges - particularly Articles 216 and 217 together with Articles 3002, 3004, 3005 and 3006, V.C.S. These Articles provide how the election judges may ascertain who is a qualified voter, what the voter must do in order to be eligible to vote, and the remedy of the voter if challenged as such. Article 3007, V.C.S., is the particular statute which governs if the election is being held in a town of 10,000 or more inhabitants where the voter's right to vote is challenged.

It is apparent from what has already been said and in view of the aforementioned statutes that if the person is otherwise qualified to vote, it is then the duty of the election judges to require such facts from the voter under oath which he deems necessary to assure the judges that the person has actually become a bona fide resident of said precinct.

If in a city or town of more than 10,000 inhabitants, in addition to ascertaining the facts as aforementioned, the person's name must appear in the supplemental list if such person is required to have a poll tax or certificate of exemption; otherwise the election judge should refuse to issue such person a ballot. In addition to this, Article 3007, supra, is also applicable. It goes without saying that the law imposing all the other duties upon the officials holding elections must also be observed.

SUMMARY

1. An otherwise qualified voter who has moved into a precinct before an election may vote in a local option election on his own statement as to precinct residence if he has been a resident of such county for 6 months immediately preceding such election upon presentation of his poll tax receipt or certificate of exemption, if required; however, if voting in a city of 10,000 inhabitants or more a voter must, in

addition to the foregoing, comply with Articles 2966 and 2967, V.C.S.

2. As to whether a voter is subject to prosecution who resides in a precinct one night and does not move his household goods, etc., presents a fact question. A declaration of a voter is not controlling as to intention although it is an element which may be considered. (90 S.W. 2d 865; 143 S.W. 2d 126)

3. There is not a different regulation for voters of rural and city precincts, as to their qualifying to vote in a precinct into which they have moved unless the city in which they are voting is one which has a population of more than 10,000 inhabitants. In either instance the voter must make an affidavit that he has removed to the precinct where he offers to vote, if required to do so by the election judges. There is no time limit for either, preceding the election, but if in a town of more than 10,000 inhabitants the voter, if requested by the judge; must comply with Article 3007, V.C.S., in addition to the other requirements set out in the statutes.

4. If a person is otherwise qualified to vote, it is the duty of the election judge to require such facts from the voter under oath which he deems necessary to assure the judge that the person has actually become a bona fide resident of said precinct.

Yours very truly,

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Enclosures