



**THE ATTORNEY GENERAL
OF TEXAS**

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AUSTIN, TEXAS 78711

March 4, 1968

Honorable O. N. Humphreys
Acting Administrator, Texas
Liquor Control Board
Austin, Texas

Opinion No. M- 208

Re: Whether a permit or a license may be refused an applicant under Article 666-11 and 667-5, 2, V.F. where the applicant is a United States citizen, if he was not such citizen a period of three years immediately preceding the filing of his application although a Texas resident for three or more years during that time?

Dear Mr. Humphreys:

The letter from your department requesting an Opinion of this office reads, in part, as follows:

"In Section 11 of Article I of the Texas Liquor Control Act (Article 666-11 of Vernon's Texas Penal Code) it is provided as follows:

'The Board or Administrator may refuse to issue a permit . . . to any applicant. . . if it has reasonable grounds to believe and finds any of the following to be true: . . . (11). That the applicant is not a citizen of the United States or has not been a citizen of Texas for a period of three (3) years immediately preceding the filing of his application, . . . ;'

"In Section 5, 2, of Article II of the Texas Liquor Control Act (Article 667-5, 2 of Vernon's Texas Penal Code) it is provided as follows:

'.... The County Judge shall refuse to approve the application for such license if he has reasonable grounds to believe and finds any of the following to be true:2. If a Distributor or Retailer:(e) That the applicant is not a citizen of Texas for a period of three (3) years immediately preceding the filing of his application. . .;'

"Our question is this: May an application for a permit or license be refused where the applicant is a citizen of the United States but has not been a citizen of the United States for a period of three years preceding the filing of his application and has been a resident of the State of Texas for a period of three or more years immediately preceding the filing of his application?"

In DeGrazier v. Stephens, 191 Tex. 194, 105 S.W. 992 (1907), the court upheld a statutory requirement that an applicant for a retail liquor license be a citizen of the state, and also a resident of the county wherein the license is issued. The court said that the requirement did not contravene the Privileges and Immunities, Equal Protection, and/or Due Process Clause, but was calculated to aid in regulating the liquor traffic, by rendering the licensee subject to process where suit is brought on his bond, and by facilitating the determination of his other qualifications to exercise his license. cf: Ziffin v. Reeves, 308 U.S. 132 (1939).

The provisions of the Texas Liquor Control Act that require a natural person, or a partnership composed of natural persons, or an association of natural persons to be resident citizens of Texas for three (3) years immediately preceding the filing of an application in order to be eligible to receive a permit or license have been held constitutional in Attorney General's Opinion No. C-427 (1965).

The question now presented requires a definition of the term "citizen of Texas". Section 43-B, of Article I of the Texas Liquor Control Act (Article 666-43B, V.P.C.) provides as follows:

"When the terms 'citizen of Texas' and 'citizen of this state' are used in this Act, they shall mean not only citizenship in Texas, as required by this Act, but shall also require citizenship in the United States."

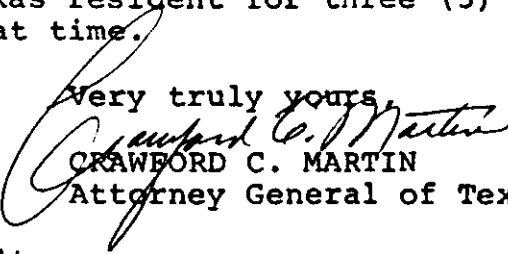
When Section 43-B of Art. I is read into Section 11 of Article I and Section 5, 2 of Article II of the Texas Liquor Control Act, it becomes apparent that the application may be refused unless the applicant has been both a citizen of the United States and a citizen of Texas for a period of three (3) years immediately preceding the filing of his application.

Therefore, in answer to your specific question, it is the opinion of this office that an application for a permit or license may be refused where the applicant is now a citizen of the United States, but has not been a citizen of the United States for a period of three (3) years immediately preceding the filing of his application, although he has been a resident of the State of Texas for a period of three (3) or more years immediately preceding the filing of his application.

SUMMARY

An application for a permit or license may be refused under Article 666-11 and 667-5, 2, V.P.C., where the applicant is a United States citizen, but he was not such a citizen for a period of three (3) years immediately preceding the filing of his application although a Texas resident for three (3) or more years during that time.

Very truly yours,


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APPROVED:

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