



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

*Superseded by
art 29d V.C.A.*

June 8, 1960

Mr. Charles L. Reynolds
County Attorney
Childress County
Childress, Texas

Opinion No. WW-851

Re: Effective date sheriff
becomes Assessor and
Collector of Taxes,
and related questions,
when population of
county becomes less
than 10,000.

Dear Mr. Reynolds:

Your request for an opinion reads in part as follows:

"Heretofore for a number of years, an Assessor and Collector of Taxes has been elected by the qualified voters of Childress County in accordance with the provisions of Article 8, Sections 14 and 16, of the Constitution of Texas, this county during all such times having had more than 10,000 inhabitants as determined by the applicable federal census. The four year term of the present incumbent expires December 31, 1960. The present incumbent, being the only announced candidate for nomination to such office and having received the highest number of votes cast for any person for such office in the May 7, 1960, Democratic primary election, has been certified to be the democratic nominee for the office of Tax Assessor and Collector at the general election to be held in November, 1960. According to the preliminary 1960 census report, Childress County has a population of 8,371. The Constitution of Texas provides that in counties having less than 10,000 inhabitants the Sheriff shall be the Assessor and Collector of Taxes unless the voters, at an election called for that

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purpose, shall approve of adding an Assessor and Collector of Taxes to the list of authorized county officials.

"This situation raises the following questions:

"1. If no election is held, or if the voters fail to approve the adding of an Assessor-Collector of Taxes to the list of authorized county officials, when does the Sheriff assume the duties of Assessor and Collector of Taxes?

"2. And, inevitably controlled by the determination of question one above, when does the term of the present incumbent end?

"3. If at an election held for that purpose, an Assessor-Collector of Taxes is added to the list of authorized county officials, is the present incumbent, who was nominated in the May 7, 1960, Democratic primary election, entitled to have his name placed on the ballot in the November general election as the Democratic nominee for such office?"

Section 16 of Article VIII of the Constitution of Texas provides as follows:

"The Sheriff of each county, in addition to his other duties, shall be the Assessor and Collector of Taxes therefor; but, in counties having 10,000 or more inhabitants, to be determined by the last preceding census of the United States, an Assessor and Collector of Taxes shall be elected as provided in Section 14 of this Article, and shall hold office for four years and until his successor shall be elected and qualified."

Section 16a of Article VIII of the Constitution of Texas provides as follows:

"In any county having a population of less than ten thousand (10,000) inhabitants, as determined by the last preceding

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census of the United States, the Commissioners' Court may submit to the qualified property taxpaying voters of such county at an election the question of adding an Assessor-Collector of Taxes to the list of authorized county officials. If a majority of such voters voting in such election shall approve of adding an Assessor-Collector of Taxes to such list, then such official shall be elected at the next General Election for such Constitutional term of office as is provided for other Tax Assessor-Collectors in this State."

In construing the provisions of Section 16 of Article VIII of the Constitution of Texas above quoted, the Court held in Nelson v. Edwards, 55 Tex. 389 (1881):

". . . It will be recollected that under the above section of the constitution of 1876, prima facie the sheriff is the collector of taxes, and that the exception applies to counties of ten thousand inhabitants; and that a party, to avail himself of this exception, should show that he comes within it. . . ."

Likewise, it was held in Attorney General's Opinion 2249 (1920):

"Primarily, and presumably, the sheriff of a county is prima facie 'the collector of taxes therefor,' and one claiming to the contrary has the burden of showing that such county comes within the exception provided for by the latter part of said Section 16 of Article 8 of our State Constitution. This is expressly so decided in Nelson vs. Edwards, 55 T. 389; and this Department has held that the failure of a sheriff to execute the bonds required of the tax collector of a county shown by the United States Census next preceding the general election to have less than ten thousand inhabitants would have the effect of creating a vacancy in the office of sheriff of such county; that the office of sheriff and tax collector of such county is dual and inseparable, and that one has not the right to hold or exercise the

functions of either without qualifying as, and being charged with the duties and responsibilities of, both. Rep. & Op. Atty. Gen. 1916-1918, p. 399.

"Does the fact that another United States Census, coming during the period of time intervening between two general elections, shows such county to have ten thousand inhabitants, terminate the right and duty of the sheriff of such county to be the collector of taxes therefor, or create or bring into existence the office of tax collector of such county as separate from the office of sheriff, as of the date of such census, or at any time before the general election next succeeding such latter census? We think not. The term of office of such sheriff is fixed at two years. /now four years/.

" . . . We do not understand that it was intended that such a census abolish the office of tax collector of such county, or terminate the term of office of such tax collector, as of the date of such census. Otherwise, by reason of such census the sheriff of such county would become the collector of taxes therefor automatically and involuntarily, without having been a candidate therefor or having been elected or appointed as such, and in the event he was unwilling or unable to make the bond required of him as such collector, he would be obliged to resign his office as sheriff or else, by reason of what we have already seen, his office would be taken away from him by operation of law. In our opinion, no such result or effect was contemplated or intended by the framers either of our Constitution or statutes. Our opinion is that the tax collector in such case remains the collector of taxes for such county for the full term of two years. /now four years/ . . ." (Emphasis added)

A copy of Attorney General's Opinion 2249 (1920) is attached to this opinion.

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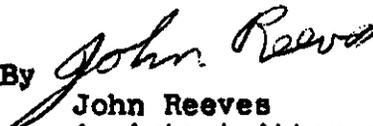
In view of the foregoing, you are advised that the present incumbent in the office of Assessor and Collector of Taxes of Childress County remains the Assessor and Collector of Taxes for such County until January 1, 1961, and the Sheriff of Childress County after January 1, 1961, will assume the duties of Assessor and Collector of Taxes. If prior to the next general election, an election is held pursuant to the provisions of Section 16a of Article VIII of the Constitution of Texas, and the voters authorize adding an Assessor and Collector of Taxes to the list of authorized county officials, the name to be placed on the ballot at the November election as the Democratic nominee for such office will be the individual nominated at the Primary Election for such office on May 7, 1960.

SUMMARY

In a county having a population of more than 10,000 inhabitants according to the 1950 Federal Census and having a population of less than 10,000 inhabitants according to the 1960 Federal Census, the Assessor and Collector of Taxes for such County remains the Assessor and Collector of Taxes for such County until January 1, 1961. If prior to the next general election, an election is held pursuant to the provisions of Section 16a of Article VIII of the Constitution of Texas, and the voters authorize adding an Assessor and Collector of Taxes to the list of authorized county officials, the name to be placed on the ballot at the November Election as the Democratic nominee for such office will be the individual nominated at the Primary Election for such purpose on May 7, 1960.

Yours very truly,

WILL WILSON
Attorney General of Texas

By 
John Reeves
Assistant Attorney General

JR:mm

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APPROVED:

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REVIEWED FOR THE ATTORNEY GENERAL
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