



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable W. Lee O'Daniel
Governor of Texas
Austin, Texas

Dear Governor O'Daniel:

Opinion No. O-1726
Re: May the Governor grant a
second thirty day reprieve
in a capital case.

We are pleased to reply to your letter of November 22, 1939, wherein you present the following question:

"I have been informed that on June 14, 1939, one Harry Lacy was given the death sentence for murder by the District Court in Montgomery County, Texas, and the date of execution set for July 18, 1939. On July 11, 1939, I granted the said Harry Lacy a thirty (30) day stay of execution in accordance with Section 11, Article 4, Constitution of Texas, thereby extending the execution date to August 17, 1939. I have also been informed that an order was granted by the United States Supreme Court on August 4, 1939, staying the execution of Harry Lacy pending the action of that court upon a petition for a writ of certiorari filed by the condemned man, and that on October 9, 1939, the petition for the writ of certiorari, was denied. It is my understanding that on November 17, 1939, Lacy was re-sentenced and given the death penalty by the District Court of Montgomery County, and the execution date set for December 19, 1939.

"Under the foregoing information I would like to know whether or not I have the authority under Section 11, Article 4, Constitution of Texas, to grant Harry Lacy another thirty (30) day stay of execution."

The applicable part of Article 4, Section 11, of the Constitution of Texas (which was adopted at election November 3, 1936) reads:

Honorable W. Lee O'Daniel, Page 2

"The Governor shall have the power to grant one reprieve in any capital case for a period not to exceed thirty (30) days; . . ."

As stated in your letter, you have already exercised the power given you by this constitutional provision to grant "one reprieve". The fact that a petition for Writ of Certiorari has been denied by the United States Supreme Court in the meantime does not constitute this a different "capital case" from the one in which you granted Harry Lacy a thirty (30) day stay of execution on July 11, 1939. It is, therefore, our opinion that you do not have authority to grant Harry Lacy another thirty (30) day stay of execution.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By (Signed) Walter R. Koch
Walter R. Koch
Assistant

WRK:LM

APPROVED DEC. 12, 1939
(Signed) Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

APPROVED OPINION COMMITTEE
BY B. W. B. CHAIRMAN.