



OFFICE OF THE SECRETARY OF STATE

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SECRETARY OF STATE

STATE CAPITOL
P.O. Box 12697
AUSTIN, TEXAS 78711

June 17, 1982

The Honorable Val D. Huvar
County Clerk
Victoria County
P. O. Box 2410
Victoria, Texas 77901

Election Law Opinion DAD-28
Re: Length of term for
individual appointed by
Governor to newly-created
district court.

Dear Mr. Huvar:

This opinion is in response to your inquiry of May 11, 1982.

This official election law opinion is rendered by me as chief election officer of the State in accordance with Tex. Elec. Code Ann. art. 1.03, subd. 1 (Vernon Supp. 1982).

You asked whether a person appointed by the Governor to a district court newly-created under Tex. Rev. Civ. Stat. Ann. art. 199a, § 3.093 (Vernon Supp. 1982) holds office for the unexpired term or until a successor is duly elected and qualified. You further asked for a clarification of the provisions of Tex. Rev. Civ. Stat. Ann. art. 199a, §§ 2.005 & 6.001 (Vernon Supp. 1982) and Tex. Rev. Civ. Stat. Ann. art. 17 (Vernon 1969).

Tex. Rev. Civ. Stat. Ann. art. 199a, § 3.093 (Vernon Supp. 1982) created the 267th Judicial District, composed of the counties of Calhoun, DeWitt, Goliad, Jackson, Refugio and Victoria. In Section 6.001, supra, it is provided, in pertinent part:

"When a judicial district is created by this Act or by amendment to this Act, the Governor shall appoint a qualified person to the office of district judge, who shall serve until the next succeeding general election and until his successor is qualified. . . ."

In Tex. Rev. Civ. Stat. Ann. art. 17 (Vernon 1969) it is stated:

"The regular terms of office for all elective state, district, county and precinct offices of the State of Texas, excepting the offices of Governor, Lieutenant Governor, State Senator, and State Representative, shall begin on the first day of January next following the general election at which said respective offices are regularly filled, and those who are elected to regular terms shall qualify and assume the duties of their respective offices on the first day of January following their election, or as soon thereafter as possible." (Emphasis added.)

The provisions of Section 6.001 cannot be read without reference to the rule of Article 17 since the requisites of qualification for state elective office are found in that Article. In the foregoing quote from Section 6.001, the appointive district judge is authorized to hold office until his successor is qualified. There is no provision made in Section 6.001 as to when a judge elected at the November general election becomes qualified to hold office and, of necessity, therefore, reference must be made to Article 17. Viewing the two statutes together, it can be logically concluded that an appointive judge serves until January 1, 1983, when the individual elected district judge will be qualified to take office under Article 17.

In Ex parte Sanders, 147 Tex. 248, 215 S.W.2d 325 (1948), the Texas Supreme Court addressed the issue of when an individual may take office upon election to a statewide position. The court, in ruling that the newly-elected judge was entitled to take office on January 1 after the November general election, stated:

"If one elected to an unexpired term cannot by reason thereof claim any part of the succeeding full term, it would seem to follow that one elected to a full term cannot on basis of that election alone claim any part of the preceding unexpired term." Id. at 326.

Under Article 17, supra, state district judges may not qualify for office until January 1 following the general election in November. Following the reasoning in Ex parte Sanders, it may again be concluded that the individual elected as state district judge for the 267th District must take office on January 1, 1983, inasmuch as his full term would begin at that time.

In Tex. Att'y Gen. Op. No. WW-530 (1958), it was concluded that a newly-elected district judge could not enter into the duties of his office until January 1, 1959. The Attorney General reasoned that Tex. Elec. Code. Ann. art. 1.08 (Acts 1951, 52nd Leg., p. 1097, ch. 492, § 8), which has been repealed, mandated the January 1 date since it provided that state and district officers became qualified to hold office "on the first day of January next following the General Election."

Accordingly, you are advised that the appointee to the newly-created 267th District Court holds office until January 1, 1983.

SUMMARY

Article 199a, Section 6.001, Texas Civil Statutes, allows judges appointed to newly-created district courts to hold office until their successors are duly elected and qualified. Article 17, Texas Civil Statutes, specifies that district officers commence their terms on January 1 following the November general election.

In the absence of any indication in Article 199a, Section 6.001, to the contrary, it becomes necessary to turn to Article 17 to determine when a newly elected district judge becomes qualified to hold office. The appointee to the 267th District Court created under Article 199a holds office until January 1, 1983, when the individual elected at the November general election becomes qualified to enter into the duties of his office.

Sincerely,



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The Honorable Val D. Huvar
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