



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WAGGONER CARR
ATTORNEY GENERAL**

September 30, 1964

Honorable Clyde E. Smith, Jr.
County Attorney
Tyler County
Woodville, Texas

Opinion No. C-323

Re: Whether persons in
military service are
required to be
registered voters in
order to vote for
federal offices.

Dear Sir:

In your opinion request you state that the County Clerk of Tyler County has received applications for absentee ballots from a number of persons in military service who want to vote for the national candidates only, in the coming general election, and who have neither paid a poll tax nor registered to vote for federal offices without payment of the poll tax as provided in Article 5.02a of the Texas Election Code. You ask the following question:

Is a serviceman who is subject to payment of the poll tax entitled to vote for federal offices if he has neither paid the tax nor registered in accordance with Article 5.02a of the Election Code?

As a general qualification for voting in Texas, a person who is subject to payment of the poll tax must have paid the tax prior to February 1 preceding the election. Tex. Const., Art VI, Sec. 2; Tex. Elec. Code, Art. 5.02. With respect to the 1964 general election, this requirement would mean that every person who was a legal resident of Texas on January 1, 1963, and was between 21 and 60 years old on that date, must have paid the state poll tax by January 31, 1964, in order to vote in the election. Persons who were not 21 years old on January 1, 1963, or who were not legal residents of the State (i.e., who were not claiming Texas as their place of domicile or permanent residence) on that date, but who will have attained age and residence requirements by election day, are required to obtain a certificate of exemption from payment of the poll

tax at least 30 days before the date of the election. Tex. Elec. Code, Art. 5.17.

The 24th Amendment to the United States Constitution, which was ratified in late January of 1964, prohibits a State from requiring payment of a poll tax as a condition of voting for the offices which we refer to in this opinion as "federal offices." Section 1 of the 24th Amendment reads as follows:

"Section 1. The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax."

In anticipation of the possible ratification of the 24th Amendment, which Congress had proposed in 1962, the Texas Legislature in 1963 enacted Article 5.02a of the Texas Election Code as contingent legislation to become effective in the event the proposed federal constitutional amendment was ratified. The date on which the Texas statute was to go into effect was fixed as "the date of publication of the certifying statement of the Administrator of General Services that the amendment had become valid as a part of the Constitution of the United States." That certifying statement was published on February 5, 1964. Accordingly, Article 5.02a took effect on that date.

Subdivision 1 of Article 5.02a reads:

"Subdivision 1. Qualification and requirements for voting for federal offices. Notwithstanding any other provision of this Code or of the Constitution of this state, the payment of the poll tax shall not be required as a condition for voting for United States Senator, for United States Representative (including Congressman-at-Large), or for President and Vice-President or electors for President and Vice-President of the United States, in any general, special, or primary election. To be eligible to vote for such offices, a person must be a qualified elector under the Constitution and laws of this state in all

other respects. If he is not subject to payment of the poll tax, he must have obtained an exemption certificate in accordance with the provisions of this Code if he is required to hold an exemption certificate as a condition for voting generally. If he is subject to payment of the poll tax, he must have paid the tax and obtained a receipt therefor prior to the first day of February preceding the election; or he must have obtained a poll tax receipt without payment of the tax, in the manner and within the time provided in Subdivision 2 of this section."

Subdivision 2 provides in part:

"Subdivision 2. Issuance of poll tax receipts without payment of the tax. A person who is subject to payment of the poll tax and who is in other respects a qualified elector may apply to the tax collector of the county of his residence at any time between the first day of October and the thirty-first day of January following for issuance of a poll tax receipt without payment of the tax, to be used to identify him in voting for offices enumerated in Subdivision 1 of this section during the voting year beginning on the first day of February thereafter; provided, however, that a receipt to identify the voter at elections held during the voting year in which this section takes effect may be obtained at any time within the period of thirty days after the effective date * * *."

Under the provisions of Article 5.02a, a person who is subject to payment of the poll tax must either have paid the tax or have obtained a poll tax receipt without payment of the tax within the prescribed time limits. The registration period for the current year under Subdivision 2 of Article 5.02a was from February 5, 1964 through March 6, 1964. These requirements apply to persons in military service as well as to all other voters.

Subdivision (i) of Section 459, Title 50, Appendix, United States Code, should be noticed. It reads as follows:

" * * * No person inducted into, or enlisted in, the armed forces for training and service under this title /Universal Military Training and Service Act/ shall, during the period of such service, as a condition of voting in any election for President, Vice President, electors for President or Vice President, or for Senator or Member of the House of Representatives, be required to pay any poll tax or other tax or make any other payment to any State or political subdivision thereof."

This statute, enacted in 1948, makes a similar provision with respect to persons fulfilling their military duties under the Universal Military Training and Service Act as that which the 24th Amendment now makes the law of the land with respect to all persons. Although a State may not require any person to pay a poll tax as a condition of voting for the listed offices, neither the statute nor the Amendment affects the power of a State to require registration, where no charge is made therefor, as a condition of voting for these offices. Effectiveness of Article 5.02a of the Texas Election Code was made conditional on ratification of the 24th Amendment, but it covers all voters subject to payment of the poll tax and requires registration of all such voters who wish to qualify for voting for federal offices without payment of the tax, regardless of whether the source of their entitlement is the 24th Amendment or the Universal Military Training and Service Act.

The question you have submitted is of general interest to county officials throughout the State. It appears that there has been a widespread misunderstanding among military personnel on the requirements for qualifying to vote for federal offices without payment of the poll tax. It is hoped that the misunderstanding will be eliminated by a recent publication issued by the Directorate for Armed Forces Information and Education, Department of Defense, Washington, D. C., which supplements its publication "Voting Information 1964," and incorporates changes in the laws of the various States since the basic material in that publication was distributed. The supplement, issued under date of September 4, 1964, contains the following statement on Texas law:

"Persons who registered under the new registration system for voting for Federal

offices without payment of the poll tax (effective 5 February 1964) prior to 6 March 1964 may vote in the General Election for President, Vice President, U. S. Senator, and U. S. Representatives. Persons who did not register under the new system on or before 6 March 1964, and who did not pay the poll tax, are not eligible to vote for Federal officers in the 3 November 1964 General Election."

SUMMARY

In order to be eligible to vote for federal offices in the 1964 general election, a person who is subject to payment of the state poll tax must either have paid the tax by January 31, 1964, or have registered to vote for these offices without payment of the tax, as provided in Article 5.02a of the Texas Election Code, by March 6, 1964. These requirements apply to voters who are in military service as well as to voters generally. The term "federal offices" includes the following: President, Vice President, electors for President or Vice President, United States Senator, United States Representative (including Congressman-at-Large.)

Yours very truly,

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APPROVED:
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