

TEXAS | **Tarlton Law Library**
LAW | Jamail Center for Legal Research

Citation: *Journal of the Texas State Convention: Assembled at Austin, Feb. 7, 1866. Adjourned April 2, 1866. [Austin, TX.]: Printed at the Southern Intelligencer Office, 1866.*

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.

On motion, the Convention adjourned until to-morrow morning at 10 o'clock.

TUESDAY, February 13th, 1866.

Convention met pursuant to adjournment; roll called; quorum present; journal of yesterday read and adopted.

Reports of Committees being in order, Mr. Jones of Bastrop, Chairman of the Committee on Privileges and Elections, presented the following reports and resolutions:

COMMITTEE ROOM, February 12th, 1866.

To Hon. J. W. Throckmorton, President of the Convention:

The Committee on Privileges and Elections have instructed me to ask the adoption of the following resolution:

Resolved, That all members of the Convention within any of the exceptions of the President's Amnesty Proclamation of the 29th of May last, and who have not received their pardons, be requested to meet the committee at 3 o'clock, P. M., 13th inst., and furnish written statements of their respective cases.

Respectfully submitted,

GEO. W. JONES, Chairman.

Adopted.

COMMITTEE ROOM, February 12th, 1866

To the Hon. J. W. Throckmorton, President of the Convention

The Committee on Privileges and Elections unanimously instruct me to report, in the case of the contested election between the Hon. James Shaw and the Hon. J. B. Boyd for the district comprising the counties of Burleson and Robertson, that by reference to the returns of the election made to the Secretary of State, it appears that Shaw received one hundred and thirty-three votes, and Boyd one hundred and twenty-nine; yet the returning officer for the district, upon representations made by the Chief Justice and County Clerk of Burleson county, assuming that seven of the votes cast for Shaw were illegal, as the electors had not been registered, awarded the certificate of election to Boyd. No proceedings appear to have been instituted for the purpose of contesting the election or purging the polls. The action of the returning officer, rejecting seven votes cast for Shaw, rests entirely upon the representations of the Chief Justice and County Clerk of Burleson. The committee are therefore of opinion that Shaw is entitled to the seat, and recommend the adoption of the following resolution:

Resolved, That the Hon. James Shaw, having received a plu-

rality of the votes cast in the district comprising the counties of Burleson and Robertson for Delegate to this Convention, is entitled to represent said district.

Mr. Davis of Webb moved to re-commit the report and resolution to the committee, for five days, to allow Mr. Boyd time to present to the committee evidences of his election and right to a seat in the Convention. Lost.

The resolution and report, as read, were adopted.

The following report was read from the Committee on Printing and Contingent Expenses.

COMMITTEE ROOM, February 13th, 1866.

To the Hon. J. W. Throckmorton, President of Convention :

The Committee on Printing and Contingent Expenses have instructed me to report that they have contracted for the publication, in pamphlet form, of 1000 copies of the Governor's Message, for sixty-five dollars in currency; and also for 100 copies of the Rules of the House of Representatives, for twenty-one dollars in currency.

A resolution of the Convention directs this committee to contract for ten copies of each of the papers published in Austin, for each member of the Convention. Upon inquiry, the committee ascertain that there are two papers published in this city, each of which is to be published tri-weekly during the session of the Convention, on alternate days, thus giving a paper each day. Eight hundred and ninety papers each day will be required to furnish the number ordered by the resolution. Upon a conference with the publishers of the papers, we ascertain that ten cents per copy, in currency, is the price which they ask for the papers, making the sum of eighty-nine dollars, in currency, as the daily cost incurred. In accordance with the order to the committee, contained in the resolution, the publishers of the papers have been engaged to furnish ten copies for each of the members, of the tri-weekly Gazette of this day, and of the tri-weekly Intelligencer of to-morrow; but the committee have gone no further with the contract, and instruct me to report the fact to the Convention, and ask that they be instructed whether to proceed or not, to make the contract to extend during the entire session of the Convention. The committee did not doubt its power, under the plain language of the resolution, to contract for the papers for the whole session, but thought it probable that the Convention had not been advised of the expense to be incurred. at the time the resolution was adopted. The committee express no opinion upon the matter, but request the Convention to take action upon it immediately. WM. E. JONES, Chairman.

Report adopted.

Mr. Hart offered the following resolution :

Resolved, That the committee be instructed to reduce the number of papers, contemplated by the resolution referred to in the report of the committee, from ten to one ; *provided* they can procure the same at ten cents per copy.

Mr. Davis of Webb proposed to amend the resolution by inserting three copies of each, instead of one.

Lost.

Mr. Shuford offered the following as a substitute for the resolution :

Resolved, That the committee is authorized to contract with any paper for ——— copies of papers reporting, in full, debates, votes and proceedings of the Convention.

Accepted.

Mr. Hart moved to fill up the blank with "one."

Lost.

Mr. Davis of Webb moved to fill up the blank with the words "from one to five."

Adopted.

On motion of Mr. Davis of Cherokee, the word "debates" was stricken out.

Mr. Hart proposed to add "*provided* they can be procured at ten cents per copy."

Lost.

Mr. Henderson moved to strike out "five," and insert "ten."
Carried.

On motion of Mr. Henderson, the words "from one to" were stricken out.

Mr. Dickson moved to postpone the matter indefinitely.

On motion of Mr. Henderson, Mr. Dickson's motion was laid on the table.

On motion of Mr. Davis of Webb, the price per copy was limited to ten cents.

Resolution, as amended, adopted.

Mr. Parsons moved to reconsider the vote adopting the resolution.

On motion of Mr. Henderson, laid on the table.

Mr. Hart moved to adjourn until to-morrow morning, 10 o'clock.

Lost.

Mr. Mabry offered the following resolution :

Resolved, That the Constitutions of the State of Texas, adopted August 27th, 1845, and on the ——— day of ——— 1861, be

referred to the committees of this Convention, and that they be required to report such changes, additions and amendments as may to them seem proper, for the action of this Convention.

Adopted.

Mr. Latimer introduced an ordinance declaring the Ordinance of Secession, and all the acts and proceedings of the Convention adopting the same, null and void, and of no effect, from the date of their adoption, and declaring that no State of the Federal Union has a right, under the Constitution of the United States, to withdraw from said Union.

Read first and second times.

Mr. Davis of Webb moved to refer to a special committee of seven.

Mr. Henderson moved to refer it to the Committee on the Condition of the State.

Mr. Frazier moved to lay on the table.

The Yeas and Nays being called for, stood thus:

Yeas—Messrs. Ball, Beall, Bryan, Bradshaw, Camp of Upshur, Clements, Davis of Cherokee, Dickson, Frazier, Giddings, Gurley, Halbert, Hill, Hunt, Ireland, Lindsey, Mabry, Nelson, Norris, Parsons, Phillips, Porter, Randolph, Record, Reeves, Roberts, Runnels, Selman, Shepard, Slaughter, Spaight, Taylor of Houston, Thomas of Grimes, Thompson, Tyus, Wilson, Woods—37.

Nays—Messrs. President, Allen, Anderson, Armstrong, Benge, Bumpass, Camp of Goliad, Dalrymple, Davis of Webb, DeGENER, Drake, Flanagan, Hancock, Hart, Henderson, Hurt, Johnson of Tarrant, Johnson of Titus, Jones of Bastrop, Jones of Bexar, Lane, Latimer, Ledbetter, McCormack, Middleton, Murchison, Norton, Parker, Paschal, Perry, Ranck, Richardson, Saunders, Saufley, Shields, Shuford, Smith of Colorado, Smith of Lamar, Taylor of Fannin, Thomas of Cameron, Varnell, Walker, Waul, Whitfield and Young—45.

Motion lost.

Mr. Hancock offered the following substitute for the ordinance:

Resolved, That the Constitution of the United States and laws passed in pursuance thereof are the supreme law of the land, and the Act of Secession, passed by the people of Texas, was, therefore, in legal contemplation, void, being a revolutionary measure, and subject to the general principles of revolutions.

On motion of Mr. Henderson, the ordinance and substitute were referred to the Committee on the Condition of the State.

Mr. Hart moved to adjourn until 10 o'clock to-morrow morning. Lost.

Mr. Parsons introduced an ordinance striking out the 8th Article of the present Constitution.

Referred to the Committee on General Provisions of Constitution.

Mr. Parsons introduced an ordinance declaring all laws and parts of laws enacted by the Legislature of this State since February 1st, 1861, that do not conflict with the Constitution of the United States, or this State, as amended by this Convention, in full force, and all acts of courts and officers, state, executive, judicial and ministerial, done in compliance thereof, in full force.

Referred to Committee on the Condition of the State.

Also, an ordinance amending the 10th Section of the 4th Article of the Constitution.

Referred to Committee on Judiciary.

Mr. Mabry introduced an ordinance promoting the manufacturing interest of the State.

Referred to Committee on Condition of the State.

Mr. Whitfield offered the following resolution :

Resolved, That the Committee on Education ascertain from the Governor and Heads of Departments such information as they may be able to impart as to the amount of funds on hand belonging to the Common School fund, the amount due from the State, and the several railroads, to said fund.

Also, that the Committee ascertain what amount of the public lands have been surveyed and set aside for Common Schools, and under what laws, if any, the unappropriated public domain, or the proceeds arising from the sale thereof, have been set aside for school purposes.

Also, that the Committee ascertain from the Commissioner of the General Land Office the amount of lands that have been surveyed for the several counties, under the law of the Republic, and the Constitution of the State, granting to each county — leagues of land for school purposes.

That the Committee be instructed to report such measures as may be deemed proper to secure the various amounts due to the school fund.

Also, that said Committee inquire into the expediency of providing in the Constitution for the electing, by the people, of a Superintendent of Common Schools.

Adopted.

Mr. Spaight introduced an ordinance annulling the ordinance of secession, of February 1st, 1861.

Read first and second times, and referred to Committee on Condition of the State.

Mr. Paschal offered the following resolution :

Resolved, That this Convention will re establish the Constitution of the State of Texas in force immediately before the 1st day of February, 1861, with such amendments only as may be necessary to conform the same to the existing order of things, growing out of the late war.

Made special order of the day for 11 o'clock to-morrow.

Mr. Jones of Bexar offered the following resolution :

Resolved, That the Judiciary Committee be instructed to take into consideration the propriety of amending the Constitution so as to increase the number of Judges of the Supreme Court to five, who shall hold the court at but one place, and be in permanent session, except in special vacation.

Also, consider the propriety of compelling the District Judges to hold their courts four times a year in each county, and to exercise original and exclusive jurisdiction over executors, administrators and guardians, under such rules as the Legislature may prescribe.

Adopted.

On motion, the Convention adjourned until 10 o'clock, A. M., to-morrow.

WEDNESDAY, February 14th, 1866.

Convention met pursuant to adjournment. Roll called; quorum present; journal of yesterday read and adopted.

Mr. Henderson presented the credentials of Mr. Gentry, member elect from Harrison county.

On motion of Mr. Shepard, leave of absence was granted to the Hon. James Shaw, of Burleson county, in consequence of sickness in his family.

Mr. Frazier presented the credentials of himself and Mr. Burke, of Harris county.

Mr. Taylor of Houston presented those of Mr. Stuart, of Galveston. Mr. Smyth, of Newton, also presented his credentials.

On motion of Mr. Taylor of Houston, Messrs. Gentry, Burke, Stuart and Smyth took the oath of office and seats in the House.

Mr. Davis of Webb introduced an ordinance relative to Internal Improvements, amending the Constitution, Sec. 1st, so as to impose a sufficient tax on tax payers living within counties where the county seats thereof are within thirty miles of any proposed road, canal or improvement of bays or coast, to pay half the