



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

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

Dear Mr. Flowers:

Opinion No. 0-2841

Re: Effective date of constitu-  
tional amendment, Article  
IV, Section 26, if such  
amendment should be adopted.

We acknowledge receipt of your letter of date  
October 22, 1940, requesting a legal opinion, as follows:

"Article 5940 of the Revised Statutes as  
passed by the 46th Legislature provides for  
the appointments of Notaries Public by the  
Secretary of State and submitted a Constitu-  
tional Amendment to be voted upon by the  
people at the November 5th Election carrying  
that law into effect.

"Section 3 of the act provides that the  
act should become effective in the event and  
when the amendment to the Constitution of  
Texas proposed by Senate Joint Resolution No.  
6 of the regular session of the 46th Legisla-  
ture becomes a part of the Constitution.

"A great many applications are now being  
made for appointments immediately after the  
November Election in the event the amendment  
receives a majority vote.

"When will the Secretary of State be  
authorized to make appointments of Notaries  
in the event that amendment carries?"

Article XVII, Section 1, of the Constitution, with respect to the mode of amending the Constitution, provides that:

" \* \* \* It shall be the duty of the several returning officers of said election, to open a poll for, and make returns to the Secretary of State, of the number of legal votes cast at said election for and against said amendment; and if more than one be proposed, then the number of votes cast for and against each of them; and if it shall appear from said return, that a majority of the votes cast have been cast in favor of any amendment, the said amendment so receiving a majority of the votes cast shall become a part of this Constitution, and proclamation shall be made by the Governor thereof."

Article 3034 of the Revised Civil Statutes provides:

"On the fifteenth day after the election, the day of election excluded, and not before, the Secretary of State in the presence of the Governor and Attorney General, or in case of vacancy in either of said offices, or inability or failure of either of said officers to act, then in the presence of either one of them, shall open and count the returns of the election."

This Article, as a sequence of Article 3033, controls the answer to your inquiry.

You are therefore respectfully advised that upon the Secretary of State's counting the returns of the election in the presence of the other State officers named, if it shall appear from said returns that a majority of the votes cast have been cast in favor of the amendment, the amendment thereupon becomes a part of the Constitution. See Texas Water & Gas Co. vs. City of Cleburne, 21 S. W. 393.

Hon. M. O. Flowers - page 3

The effective date of the amendment if carried does not depend upon the Governor's proclamation. This was determined in an early case by Judge Willson of the Court of Criminal Appeals, wherein he said:

"Our construction of this provision is that it is the ascertained majority of the vote of the people, and not the proclamation of the Governor, which gives force and effect to the amendment. \* \* \* We are of the opinion, therefore, that as soon as the election returns were canvassed, and it was ascertained that a majority of the votes cast were in favor of the amendment, it became a part of the Constitution, and was in full force and effect from that date." -- Wilson vs. The State, 15 Tex. Ct. Apps. Rep. 150.

Very truly yours

ATTORNEY GENERAL TEXAS

By

*Ocie Speer*  
Ocie Speer  
Assistant

OS-MR

APPROVED OCT 26, 1940

*Gene B. Mann*  
ATTORNEY GENERAL OF TEXAS

*OK  
Flowers*

APPROVED  
BY  
*BWT*