

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.

man. Why is this? It is the fault of the system of education adopted by the South. The public free school system of the North has produced as great statesmen, as illustrious soldiers, as eminent divines as the South, and in addition to all these, all the poets, all the historians, and all the men of science, save one, who have a national or European reputation; and we are told by writers on mental science and philosophy that the commonest forms in which the human mind develops itself are of war and statesmanship, of politics, or whatever name you chose to call it, and that the higher branches of mental labor are those branches in which the private school system has utterly failed to produce one worthy of the name."

MR. MCCORMICK: "Was that the reason why the gentleman himself went into politics?"

MR. BRADY: "Certainly it was. The same reason brought me here that brought the gentleman from Colorado—because I got votes enough, and I don't know any other good reason why either one of us is here."

MR. GRAVES moved to close the debate on the pending question, which carried.

Mr. Waelder's amendment was lost by a vote of 33 to 43.

General Whitfield's substitute was lost by a vote of 34 to 42.

FORTY-EIGHTH DAY

SATURDAY, OCTOBER 30, 1875⁹⁷

MR. FERRIS offered the following as a section in the article on education: "Until the available school fund, including the fund derivable from taxation, shall appear sufficient for the maintenance of a system of free schools, such fund may be used for the support of public schools, which shall afford free tuition for pupils whose parents or guardians are unable to pay for tuition, in such manner and under such regulations as may be provided by law."

MR. FERRIS spoke briefly in favor of his amendment. He said he had been in Texas twenty-seven years. His children had been born in Texas, but had to be educated elsewhere. It had been promised him when he came to the State that education would be provided for the children, but twenty-seven years had elapsed and they were as far from obtaining education in Texas as ever before. It was

⁹⁷The proceedings for this day were taken from the *State Gazette* (Austin), October 31, 1875.

true that they had private schools in the State, but he had never seen any worth a hill of beans.

MR. ROBERTSON asked if he had ever seen that of Bell County.

MR. FERRIS said he knew of that school by reputation, but if it was all that was claimed for it why did it not place its merits before the people and get the thousands of dollars annually expended out of the State? He was in favor of utilizing the fund they already had, which was ample to make a beginning. They had a school fund of \$2,587,756. The interest on that would be not less than \$150,000. One-tenth of the annual revenue would be \$75,000. A poll tax of \$1, as had been agreed to, would raise \$200,000. That would make a total sum of \$425,000 to be appropriated among the counties for public school purposes. On the basis of representation, Ellis County having one representative, her proportion would be \$4,733, which would give her twenty schools in the county, and other counties of larger population would get more in proportion. The seventh clause provided for separate schools for whites and blacks, and both would get their just proportion. He said he was arguing for public schools and not free schools. Those who could pay would still pay, and it would be only the children of those who could not pay who would receive education free. Such a plan would be the beginning, at least of a system, and it would do more for immigration than a bureau.

His objection to the report before them was that it proposed to establish "free" schools, which it was utterly impossible to accomplish at that time. The system he had suggested had prevailed in New York, Indiana, and other states. He thought it would work out in a very practical way in Texas. His people objected to unjust taxation, but not to reasonable taxation. He had letters in his pockets from his constituents, stating that they did want public schools, and that they were willing to stand as high taxation as one-sixth of 1 per cent. If the Convention would establish a public school system, whatever defects the Constitution might have, that would outweigh them all, and they would receive the plaudits of the people.

MR. SCOTT moved to close the debate, and the House consented.

Mr. Ferris' amendment was lost.

The article was then engrossed by a vote of 55 to 25.

GENERAL WHITFIELD said that he desired to explain the vote he had cast on the article on free schools. He said it was known to the Committee on Education, of which he had had the honor of being chairman, that when he signed the majority report that it was understood with the committee that he was opposed to establishing as a rule that the Convention should restrict the Legislature on questions which the people had the right to change, alter, or amend through their Legislature, and that if the people had the desire to tax themselves for school purposes they certainly should not be denied that right. He said the article just engrossed was the old system which had been established by the Constitution of 1869, that had proved to be a total failure, so much so that a majority of the people had become disgusted with such a system, and that he was unwilling to return to his constituents with the same system they had when he left home. The present fund paid the teachers only one month out of four, and he was not willing to prevent the people by a positive constitutional provision from changing the free school system, and he, therefore, would vote "No."

Revenue and Taxation

MR. RUSSELL, of Harrison, moved to strike out all after "dollars" in Section 1, which was as follows: "The Legislature may also, in its discretion, provide for levying a tax on the gross earnings and franchise, or either, of all corporations, or of any class of corporations." He held that this was in direct opposition to the first clause of the section, which said that taxation should be "equal and uniform throughout the State." He thought it was inconsistent and an unjust discrimination, and he protested against it. It was proper to tax them as individuals, on the valuation of their property, on their occupations and their income; but to tax them on their franchises and gross earnings was utterly unjust, and he hoped the Convention would not consent to do it. The franchise was included in their real and personal property, which had already been taxed, while their gross earnings had been taxed in their income.

MR. McCORMICK proposed a substitute for the section, that all property should be taxed in proportion to its value, to be ascertained as prescribed by law; exempts \$250 worth of household furniture; the Legislature might also impose occupation and income taxes upon

such occupations and pursuits as it might deem to the interest of the State to tax, but prevents counties, cities, and towns from levying a tax on occupations and pursuits, but the Legislature might provide by law that such occupation or income tax collected by the State, or any part thereof, might be returned to the county for the benefit of the general county fund, provided it was collected from the county to which it was returned.

MR. FLOURNOY said that a franchise consisted of the right to follow a business just the same as he obtained the license to practice law, and should be taxed. They had said before that occupations should be taxed, and this was the occupation of persons engaged in the railroad business. The object was simply to secure the taxation of their business. How could they reach their occupation unless they taxed their franchise? It was simply a definition of their business. As to their gross earnings, he denied that it was their desire to tax them over again. What were their incomes? Did they wish to leave them without definition? How could they reach their incomes without ascertaining their gross earnings? Surely they would not consider the balance a man had after paying for the support of his family and the education of his children, to be his income. It was because they desired taxation to be equal and uniform, as was expressed in the first clause, that they had included the words "franchises and gross earnings."

MR. STAYTON said that the two sections were inconsistent on the subject and were unnecessary.

JUDGE REAGAN said he was of a similar opinion.

JUDGE BALLINGER said he thought it was horrible to say that a tax should be levied on the gross earnings and their franchises. It placed corporations entirely at the mercy of the Legislature.

MR. DEMORSE said he thought no elaborate argument was necessary to convince the Convention that the same rule should apply to corporations as to individuals. He thought the conclusion of the gentleman from Galveston had been adopted during temporary inadvertence or incomprehension of what the House was really doing. He hoped there would not be any considerable objection to striking out this clause, if it was deemed best that they should be taxed on their gross earnings and their franchises, and the Legislature should elect to do so, that there should be another clause inserted that the

real and personal property of corporations should not be taxed. One or the other of these modes should be adopted, but he held that the first duty of the House was to strike out the clause referred to.

MR. WRIGHT said he was willing to adhere to the clause as it stood if he were positive that it would receive the same interpretation as was placed upon it by Mr. Flournoy, but he was afraid it would be open to misconstruction. He was opposed to duplicate taxation. He thought railroads should be taxed like other property, but no more.

MR. SANSOM offered to amend Section 2 by exempting from taxation "school houses and their necessary furniture." Adopted.

COLONEL CRAWFORD moved to amend the last amendment by inserting the word "public" before "schools." He said he thought the exemption should be confined to public schools. Large sums of money were invested in private schools. They were for profit, and ought to be taxed.

MR. ROBERTSON, of Bell, opposed the Crawford amendment. He hoped the Convention would not strike down private schools. It was well known that the people could not keep up a great system of free education, but they had that day adopted a proposition showing that they were desirous of doing something for the cause of education. But what would be said if they struck down private schools? The early schools of the country had existed in Texas for forty years, and, notwithstanding the adverse opinions of the gentleman from Ellis, he thought that they had done some good in the cause of education. He spoke of the MacKenzie Institute and Baylor University, and said that many of their most eminent statesmen and citizens owed all the education they possessed to private schools. He thought there were several men on the Convention floor who were indebted to private schools.

COLONEL CRAWFORD said that he was educated at MacKenzie University, but, though it was the work of a noble old man, it was that of a man who had put his private fortune in it for the purpose of profit.

JUDGE REAGAN said he opposed the Crawford amendment.

MR. WAELDER moved the following substitute to the Crawford amendment: "All buildings used exclusively and owned by persons for school purposes, and the necessary furniture for all schools shall

be exempted from taxation." He spoke of cases where houses were used for schools, in whole or in part, which were used in part for purposes of profit, such as for merchandising or other pursuits.

JUDGE BALLINGER spoke of similar cases in Galveston.

MR. SANSOM said he was surprised at this objection from Colonel Crawford after the latter's sentiments had been so warmly and eloquently expressed for free schools, and especially because of his tenderness for the blue-eyed or blue-headed boys.

MR. FERRIS said he was in favor of exemption. He said he had been misunderstood in the morning session. He thought they could not depend upon the private schools, because they were insecure. They were up today and gone tomorrow. He admitted the great usefulness of such enterprises, and had worked for them as hard as any one. They were generally the results of associations of persons in a neighborhood to obtain schooling for their children. Even then the Waxahachie institution was languishing for want of support.

GENERAL ROSS moved to table both amendments. The motion was divided. Colonel Crawford's amendment was voted down, but Mr. Waelder's was accepted.

FORTY-NINTH DAY

MONDAY, NOVEMBER 1, 1875⁹⁸

Revenue and Taxation

MR. MARTIN, of Hunt, moved to amend Section 4, as follows: "The power to tax all the property, real and personal, of corporations, shall never be surrendered or suspended by act of the Legislature, but the same shall always be taxed as other property."

MR. DEMORSE said this matter had been brought directly before the Convention by a petition of the people of Sherman. The petition had been referred to the Committee on Taxation, and the committee had reported what they considered proper clauses to meet the case. The city of Sherman granted municipal subsidies to one railroad of \$84,000 and to another of \$50,000. The city was taxed to pay the interest on those subsidies, and one of the very railroads

⁹⁸The proceedings for this day were taken from the *State Gazette* (Austin), November 2, 1875.