



THE ATTORNEY GENERAL  
OF TEXAS

ACOSTA 11, TEXAS

WILL WILSON  
ATTORNEY GENERAL

April 15, 1957.

Honorable Tom Moore,  
Criminal District Attorney,  
McLennan County,  
Waco, Texas.

Opinion No. WW-98

Re: Does an elected and qualified Public Weigher continue in such office until his successor "shall be duly qualified", the successful candidate in the last general election having disqualified himself before taking office?

Dear Sir:

This is in response to your letter of April 1, 1957, in which you pose a question which is substantially as follows:

Does a duly elected and qualified Public Weigher continue in office until his successor "shall be duly qualified" in a case where the individual who was elected Public Weigher in the last election refused to qualify and serve in that capacity?

Section 17 of Article XVI of the Constitution of Texas provides:

"All officers within this State shall continue to perform the duties of their offices until their successor shall be duly qualified."

Article 18, Vernon's Civil Statutes, reads in part as follows:

"Each officer, whether elected or appointed under the laws of this State, and each Commissioner, or member of any board or commission created by the laws of this State, shall hold his office for the term provided by law and until his successor is elected or appointed and qualifies; . . ."

In Plains Common Consolidated School District No. 1 vs. Hayhurst, 122 S.W.2d 322; (Tex. Civ.App. 1938, no writ history) the Court quotes from 34 Tex. Jur. 370, which states:

"The purpose of the constitutional and statutory provisions requiring officers to hold over until their successors have qualified is to prevent vacancies in office and a consequent cessation of the functions of government. The constitutional provision is self-executing, and, like the similar provisions in the statutes, it is mandatory. Under the Constitution an officer cannot arbitrarily divest himself of the office until his successor qualifies; and even though he resigns and his resignation is accepted, the law operates to continue him in office until his successor qualifies. \* \* \*"

In accord with the above statement, also see Attorney General's Opinion No. V-760 (1949), a copy of which is enclosed herewith.

It would seem that in the light of the above authorities an incumbent official is bound to occupy his office until such time as a successor qualifies for the position. It is, therefore, our opinion that the incumbent Public Weigher shall continue to serve in that capacity with all powers instant thereto, until his successor has been duly qualified. For this reason, your question must be answered in the affirmative.

SUMMARY

A duly elected and qualified Public Weigher shall continue in such office until his successor "shall be duly qualified".

Yours very truly,

WILL WILSON  
ATTORNEY GENERAL OF TEXAS

By *Wayland C. Rivers Jr.*  
Wayland C. Rivers, Jr.  
Assistant

WCR:pf:rh

APPROVED:

OPINION COMMITTEE

H. Grady Chandler, Chairman  
Arthur Sandlin  
Richard Stone  
B. H. Timmins, Jr.

REVIEWED FOR THE ATTORNEY GENERAL

Geo. P. Blackburn