



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

Gerald C. Mann
~~REX THE SECRETARY~~
ATTORNEY GENERAL

Hon. M. O. Flowers
Secretary of State
Austin, Texas

Dear Sir:

Opinion No. 0-1945
Re: The time for meeting of the State
Executive Committee and of the State
Convention.

Your letter of recent date, requesting the opinion of this department touching the above matters, has been given our careful consideration.

The statutes pertinent to your inquiry are as follows:

Article 3136, Revised Civil Statutes, reads:

"At the meeting of the State Executive Committee held on the second Monday in June preceding each general primary election, the said Committee shall decide upon and publish the place where the State convention of the party shall be held on the first Tuesday after the third Monday after the fourth Saturday in August, A. D. 1928."

Article 3137, Revised Civil Statutes, reads in part as follows:

" * * * On the third Monday after the fourth Saturday in August 1928, and every two years thereafter, the State executive committee shall meet at the place selected for the meeting of the State convention and shall open and canvass the returns of the second primary election held to nominate candidates for State offices as certified by the various county chairmen to the State chairman, and shall prepare a tabulated statement showing the number of votes received by each such candidate in each county, which statement shall be approved by the State committee and certified by its chairman. At this meeting the State committee shall also prepare a complete list of the delegates elected to the State conventions from each county, as certified to the State chairman by each county chairman. The State chairman shall present said tabulated statement and said list of delegates to the chairman of the State

committee, and shall declare the candidates for each State office who has received a majority of votes cast for all candidates for such office in the first primary election, if any candidate receives a majority of all the votes cast for all the candidates for such office at said primary election, and if no candidate received such majority, then it shall declare the candidate who received a majority of all votes cast for such office at the second primary election, the nominee of the party for such office; and the chairman and the secretary of the State convention shall forthwith certify all such nominations to the Secretary of State." (Emphasis ours).

Article 3139, Revised Civil Statutes, as amended, provides:

"All party State conventions to announce a platform of principles and announce nominations for Governor and State offices shall, except as otherwise provided, meet at such places as may be determined by the parties respectively on the Tuesday after the second Monday after the fourth Saturday in August, 1936, and every two years thereafter, and they shall remain in session from day to day until all nominations are announced and the work of the convention is finished. Said convention shall elect a chairman and a vice-chairman of the executive committee, one of whom shall be a man and the other a woman, and sixty-two members thereof, two from each senatorial district of the State, one of whom shall be a woman and the other a man, the members of said committee to be those who shall be recommended by the delegates representing the counties composing the senatorial districts respectively, each county voting its convention strength, each of whom shall hold said office until his successor is elected; and, in case of a vacancy, majority of the members of said committee shall fill the same by electing some eligible person thereto, but such person shall be of the same sex as vacating member."

It is observed, as pointed out in your letter that as a result of the amendment to Article 3139 in 1937, and again in 1939, the statute reads so as to have the State convention convening approximately one week before the meeting of the State executive committee, notwithstanding the requirement of Articles 3137 and 3138 that the State executive committee shall meet prior to the State convention whereby certain reports by the committee may be made to the convention after its temporary organization of the following day.

The legislative history of Article 3139 is significant. Prior to 1937, Article 3139 provided in part as follows:

"All par., State conventions to announce a platform of principles and announce nominations for Governor and State offices shall, except as otherwise provided, meet at such places as may be determined by the parties respectively on the Tuesday after the third Monday after the fourth Saturday in August 1928 and every two years thereafter * * * *"

The Forty-fifth Legislature, in 1937, amended Article 3139, supra, to provide for the election of 62 members of the executive committee, rather than 31 members as theretofore provided for, and for the election of a man and woman member thereof from each senatorial district of the State. The emergency clause of this amendatory act of 1937 referred only to the change in the statute whereby women would have equal representation on the executive committee.

This amendment, however, read that the State convention should meet on Tuesday after the second Monday after the fourth Saturday in August, rather than on the Tuesday after the third Monday after the fourth Saturday in August.

Likewise, the Forty-sixth Legislature, in 1939, amended Article 3139, supra, adding the provision for a vice-chairman of the executive committee, in addition to the chairman, one of whom should be a man and the other a woman. This change alone is recognized in the emergency clause to the amendatory act. However, the amendatory act in 1939 likewise read that the State convention should meet on the Tuesday after the second Monday after the fourth Saturday in August, thereby following the terminology in this respect of the 1937 amendatory act.

We therefore have the anomalous situation whereby Article 3137 requires the State executive committee to meet on the third Monday after the fourth Saturday in August for the purpose of tabulating the votes received by each candidate, and preparing a complete list of the delegates elected to the State convention, whereupon "the state chairman shall present said tabulated statement and said list of delegates to the chairman of the State convention immediately after its temporary organization on the following day, for its approval or disapproval". Likewise, Article 3138 in its provision "the State convention shall canvass the votes cast in the entire state for each candidate for each state office as shown by the statement thereof presented to it by the State committee". Whereas, under Article 3139, supra, as amended, the State convention is described as meeting on the Tuesday after the second Monday after the fourth Saturday in August, which is obviously prior to the meeting of the State executive committee.

In resolving this conflict between the statutes, we can only seek to achieve the result which, in our opinion, was sought by the Legislature. Clearly, Article 3137, supra, in its provision "the state chairman shall present said tabulated statement and said list of delegates to the chairman

of the State convention immediately after its temporary organization on the following day, for its approval or disapproval", establishes the legislative requirement that the State convention should follow the meeting of the State executive committee.

You are, therefore, respectfully advised that it is the opinion of this department, under the conflict in the statutes described above, that effect should be given to the requirements of Articles 3137 and 3138, supra, whereby the State convention shall meet on the day following the meeting of the State executive committee. Since under Article 3137, supra, the committee shall meet on the third Monday after the fourth Saturday in August, it follows that the State convention should meet on the following Tuesday.

Trusting that we have adequately answered your inquiry, we remain

Yours very truly

ATTORNEY GENERAL OF TEXAS

By /s/ Zollie C. Steakley
Zollie C. Steakley
Assistant

XCS:ob:jrb

APPROVED FEB. 24, 1940
/s/ Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

APPROVED OPINION COMMITTEE
BY BWE, Chairman