



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable Donald M. Markle, Chairman
Committee on Constitutional Amendments
House of Representatives
49th Legislature
Austin, Texas

Dear Mr. Markle:

Opinion No. O-6627

Re: Time for publication of proposed amendments to the Constitution.

We beg to acknowledge the receipt of your request for an opinion upon the above subject-matter, as follows:

"We would like to submit for your consideration and opinion the following facts and circumstances regarding the submission of H. J. R. 13 for adoption or rejection by the electorate on August 25, 1945:

"Reference is made to Attorney General Opinion Nos. O-6612 and O-6617, dated May 29 and May 30, 1945, respectively, wherein facts and circumstances surrounding the adoption of the Resolution by the Legislature and the transmittal by the Secretary of State's Office to the newspapers in the respective counties of the State, were related. I realize that in order to fully explore the legality of submission of this proposed amendment it will be necessary for you to take into account any relevant fact which your direct investigation of the existing circumstances may reveal. This is my understanding of the facts in this case:

"I am informed by the office of the Secretary of State that H. J. R. 13 was mailed to 238 newspapers on Tuesday evening, May 22, 1945, the same day it was received in that office. No newspaper is published in the remaining 16 counties. The acknowledgment cards, accepting the copy for publication on the dates specified, was returned immediately by 224 publishers. Of the 14 who wrote to say the copy missed their deadline,

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six assured Representative Ben Sharpe by telephone that they would publish a supplement in time. Of these six, the Jack County paper has now informed the Secretary of State that the publication date was adhered to. The following five papers were to publish a supplement:

<u>*Newspaper</u>	<u>County</u>	<u>Circulation</u>	<u>Day</u>	<u>Population</u>
Port Lavaca Wave	Calhoun	850	Thursday	5,385
Quannah Tribune Chief	Hardeman	2,800	Thursday	11,073
Port Neches Chronicle	Jefferson	1,522	Friday	133,391
Kemp News	Kaufman	1,500	Thursday	40,905
Brackett News	Kinney	500	Friday	2,980
Sub total		7,172		194,734

The following eight newspapers failed or refused to publish the proposed amendment:

Claude News	Armstrong	3,014	Friday	3,329
Cochran Co. Headlight	Cochran	480	Est.	1,963
Kingsville Record	Kleberg	1,950	Wednesday	12,451
Merkel Mail	Taylor	1,346	Friday	41,023
Hidalgo Co. News	Hidalgo	2,607	Thursday	77,004
O'Donnell Index-Press	Lynn	1,500	Friday	12,372
Bells Banner	Crosby	500	Est. Thursday	10,046
Yoard Co. News	Foard	1,535	Thursday	6,315
Sub total		12,932		164,503
GRAND TOTAL		20,104		359,237

"In Opinion No. 0-6617 written in reply to a request from Honorable J. E. Winfree, Chairman of the House Rules Committee, you state in effect that if the date of submission of the constitutional amendment proposed by H.J.R. 13 is changed, it must be changed by the Legislature. Col. Winfree did not ask whether or not the amendment, under existing circumstances, is being legally submitted in August, 1945, and you did not answer this question.

"In Opinion No. 0-6612, replying to questions submitted by Honorable Claude Ishell, Secretary of

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state, you in essence exclude publication (and payment for same) in those several newspapers who failed or refused to publish the amendment on or before May 24, 1945. We note again that you were not asked for, and you called attention to the fact that you were not giving, an opinion on the legal consequences of the failure of these few newspapers to publish the amendment on or before May 24, 1945.

"Since this is a subject of grave concern to the Legislature and the people, and in view of the facts set forth herein, I am respectfully requesting your opinion on two additional questions:

- "(1) Is the constitutional amendment proposed in House Joint Resolution No. 13 being legally submitted for a vote on August 25, 1945?
- "(2) Irrespective of your answer to question Number 1, will the amendment become a part of the constitution should it appear on the ballot and receive a majority of the votes cast?"

You are advised that under the facts stated House Joint Resolution No. 13 is being legally submitted with this qualification, in some of the counties the same has not been duly published for want of sufficient time. This irregularity will not necessarily prevent the adoption of the amendment by the people unless the total potential legal vote in those counties where no publication was had and no election held would be sufficient if counted against the adoption of the amendment to result in the amendment's receiving less than a majority of such total count. In such event the amendment would fail for lack of the necessary majority vote. See the following cases:

Hunnicut v. State, 12 S. W. 106;
 Hebert v. Scurlock, 178 S. W. 711;
 Manos v. State, 263 S. W. 310.

We trust that what we have said sufficiently answers both of your questions.

Very truly yours

ATTORNEY GENERAL OF TEXAS
 By

Osie Speer
 Osie Speer
 Assistant

