



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

GROVER SELLERS
~~WILLIAM WILSON~~
ATTORNEY GENERAL

Honorable Sidney Latham
Secretary of State
Austin, Texas

Dear Sir:

Opinion No. O-6205

Re: Whether the joint action of
the two county committees is
sufficient to constitute a
nomination under Art. 3165,
V.A.C.S., under the facts
stated, and related questions.

Your letter of recent date, requesting the opinion of this department on the questions stated therein is, in part, as follows:

"Honorable Penn J. Jackson of Cleburne, Texas, was nominated for the office of State Senator of the 12th Senatorial District at the Democratic Primary held this year. Judge O.B. McPherson was nominated Judge of the 18th Judicial District at the same time and has since died.

"The County Executive Committees of Johnson and Somervell Counties, which comprise the 18th Judicial District, have undertaken to nominate Penn J. Jackson as the Democratic nominee for Judge of the 18th Judicial District.

"Articles 2979 and 3165 prescribe the procedure in the event of death or declination of a nominee. Article 3165 prescribes that the declination be delivered 'to the officer with whom the certificate of his nomination is filed.' Mr. Jackson has filed his declination in this office.

"Article 3138 provides that certificates of nomination of State candidates only shall be filed with the Secretary of State, while Article 3127 provides that nominees for district offices shall be certified to the county clerks of the proper district.

"The certificate of nomination of Mr. Jackson was executed by George L. Murphy as Chairman of the Democratic Executive Committee of Johnson County and L. G. Kirk as Chairman of the Democratic Executive Committee of Somervell County, and these two were joined by numerous members of both County

Executive Committees. Neither county chairman executed the certificate in his capacity as an ex officio member of the District Executive Committee, which position each occupies by virtue of Article 3118, but the certificate recites in its body that the two county chairmen constitute the District Committee.

"Article 3165 provides that such nomination shall be made by the Executive Committee 'for the State, district or county as the office to be nominated may require'. This would seem to indicate that the district committee should make the nomination. Apparently it has been made in this instance by the joint action of two county committees.

"In the light of the above facts, will you please advise this department upon the following inquiries:

"1. Is the declination of nomination of the office of State Senator sufficient when filed in this office rather than with the county clerks of the counties comprising the district?

"2. Is the joint action of two County Committees sufficient to constitute a nomination under Article 3165 where neither County Chairman executes the certificate in his capacity as an ex officio member of the District Committee?

Article 3118, Vernon's Annotated Civil Statutes, reads as follows:

"There shall be for each political party required by this law to hold primary elections for nomination of its candidates a county executive committee, to be composed of a county chairman, and one member from each election precinct of such county; the committeeman from such election precinct shall be chairman of his election precinct, and the said county chairman shall be elected on the general primary election day; the county chairman by the qualified voters of the whole county, and the precinct chairman by the qualified voters of the respective election precincts. Said county and precinct chairman shall assume the duties of the respective offices on Saturday following the run-off primary immediately after the committee has declared the results of the run-off primary election. Said county chairman shall be ex-officio a member of the executive committee for all districts of which his county is a part, and the district committee thus formed shall elect its own chairman. Any vacancy in the office of chairman, county or precinct, or any member of such committee shall

be filled by a majority vote of said executive committee. The list of election precinct chairmen and the county chairmen so elected, shall be certified by the county convention to the county clerk, along with the other nominees of said party. If there are no requests filed for candidates for county and precinct chairman, a blank space shall be left on the ticket beneath the designation of such position."

Article 3165, Vernon's Annotated Civil Statutes, provides:

"A nominee may decline and annul his nomination by delivering to the officer with whom the certificate of his nomination is filed, ten days before the election, if it be for a city office, and twenty days in other cases, a declaration in writing, signed by him before some officer authorized to take acknowledgments. Upon such declination (or in case of death of the nominee) the executive committee of the party, or a majority of them for the State, district or county, as the officer to be nominated may require, may nominate a candidate to supply the vacancy by filing with the Secretary of State in the case of State or district officers, or with the county judge in the case of county or precinct officers, a certificate duly signed and acknowledged by them, setting forth the cause of the vacancy, the name of the new nominee, the office for which he was nominated and when and how he was nominated. No executive committee shall ever have power to nominate, except where a nominee has died or declined the nomination as provided in this Article."

It will be noted that under Article 3165, supra, a nominee may decline his nomination by delivering a declaration in writing, signed by him before some officer authorized to take acknowledgments, to the officer with whom the certificate of his nomination is filed. The declaration must be filed within the time prescribed by said statute.

"In the event any candidate for a district office received in the first primary the necessary vote to nominate, the State Executive Committee will certify the name of such candidate to the county clerks of the proper district to be printed upon the official ballot for the general election as a candidate of the party for said office." (Art. 3127)

Mr. Jackson received the necessary vote to nominate him for the office of State Senator in the First Primary. As we understand your inquiry, nominations for State Senator are certified to the county clerks of the counties comprising the Senatorial District, and such nominations are not certified to the Secretary of State by the State Executive Committee. Apparently, Article 3138, is applicable only to

nominations where the vote cast of the entire State for a candidate is involved. Therefore, it is our opinion that a person nominated for the office of State Senator in order to decline his nomination should file his declination with the county clerks of the counties comprising his Senatorial District. It is our further opinion that the declination of a nomination to the office of State Senator is not sufficient when filed with the Secretary of State, rather than with the county clerks of the counties comprising his senatorial district. Therefore, your first question is respectfully answered in the negative.

With reference to your second question, you are respectfully advised that it is the opinion of this department that the nomination involved in your inquiry must be made by the district executive committee of the judicial district composed of Johnson and Somervell Counties. The certificate of nomination provides, in part, as follows:

" . . . At such meeting the majority of the members of such Executive Committee of Johnson County voted for the nominee above named, and a majority of the Democratic Executive Committee of Somervell County voted for the nominee above named, whereupon the said George L. Murphy and L. G. Kirk, Chairman of the Democratic Executive Committees of the two counties composing said District, together constituting the District Democratic Executive Committee, voted for the nomination of the nominee above named; and upon such facts we hereby certify that he was duly nominated as the Democratic nominee for the office of District Judge of the 18th Judicial District of Texas."

The executive committee will consist of the county chairman of Johnson County and of Somervell County. The nomination, to be effective, must be made by members of the district executive committee, or a majority of them. The fact that members of both county executive committees joined in the action of the district committee composed of the various county chairmen is immaterial. As the certificate mentioned in your letter recites in its body that the two county chairmen constitute the district committee, and both of them voted for Mr. Jackson, it is our opinion that their action is sufficient to constitute a nomination under Article 3165, supra.

Yours very truly

ATTORNEY GENERAL OF TEXAS

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By s/Ardell Williams
Ardell Williams
Assistant

APPROVED SEP. 15, 1944 s/ Grover Sellers,
ATTORNEY GENERAL OF TEXAS

Approved Opinion Committee By BWB Chairman