



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

**WILL WILSON**  
ATTORNEY GENERAL

July 18, 1962

Honorable Wm. L. Ferguson  
County Attorney  
Rusk County Courthouse  
Henderson, Texas

Opinion No. WW-1387

Re: Eligibility of a person to be appointed a school trustee to fill a vacancy in such office, when such person has not resided in the school district for six months prior to such appointment.

Dear Mr. Ferguson:

You have asked the following question:

"Is a person eligible to hold office as a school trustee in an independent school district who has been appointed by the board to fill a vacancy when this person has not resided in the school district for six months prior to said appointment?"

Article 1.05, Texas Election Code, provides in part:

"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 six (6) months. . . ." /Emphasis added/

Whitmarsh v. Buckley, 324 S.W.2d 298 (Civ.App. 1959) was a case involving the right of one elected trustee and one appointed trustee of the Aldine Independent School District in Harris County to continue to serve on the Board of Trustees, after the area in which they resided was de-annexed from the Aldine Independent

School District and annexed to the Houston Independent School District. The Court of Civil Appeals held that Art. 1.05, Texas Election Code, was the governing law in the situation. After quoting the above statute, the Court stated at page 301:

"From this it will be seen that every type of office in the State is covered in general terms. While the term 'school trustee' is not used, the terms 'State', 'county', 'precinct' and 'municipal office' are used. We think the term 'precinct' is used in a general sense to include all political units within the county, except municipal, that are less than county-wide in area. The evident purpose of the statute is to require representation of a political unit by one who is elected who resides in the unit which he is to serve. It is true that it does not deal specifically with removal from office upon cessation of residence once a person has been elected, but it would in effect be meaningless if it is interpreted as restrictive only of residence at the time of election and qualification. If it is so restricted, a person could be elected and qualify and then move out of the political unit and yet continue to act in an official capacity when he is no longer affected by the acts he performs. A statute should be liberally construed to effect the intention of the legislature. It has ever been traditional with Texas to require representation be elective officers who are residents of the political unit for which the elected officer acts.

"We therefore, hold that when a school trustee permanently becomes a non-resident of the school district he was elected to serve, he vacates his office."

On Motion for Rehearing, the Court modified its use of the word "vacate" as used in last sentence quoted above, and stated at page 303:

"Under Article 1.05 of the Election Code a school trustee becomes ineligible to continue to serve, upon proper attack, when he becomes a permanent non-resident of the district. We feel our use of the term 'vacate' in our original opinion was perhaps too broad. We think the correct term is 'ineligible.' There is nothing in the statute providing that an office will automatically become vacant when a person becomes ineligible. . . ."

At page 304 the Court said:

"It was admitted that appellees had been duly elected or appointed to office, had qualified and were acting as trustees. They were, therefore, de facto officers and the action to question their eligibility to continue to serve is by quo warranto proceedings."

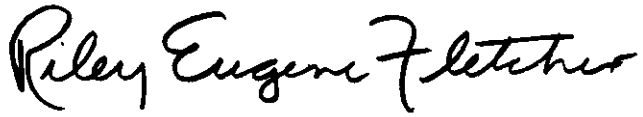
If a person is not eligible to be elected to serve as school trustee unless he has been an actual bona fide citizen for six (6) months next preceding his election, then an appointee who fills a vacancy on a school board must possess the same qualifications for that office as one who is elected, and must have been an actual bona fide citizen of such school district for six (6) months next preceding his appointment. We could paraphrase what was said above in the Whitmarsh case, and say: It is true that Art. 1.05, Election Code does not deal specifically with the residence qualifications of one who is appointed to fill a vacancy, but the article would in effect be meaningless if it is interpreted as restrictive only of residence qualifications for those who are elected as school trustees. We hold therefore, that a person who has not resided in the school district for six (6) months or more is not eligible for appointment as school trustee to fill a vacancy.

S U M M A R Y

A person who has not resided in the school district for six (6) months or more is not eligible for appointment as a school trustee to fill a vacancy on the Board of Trustees of an independent school district.

Yours very truly,

WILL WILSON  
Attorney General of Texas

By   
Riley Eugene Fletcher  
Assistant

REF:rk

APPROVED:

OPINION COMMITTEE  
W. V. Geppert, Chairman

Robert Lewis  
W. O. Shultz  
Coleman Gay

REVIEWED FOR THE ATTORNEY GENERAL  
BY: Leonard Passmore