



OFFICE OF THE SECRETARY OF STATE

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STATE CAPITOL
P.O. Box 12697
AUSTIN, TEXAS 78711

August 9, 1982

The Honorable Richard M. Anderson
County Judge
Harrison County
Marshall, Texas 75670

Election Law Opinion DAD-47
Re: Whether affidavits of
residency may be required
of voters in Rural Fire
Prevention District
election and whether real
property ownership
requirement to vote in
said election is consti-
tutional.

Dear Judge Anderson:

This is in answer to your inquiry of July 23, 1982.

This official election law opinion is rendered by me as
chief election officer of the state in accordance with
V.A.T.S. Election Code art. 1.03, subd. 1.

You asked the following questions:

- (1) May election judges at the Rural Fire Prevention District election require affidavits of residency from voters who wish to participate in the election?
- (2) Is the requirement that individuals own real property within the proposed District's boundaries constitutional?

In your letter you indicate that the boundary lines of the proposed Rural Fire Prevention District do not conform to the boundary lines of the county election precincts and, therefore, there are voters within the precincts who will not be qualified to vote in the election. To ensure that all voters in the election are qualified to vote, you asked

whether an affidavit of residency may be required of each individual desiring to vote who is challenged by the presiding judge.

V.A.T.S. Election Code, art. 8.09, states in part:

When a person offering to vote at any general, special, or primary election shall be objected to by an election judge or clerk, a poll watcher, or any other person, the presiding judge shall examine him upon oath touching the points of such objection, and if such person establishes his right to vote to the satisfaction of the presiding judge, he shall be permitted to vote, and the word "sworn" shall be written upon the poll list or on the prescribed combination form opposite the name of the voter.

Pursuant to Article 8.09, election officers conducting the Rural Fire Prevention District election, in the event of a challenge, may utilize affidavits of residency containing an affirmation of the voter's residence. This conclusion is consistent with the decision in Clark v. Stubbs, 131 S.W.2d 663 (Tex. Civ. App.--Austin 1931, no writ) in which the court held that a voter who was challenged and who refused to make out an affidavit that he was a resident of the county on the day of the election was ineligible to vote.

In your second question you asked whether the property ownership requirement in Vernon's Ann. Civ. Stat., art. 2351a-6, for voting is constitutional in light of the U.S. Supreme Court's decision in Hill v. Stone, 421 U.S. 294 (1975) and other decisions by federal courts holding property ownership requirements unconstitutional. This question of law should be addressed to the Attorney General of Texas pursuant to the authority granted him by Vernon's Ann. Civ. St., art. 4399. It should be noted that the question should be submitted by your county attorney since he is among the state officers authorized to request opinions of the Attorney General by Article 4399.

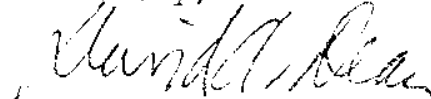
SUMMARY

Election officials conducting a Rural Fire Prevention District election may utilize affidavits of residency from challenged voters to ensure that the voters are residents within the proposed district.

The Attorney General of Texas is the proper authority to address the question on the constitutionality of the real

property membership requirement for voting in a Rural Fire
Prevention District election.

Sincerely,



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