



**THE ATTORNEY GENERAL
OF TEXAS**

WAGGONER CARR
ATTORNEY GENERAL

AUSTIN 11, TEXAS

December 14, 1964

Honorable Dean Martin
County Attorney
Grayson County
Sherman, Texas

Opinion No. C-362

Re: Voter Eligibility in local
option election.

Dear Mr. Martin:

In your request for an opinion you ask whether or not certain citizens who were over 60 years of age on January 1st, 1963, and who have not paid a poll tax or obtained an exemption certificate, if they are otherwise qualified to vote, will be entitled to vote in an anticipated local option election to be held in the City of Denison on January 15, 1965.

You state in your letter that in May, 1964, the City of Denison annexed certain property to the South of its then southern boundary, and that this area is now incorporated into the City of Denison. Prior to the annexation, this area was not included in or a part of a city having a population of 10,000 or more inhabitants. Consequently, you state that the citizens therein who were over 60 years of age were not required to pay a poll tax or obtain an exemption certificate for the voting year February 1, 1964 through January 31, 1965, pursuant to Article 5.16 of the Election Code, Vernon's Annotated Texas Statutes. With the annexation of this area in May, 1964, however, the question arises as to whether or not these overage citizens must obtain an exemption certificate to vote in a local option election to be held January 15, 1965, which will determine the "wet-dry" status of Denison, a city of over 10,000 population.

Article 5.16, Election Code, V.A.T.S., states:

"Every person who is exempted by law from the payment of a poll tax, and who is in other respects a qualified voter, who resides in a city of ten thousand (10,000) inhabitants or more, shall, before the first day of February of the year when such voter shall have become entitled to such exemption, obtain from the Tax

Collector of the county of his or her residence, a certificate showing his or her exemption from the payment of a poll tax. Such certificate shall entitle such voter to vote at any election held between the date of its issuance and a period of one (1) year from the 31st day of January following its issuance."

At the last legislative session this statute was amended and the following language was added:

" . . . If a person who is exempt on the ground of overage does not reside in a city of ten thousand or more inhabitants during the regular period for issuance of exemption certificates, but thereafter moves to such city, he must obtain an exemption certificate not less than four days before any election at which he wishes to vote. . . ."

Contrary to the above provision, the citizens in question have not moved to a city of 10,000 or more inhabitants; rather, the city has moved to them. The wording of the statute is unambiguous, and we must presume that if the Legislature had intended for citizens under our particular fact situation to obtain exemption certificates, they would have so provided.

Furthermore, the overage citizens within the annexed area were qualified to vote without an exemption certificate as of February 1, 1964, pursuant to Article 5.16, Election Code, Vernon's Civil Statutes. That right continued to January 31, 1965. To prevent these citizens from voting on January 15, 1965, because they had not obtained an exemption certificate would be to disenfranchise them of their right to vote after being duly qualified to vote for the year February 1st, 1964 through January, 1965.

We hold, therefore, that the overage citizens in question need not hold an exemption certificate to be able to vote in the proposed local option election on January 15, 1965.

SUMMARY

Citizens over 60 years of age on January 1st, 1963, not residing in a city of 10,000 inhabitants or more and who thereby have the

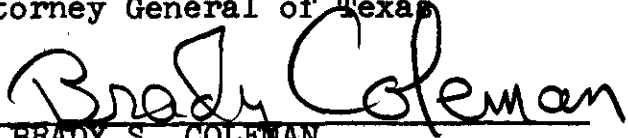
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right to vote without a poll tax or an exemption certificate as of February 1, 1964, are not thereafter required to obtain an exemption certificate for the February 1, 1964 through January 31, 1965 voting year, by reason of the fact that the area is annexed to a city of 10,000 or more inhabitants.

Yours very truly,

WAGGONER CARR
Attorney General of Texas

By



BRADY S. COLEMAN
Assistant Attorney General

BSC/lh/br

APPROVED:

OPINION COMMITTEE

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APPROVED FOR THE ATTORNEY GENERAL
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