



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

March 29, 1951

Hon. Jack M. Allen
County Attorney
Ochiltree County
Perryton, Texas

Opinion No. V-1164

Re: Authority of the commissioners' court to approve the bond of a justice of the peace who does not reside in the precinct of his office.

Dear Sir:

You have requested an opinion concerning the authority of the commissioners' court to approve the bond of a justice of the peace who does not reside in the precinct of his office.

Section 18 of Article V, Constitution of Texas, provides:

"Each organized county in the State now or hereafter existing, shall be divided from time to time, for the convenience of the people, into precincts, not less than four and not more than eight. The present County Courts shall make the first division. Subsequent divisions shall be made by the Commissioners' Court, provided for by this Constitution. In each such precinct there shall be elected at each biennial election, one justice of the peace and one constable, each of whom shall hold his office for two years and until his successor shall be elected and qualified; provided that in any precinct in which there may be a city of 8000 or more inhabitants, there shall be elected two justices of the peace. . . ."

Article 2927, V.C.S., provides:

"No person shall be eligible to any State, county, precinct or municipal office in this State unless he shall be eligible to hold office under the Constitution of this State, and unless he shall have resided in

this State for the period of twelve (12) months and six (6) months in the county, precinct, or municipality, in which he offers himself as a candidate, next preceding any general or special election, and shall have been an actual bona fide citizen of said county, precinct, or municipality for more than six (6) months. No person ineligible to hold office shall ever have his name placed upon the ballot at any general or special election, or at any primary election where candidates are selected under primary election laws of this State; and no such ineligible candidate shall ever be voted upon, nor have votes counted for him, at any such general, special or primary election. No person, who advocates the overthrow by force or violence or the change by unconstitutional means of the present constitutional form of government of the United States or of this State, shall be eligible to have his or her name printed on any official ballot in any general, special, or primary election in this State."

The provisions of Article 2927, above quoted, require that a precinct officer be a resident for a period of six months next preceding the date of election in the precinct of his office. Although the justice of the peace referred to in your request has not been a resident in the precinct of his office, you state that he has been elected and has assumed and performed the duties of his office for the last twenty-five years. Under these circumstances, it is our opinion that he is at least a de facto officer "until ejected in a proceeding having that object directly in view." Aulanier v. The Governor, 1 Tex. 653, 666 (1846); Williams v. Castleman, 112 Tex. 193 247 S.W. 263 (1922).

Williams v. Castleman held that one who was ineligible to fill the office of justice of the peace because he had not resided in the precinct six months prior to the date of his appointment became at least a de facto officer by virtue of his appointment and entering upon the duties of the office.

Article 2373, V.C.S., provides:

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"The qualified voters of each justice precinct in this State, at each biennial election, shall elect one justice of the peace, styled in this title 'justice,' who shall hold his office for two years. Each justice shall give bond payable to the county judge in the sum of one thousand dollars, conditioned that he will faithfully and impartially discharge the duties required of him by law, and will promptly pay over to the party entitled to receive it, all moneys that may come into his hands during his term of office."

Article 2373, it is noted, does not state with whom the bond of the justice of the peace should be filed and approved, nor is there any other statutory provision setting out this duty. It is our opinion, however, that the commissioners' court has the implied authority to approve a bond executed by a justice of the peace in conformity with the provisions of Article 2373.

Section 20 of Article III, Constitution of Texas, provides that no person who at any time may have been a collector of taxes shall be eligible to any office of trust or profit under the State government until he shall have obtained a discharge from the amount of such collection. In construing this provision, it was held in Oglesby's v. State, 73 Tex. 648, 11 S.W. 873 (1889), that it was not the duty of the Comptroller's office to determine the question of eligibility for the office of assessor-collector in approving or disapproving his bond, although evidence may have been before the Comptroller which showed that the assessor-collector had not obtained his discharge for the moneys collected by him as required by Section 20 of Article III.

It is therefore our opinion that the commissioners' court cannot determine the eligibility of the person in question for the office of justice of the peace in approving or disapproving the bond, but its sole function is to pass upon the bond and approve it if it is in conformity with the statute.

SUMMARY

The commissioners' court cannot determine the eligibility of an individual to

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hold the office of justice of the peace in approving or disapproving his bond, but its sole function is to pass upon the bond and approve it if it is in conformity with Article 2373. Oglesby's v. State, 73 Tex. 648, 11 S.W. 873 (1889).

APPROVED:

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JR:mw

Yours very truly,

PRICE DANIEL
Attorney General

By *John Reeves*
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