



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

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

Dear Sir:

Attention: John Vickers
Franchise Tax Attorney

Opinion No. O-2194
Re: Interpretation of Article 3083,
Revised Civil Statutes, 1925,
relating to tabulation of elec-
tion returns by the Secretary
of State.

This will acknowledge receipt of your letter of June 11, 1940, requesting the opinion of this department as to the proper date for tabulating election returns in accordance with the provisions of Article 3083, Revised Civil Statutes, 1925.

Article 3083, Vernon's Annotated Civil Statutes, reads as follows:

"The Secretary of State, in the presence of the Governor and Attorney General, or either of them, on the fourth Monday in November next after said election, shall open all the election returns received by him, and correctly add up all the votes cast in the several counties for each of the said electors, and cause the result thereof, with the names of those elected, to be published forthwith in some newspaper printed at Austin, and shall issue certificates of election to the persons so elected."

In this connection you point out that:

"This office notices that there are only three Mondays in November after the general election on November 5. The fourth Monday in

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November is November 25 and the fourth Monday after the general election is December 2. We feel that in all probability the legislature intended this date to be the fourth Monday in November, however, the awkward position of the words creates considerable confusion."

Articles 2930, 3079 and 3086, Vernon's Annotated Civil Statutes, read as follows:

"Art. 2930. A general election shall be held on the first Tuesday after the first Monday in November, A.D. 1926, and every two years thereafter, at such places as may be prescribed by Law, after notice as prescribed by Law. Special elections shall be held at such times and places as may be fixed by Law providing therefor. In all elections, general, special, or primary, the polls shall be open from seven o'clock A.M. to seven o'clock P.M. in all counties having a population of 150,000 or more according to the last Federal census and in all other counties the polls shall be opened at 8 A.M. and shall remain open until 7 P.M. The election shall be held for one day only."

"Art. 3079. On the Tuesday after the first Monday in November, A.D. 1932, and on the Tuesday next after the first Monday in November, every four years thereafter, or at such other times as the Congress of the United States may direct, there shall be elected by the voters of the State, as many electors for President and Vice-President of the United States as the State of Texas may at that time be entitled to elect, no one of whom shall be a person holding the office of Senator or Representative in Congress, or any office of trust or profit under the United States."

"Art. 3086. An election for the election of a Senator from Texas to the Congress of the United States shall be held on the first Tuesday after the first Monday in November of every year immediately preceding the fourth day of March when the term of any United States Senator from the State of Texas to the Congress of the United States is to expire. At such election no person shall be qualified to vote for any candidate for United States Senator

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unless he is a qualified elector in any election held to elect members of the most numerous branch of the Legislature of this State."

In construing a statute the consideration of primary importance is the intention of the Legislature. *Koy vs. Schneider*, 110 Tex. 369, 218 S.W. 479, rehearing denied, 221 S.W. 880; *Barnes vs. State*, 75 Tex. Crim. Rep. 188, 170 S.W. 548, L.R.A. 1915c, 101. The language employed by the Legislature must not be overlooked. It is presumed to have been selected with deliberation. *Smith vs. Texas Company (Com. App.)* 53 S.W. (2d) 774.

Applying these principles, it is clear that the Legislature intended that the Secretary of State perform the duties set forth in Art. 3083 in the month of November. The statute provides that he shall "on the fourth Monday in November next after said election" proceed to tabulate the returns. It is also clear from Articles 2930, 3079 and 3086 that the general election will always fall on the first Tuesday after the first Monday in November. If Article 3083 be construed to mean that four Mondays must elapse after the election before the Secretary of State shall tabulate the returns then that officer can never act in the month of November as Article 3083 directs. It follows that the phrase "on the fourth Monday in November next after said election" means the same as if the Legislature had said "the fourth Monday in November next succeeding the date of said election" or "the fourth Monday in November in the year of said general election".

It is therefore the opinion of this department and you are respectfully advised that November 25, 1940, is the proper date for the Secretary of State to tabulate the election returns in accordance with the provisions of Article 3083, Vernon's Annotated Civil Statutes.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Walter R. Koch*
Walter R. Koch
Assistant

By *James D. Smullen*
James D. Smullen

APPROVED JUN 24, 1940

Gross
FIRST ASSISTANT
ATTORNEY GENERAL

JDS:jm

