



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

July 18, 1962

Honorable Glendon Roberts
County Attorney
Bandera County
P. O. Box 446
Bandera, Texas

Opinion No. WW-1386

Re: Whether independent candidates for the office of County Tax Assessor-Collector of Bandera County, which county has less than 10,000 inhabitants, and which separate office of Tax Assessor-Collector has been created by special election under Art. 1903, V.C.S., must comply with Sec. 3, Art. 13.47a, Election Code, providing for an affidavit of intention to run.

Dear Mr. Roberts:

Your letter requesting an opinion reads in part as follows:

"The Commissioners Court of Bandera County, Texas, called a special election for May 5, 1962, for the purpose of submitting to the qualified property tax paying voters of such county the question of adding an Assessor-Collector of Taxes to the list of authorized county officials. At such election the majority of the property tax paying voters voted in favor of adding such Assessor-Collector of Taxes to the list of authorized county officials."

Prior to the special election in Bandera County, held on May 5, 1962, the Sheriff of Bandera County was ex-officio Tax Assessor-Collector, as provided by Section 16, Art. VIII, Texas Constitution. As authorized by Sec. 16a, Art. VIII of such Constitution, the Commissioners Court called the special election of May 5, 1962, which resulted in the separation of the offices of Sheriff and Tax Assessor-Collector. This office held in Opinion No. WW-1292 that whoever was elected as Tax Assessor-Collector of Bandera County at the General Election of November, 1962, would only serve until December 31, 1964, and the Tax Assessor-Collector of Bandera County elected at

the General Election of November, 1964, and thereafter, would serve for full four year terms. The separate office of Tax Assessor-Collector of Bandera County did not come into existence until after the votes were canvassed for the special election of May 5, 1962. Certain candidates for the office are running as independent candidates by petition as provided for in Articles 13.50 to 13.53, inclusive, Election Code. These candidates were unable to comply with Sec. 3, Art. 13.47a, Election Code, which provides for independent candidates to file an affidavit of intention to run as independent candidates with the County Judge on or before the first Monday in February of the election year, since the separate office of Tax Assessor-Collector of Bandera County did not exist on the first Monday of February, 1962.

You have asked the following question:

"The question arises as to whether or not the proposed candidates can have their names printed on the official ballot as independent candidates for said office for the general election?"

This office recently held in Opinion No. WW-1377 that where a county or precinct office is to be filled at the General Election for a full four year term, an independent candidate must have filed his affidavit of intention to run for such office with the County Judge on or before the first Monday in February of the election year, in order to have his name printed on the General Election ballot, as required by Sec. 3, Art. 13.47a, Election Code. But Sec. 3, Art. 13.47a, Election Code provides for such affidavit to be filed on or before the first Monday in February of the election year only in those cases where it is known at that time that there is an office to be filled by the voters at the next General Election for a full term. Sec. 4, Art. 13.47a, Election Code provides that in elections to fill unexpired terms, the affidavit will not be required unless the vacancy in office occurred prior to the tenth day preceding the first day of February in the election year.

Obviously, neither Sec. 3 nor Sec. 4 of Art. 13.47a, Election Code is applicable to your situation. On the first Monday in February of the present election year (February 5, 1962) the separate office of Tax Assessor-Collector of Bandera County did not even exist, and no one could predict whether or not the Commissioners Court would call such an election, or if held, what the outcome would be. Such office did not come into existence until the votes were canvassed after the special election was held on May 5, 1962. We hold, therefore, that independent

candidates for the office of Tax Assessor-Collector of Bandera County may have their names printed on the ballot for the General Election of November, 1962, by complying with the provisions of Arts. 13.50 to 13.53, inclusive, Election Code, governing the filing of independent candidates, plus the requirements of Art. 6.02, Election Code, which requires a loyalty affidavit from any and all candidates.

S U M M A R Y

Sec. 3, Art. 13.47a, Election Code, which requires an affidavit of intention to run to be filed by independent candidates on or before the first Monday in February of the election year, is not applicable to independent candidates in the General Election to fill the separate office of County Tax Assessor-Collector, which office was created by special election held in May of the election year in a county with less than 10,000 inhabitants, under the provisions of Art. 1903, V.C.S., since the separate office of Tax Assessor-Collector did not exist in such county on the first Monday in February of the election year, in order for independent candidates to declare their intention to run therefor.

Independent candidates for the office of County Tax Assessor-Collector of Bandera County may have their names printed on the ballot for the General Election of November, 1962, by complying with the provisions of Arts. 13.50 to 13.53, inclusive, Election Code, governing the filing of independent candidates, plus the requirements of Art. 6.02, Election Code, which requires a loyalty affidavit from any and all candidates.

Yours very truly,

WILL WILSON
Attorney General of Texas

By 

Riley Eugene Fletcher
Assistant

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APPROVED:

OPINION COMMITTEE
W. V. Geppert, Chairman

Robert Lewis
W. O. Shultz
Coleman Gay

REVIEWED FOR THE ATTORNEY GENERAL
BY: Leonard Passmore