



OFFICE OF THE SECRETARY OF STATE

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AUSTIN, TEXAS 78711

March 25, 1982

Mayor Richard A. Smith
City of Bryan
Post Office Box 1000
Bryan, Texas 77805

Election Law Opinion
No. DAD-5
Re: Six Month Candidate
Residency Requirement for
Inhabitants of
Newly-Annexed Municipal
Territory

Dear Mayor Smith:

You have requested my opinion on the following question:

"The City of Bryan recently annexed territory. The effective date of such annexation was October 9, 1982. The territory was and is occupied by citizens who have resided in such territory for a period of time in excess of six months preceding the date which was the filing deadline for application to have a name placed on a ballot. . . . Presuming that the effective date of annexation of the recently annexed territory as described hereinabove, is less than 'six months next preceding such date' then, notwithstanding the mandatory language of Article 1.05 Subdivision 1 of the Code, may a person residing in such territory be eligible to be a candidate for, or be elected, or appointed to a municipal elective office?"

This official election law opinion is rendered by me as chief election officer of the state in accordance with Tex. Elec. Code Ann. art. 1.03, subd. 1 (Vernon Supp. 1982).

Tex. Elec Code Ann. art. 1.05, subd. 1 (Vernon Supp. 1982) provides in part:

"No person shall be eligible to be a candidate for, or to be elected or appointed to, any public elective office in this state unless he . . . shall have resided

for six months next preceding such date in the district, county, precinct, municipality or other political subdivision for which the office is to be filled."

In Tex. Att'y Gen. Op. No. O-274 (1939), it was held that:

"Inhabitants of territory annexed by a city may vote in city elections although the territory has not been annexed for a period of six (6) months prior to the election, if such inhabitants, at the time of the election, had lived within such territory for a period of six (6) months." (Emphasis added.)

M. Wall, Texas Municipal Election Law, § 8-24, at 258.6 (1971) states that "The meaning of the word 'residence' and the rules for determining residence are the same for holding office as for voting."

Tex. Rev. Civ. Stat. Ann. art. 974 (Vernon 1963), provides the method of annexing territory to a city, and further provides that "[T]he inhabitants thereof shall be entitled to all the rights and privileges of other citizens, and bound by the acts and ordinances made in conformity thereto and passed in pursuance of this title." (Emphasis added.)

Tex. Rev. Civ. Stat. Ann. art. 1135 (Vernon 1963) additionally provides:

"Whenever a majority of the inhabitants, who are qualified voters of any territory adjoining the limits of any town or village incorporated hereunder, shall vote in favor of becoming a part of said town or village, any three of them may make affidavit to such fact and file such affidavit with the mayor of said town or village, and such mayor shall certify the same to the council of said town or village. Thereupon, such council may, by ordinance, receive such inhabitants as a part of said town or village. Thenceforth the territory so received shall be a part of said town or village and the inhabitants shall be entitled to all the rights and privileges of other citizens and bound by all the acts and ordinances made in conformity thereto and passed in pursuance of this chapter. . . ." (Emphasis added.)

Your inquiry turns upon the meaning of the words "shall have resided for six months . . . in the . . . municipality . . . for which the office is to be filled."

Articles 974 and 1135, supra, clearly provide that persons residing in territories newly annexed to a city shall have

all of the rights and privileges of all other citizens. Moreover, the wording of Article 1.05, supra, should be interpreted to favor candidate eligibility. Chapa v. Whittle, 536 S.W.2d 681 (Tex. Civ. App.---Corpus Christi 1976, no writ).

The question you pose is one of first impression in this state. It is not apparent on its face what residence in the municipality means. An interpretation is required as to whether it means residency in the municipality as it previously existed or as it currently exists after annexing new territory.

Inasmuch as existing Texas case law is silent on the point raised by your inquiry, we must look elsewhere for precedent in this matter. A leading treatise on municipal law has stated:

"Under a charter providing that 'no person shall be eligible to any office who is not at the time of his election, a qualified voter of the city, and who has not resided therein three years preceding his election,' it was held that residence in territory afterwards annexed to a city is to be deemed residence within the city for the purpose of computing the period of residence necessary to make one eligible to hold office." 3 E. McQuillin, Municipal Corporations § 12.59, at 268-69 (3rd ed. rev. 1973).

The following courts of our sister states are in accord with this principle: Headlee v. Franklin County Board of Elections, 368 F. Supp. 999, 1003-04 (S.D. Ohio 1973) (3-judge court); Lindsey v. Dominguez, 217 Cal. 533, _____, 20 P.2d 327, 328 (Cal. 1933); Meffert v. Brown, 132 Ky. 201, _____, 116 S.W. 779, 780 (Ky. 1909); and Gibson v. Wood, 105 Ky. 740, _____, 49 S.W. 768-70 (Ky. 1899). See also 65 A.L.R.3d Public Office--Residence Requirement § 12 (1975); 56 Am. Jur. 2d Municipal Corporations, Etc. § 247 (1971); and 62 C.J.S. Municipal Corporations § 479 (1949).

In view of the foregoing, you are advised that residency in territory afterwards annexed to a city, that otherwise complies with the residency requirements of Tex. Elec. Code Ann. art. 1.08 (Vernon Supp. 1982), is to be deemed residence within the city for the purpose of computing the period of residence necessary to make one eligible to hold city office.

SUMMARY

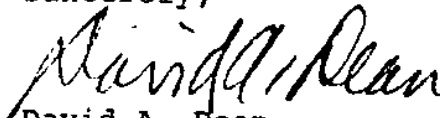
Residency in territory afterwards annexed to a city, that otherwise complies with the residency requirements of

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Article 1.05, Texas Election Code, is to be deemed residence within the city for the purpose of computing the period of residence necessary to make one eligible to hold city office.

Sincerely,



David A. Dean
Secretary of State

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Prepared by Austin C. Bray, Jr.
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APPROVED:
OPINION COMMITTEE

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