

TEXAS LAW | Tarlton Law Library Jamail Center for Legal Research

Citation: *Debates in the Texas Constitutional Convention of 1875 Texas. Constitutional Convention (1875). Austin: Published by the University of Texas, c1930.*

Content downloaded from

Tarlton Constitutions 1824-1876 (<http://tarlton.law.utexas.edu/constitutions/>)

The text of these documents is in the public domain. That is, the original words and content are freely usable.

The images of the documents are copyrighted material; the copyright is held by the Tarlton Law Library. The copyrighted images may be used only with permission. Permission is granted to use the copyrighted materials in the classroom for educational purposes. Downloading, printing, publication, public display or otherwise using any of the copyrighted images, including on the web or in a forum other than a classroom, requires permission from Tarlton. Requests for permission to use these materials should be submitted online to rarebooks@law.utexas.edu.

If you are uncertain whether you need permission to use these materials, please contact us at rarebooks@law.utexas.edu.

NINTH DAY

WEDNESDAY, SEPTEMBER 15, 1875¹⁴

MR E. W. BRADY, of Grimes, from the select committee, to whom was referred the question of filling the vacancy occasioned by the resignation of Mr. Goddin, of the Fifteenth District, reported as follows:

Resolved, That a vacancy having occurred in the representation of the Fifteenth Senatorial District in this Convention, by the resignation of the Hon. M. H. Goddin, of Walker County, his excellency, the Governor, be and is hereby requested and authorized to order an election, to be held in said district, to fill the vacancy, on Saturday, the 25th day of September, 1875.

MR McCORMICK offered the following substitute:

“Whereas, It appearing to the satisfaction of this Convention that at the election held for delegates thereto, in the Fifteenth District, one M. H. Goddin, of Walker County, received the certificate of election, and it appearing to the satisfaction of the members hereof, that said M. H. Goddin is, and was at the time he received the certificate of election *non compus mentis*, and therefore ineligible to a seat in this convention;

“And it further appearing that at the election for delegates in said district, D. C. Dickson received the next highest number of votes; and that said Dickson is a pure, good man, and the true representative of the good people of the said district;

“And further, that the said Goddin having, in a fit of drunkenness and passion, resigned his seat in this Convention; therefore be it

Resolved, That in the opinion of this Convention, the said D. C. Dickson is the true representative of the good people of the Fifteenth Senatorial District;

Resolved further, that D. C. Dickson, upon taking the oath prescribed by the Convention, is admitted to a seat in the same.”

MR McCORMICK moved to refer the report of the select committee and his substitute to a committee of five

¹⁴The proceedings for this day were taken from the *State Gazette* (Austin), September 16, 1875.

MR. J. R. FLEMING, of Comanche, opposed the motion. It would involve a recount of the votes in that district, and would waste time uselessly. There was no claimant to the seat that he was aware of, and that the party resigning had been elected by a majority of votes was not questioned. It might as well be asked that the Convention sit as a court of lunacy, as to inquire whether the delegate referred to was disqualified for the reasons given. As to the report of the committee, its members had no doubt in their own minds, and after consultation with other members of the body, that the Convention had the right to fill any vacancy in its ranks, but as the machinery for calling an election was not in its control, the committee interviewed the Governor to ascertain if he would act upon a call of the Convention. The constituency whose delegate had resigned was entitled to representation, and if the report were acted upon promptly they would soon obtain it.

MR. J. B. MURPHY, of Nueces, ridiculed the idea of the Convention determining which of its members was or was not *compos mentis*. He suggested that it would be well to refer to a lunatic asylum, for he did not think the Convention was well qualified to sit on a question of lunacy.

The motion to refer to a select committee of five, and the substitute were lost

MR. CRAWFORD was opposed to establishing a precedent, as there was no telling to what length it would go. He moved the postponement of further consideration of the question until the next day, the question to be taken up then after the dispatch of the regular business.

MR. BROWN alluded to several precedents. Among others he mentioned that Sam Houston resigned his seat in the Convention of 1845, and that Dr Stewart, late member of the Fourteenth Legislature, was elected to fill his place. A similar precedent was established in the Convention of 1861 when Mr. Jones' place was filled by election.

MR. JOHNSON, of Franklin, thought the last speaker was in error with regard to Sam Houston, for when a motion was made to vacate his seat it was voted down.

MR. MCCORMICK hoped the motion to postpone would carry. He saw no reason why an election should be ordered. Some carpet-bagger would go down there and be elected, and he could see no good to the State or county from such election. There were two delegates present, able and willing to represent that district, and it would not suffer for want of representation.

MR. SANSOM said the Fifteenth District was entitled to representation, and it was simply a question of whether the Governor should be requested to call an election. It was no part of the business of the Convention to consider the manner of man who might be elected. If he reflected or did not reflect the sentiments of his constituency was not a question for them to determine either, but simply a question of election by the district entitled to representation.

MR. DOHONEY thought the Fifteenth District was entitled to its full representation. The question in his mind was whether the Convention had the power to order an election. It was clear to his mind that it could not issue a writ of election. It was proposed that the Governor issue his proclamation, he having only the powers given him by law, which were such, however, as had called that Convention. The time had passed, however, when he could issue such proclamation, and the Convention had not proposed to clothe him with any new powers. There were precedents, on the other side, to prove that the Convention had no power to fill vacancies. He was in favor of postponement.

JUDGE REAGAN thought it was the duty of the Convention to make provision to fill vacancies, and as it had power to do it he should oppose postponement and favor action at once on the subject. He knew it was a question among lawyers whether a Constitutional Convention had the power to fill vacancies. Examined by lawyers as lawyers, their decision might be that the Convention had no such power. He quoted Mr. Jamison as his authority for such an opinion. He, Reagan, thought they were to examine, not as lawyers, but as it affected the rights of the people. The right of the people to representation in all legislative bodies was held sacred in all countries. Their right to representation in the formation of a Constitution could be held no less sacred. Suppose more than one district were to lose representation by the vacation of seats of delegates. They could see where this matter might lead, whatever might be determined as

the rule of law by lawyers. He doubted if any such conclusion would be sustained by practice and experience. In 1845 Sam Houston had resigned his seat from that same district, and Dr. Stewart was elected. In 1861 he, Reagan, resigned, and Colonel Word was elected to his place. He was satisfied that some six such vacancies had been filled by election. In the North Carolina Convention a distinguished member had resigned his seat and provision had been made to fill it. Looking at it as a Convention, and not as a legal question, he thought it their duty to make provision to fill vacancies. It could be done, he thought, by requesting the Governor to issue his proclamation calling an election, or by directing the President of the Convention to do it. He did not think that in 1861 the Governor was called upon, as he was not in sympathy with the Convention, and he took it for granted that the other mode was used to fill the vacancies. As Mr. Sansom had said, it was not their place to determine the views of the men to be sent there, but the Fifteenth District was entitled to representation by such men as it might elect. He thought the question before the Convention should be disposed of at once.

MR. W. B. WRIGHT, of Lamar, thought the question was vital, as it affected the power of the Convention *in limine*, in its deliberations. Desiring to vote intelligently he favored postponement. Mr. Jamison, he was aware, was much confused as to the powers and organism of a Convention existing simultaneously with a Government. The Convention was a body clothed with power from the people, and had been called to power by a popular vote. That Convention represented its own vitality. It was unquestionably within the power of the Convention to presume that it was inviolate, and that a part of that vitality was to order its presiding officer to fill vacancies. There were few who would not admit that the Convention had the power of self preservation. It seemed, then, unquestionable that it had the power to order an election and not merely to request the Governor to do it. A request to the Governor was simply State diplomacy. He had nothing to do with the Convention so far as were regarded its powers and rights. He regarded that as one of the inevitable powers inhering in the Convention. Hence he favored postponement in order to examine into the question, not merely as

lawyers, but as honest men. He wanted to get an enlightened consideration of the subject and then vote upon it.

MR. WEAVER said the question of sovereignty had cost millions in blood and treasure. He would be the last man to ignore the sovereignty of the Convention. Its limit could not be fixed. It was supreme as far as the people could make it, and overrode all law and all organic law. But still they had met, recognizing the Constitution under which they were then living. It was law until they adopted a new constitution and it had been ratified at the ballot box. The people of the Fifteenth Senatorial District were entitled to representation, whether the delegate they elected was Radical, Conservative, or Democrat, and the only question was how was the vacancy to be filled. The question was one of constitutional and legal right. Its reference to the Governor was simply one of courtesy, to apprise him of the will of the Convention and to let him exercise the power of issuing a proclamation to fill the vacancy.

MR. FLOURNOY said that too much controversy had taken place on a misapprehension of the purposes of the report. He had stated that the committee had no doubt of the power of the Convention as a parliamentary body to fill vacancies in its own ranks, but appreciated the fact that the people of the State wanted the whole of Texas to be represented in the Convention. But the machinery of election was not yet provided by the Convention; therefore, they called upon the Governor to act for them through the machinery and officials of the State Government. He had consented to issue his proclamation if called upon. When the Governor refused to use the machinery at his command for such purpose to carry out the will of the people, it would be time enough for delegates to consider their rights as a sovereign body. They were having a controversy on a state of things which did not exist. It had been said that they should not "request" but "order" the Governor to do so. His idea was that a request was a polite way of ordering the will of the Convention to be carried into effect. If it was the will of the Convention to have the vacancy filled so that the district might be represented and on an equality with other districts, it was useless to hold a controversy over the matter, because no one had disputed their power to fill it, and the whole machinery of the law had been tendered the Convention to carry out its will.

MR. CRAWFORD did not question the last speaker's statement that there was nothing in the Constitution of 1869 authorizing the Government to fill vacancies except in offices under the Government. The Governor had no more power to order an election to fill the vacancy than did any other citizen, for he derived his power from the provisions of the law of the State, and in the absence of that had none. If the Convention claimed the right to fill vacancies it ought also to have the symmetry and uniformity attaching to such power, to appoint its agents and clothe them with proper authority, so as to give respectability to it and entitle their acts to obedience.

MR. D. A. NUNN, of Houston, said it had suggested itself to him that it was not the want of power in the Convention nor yet the mode in which they were seeking to exercise it, for he conceded both. But he thought the resolution did not go far enough. It was not pretended that they had power to change the election law. The Convention recognized the fact that they were elected under a joint resolution of both Houses, but now it was proposed to order the Governor to call an election within ten days. There was no election law that recognized a proceeding of that sort. Suppose the Governor assented to the proposition. The only thing to guide his judgment was that a certain day had been fixed for the election. There was no authority in the election law authorizing him to issue his proclamation calling the election within ten days. Did they propose to disregard the election law? His objection to the resolution was that it was not complete in itself. Authority and power must be given by the Convention to the Governor to call said election, otherwise he could not see how the Governor was to act upon their resolution.

MR. MARTIN, of Navarro, moved as an amendment to Mr. Crawford's amendment: "That said election be ordered by the President of this Convention, and said election be held and governed by the existing laws of this State." He made the motion, he said, simply to test the powers of the Convention. He had no objection to an election, but he did object to giving any number of men the opportunity of shaking the dust from their shoes, and of expressing their disgust with the Convention by retiring from it. Nor did he object to postponement or reference to a special committee.

MR. DOHONEY moved to strike out the word "request" and insert the word "authorize" in the resolution.

MR. MILLS asked the gentleman from Navarro to withdraw his amendment, at is would be impossible to obtain in time, to be of service, the general returns of an election held under the State laws existing. The Convention had done away with the constitutional oath, and if they had the right to order an election they could do it in two days or ten weeks, just as the Convention in North Carolina had done. If the Convention in North Carolina had the right to call an election in ten days, then the Texas Convention could do the same thing, for the Constitution of North Carolina was very much like that of Texas. The people of the Fifteenth Senatorial District asked to be represented, not in part but fully, on that floor, and he hoped they would elect a better man and be represented more competently than they had been at the start. He wished to strike out of Mr. Martin's resolution "in conformity with existing laws" so as to read, "that the said election be ordered by the President of this Convention."

MR. MARTIN said he would accept the amendment, but the amendment, as amended, was lost by a vote of 32 to 41.

The question recurring on Mr. Dohoney's amendment, Mr. Johnson, of Franklin, moved to amend by striking out the word "requested" in the resolution and inserting the word "instructed."

MR. SANSOM moved to lay the amendment on the table, but his motion was lost by a vote of 29 yeas to 49 nays.

MR. WEST explained that "requested" meant about the same as "instructed" or "ordered." The legal effect was the same, and the first expression was the most courteous of the three.

MR. JOHNSON withdrew his amendment.

MR. DOHONEY's amendment was accepted and the resolution of the committee was adopted.

TENTH DAY

THURSDAY, SEPTEMBER 16, 1875¹⁵

MR. MILLS moved to take up the unfinished business of the Convention.

¹⁵The proceedings for this day were taken from the *State Gazette* (Austin), September 17, 1875.