



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Harry Boyd
County Attorney
Henderson County
Athens, Texas

Dear Sir:

Opinion No. C-4797
Re: County executive committee has authority to name nominee for office of tax assessor-collector where nominee at primary election died after said election and before the results were canvassed.

Your request for opinion upon the following stated question:

"Does the County Executive Committee have the power to name a nominee for the office of Tax Collector-Assessor, where the candidate who received a majority vote, for that office at the general primary election, died after said election and before the results were canvassed."

has been received and carefully considered by this department.

Article 3165, Vernon's Annotated Texas Civil Statutes, reads as follows:

Art. 3165. Nomination declined

A nominee may decline and annul his nomination by delivering to the officer with whom the certificate of his nomination is filed, ten days before the election, if it be for a city office, and twenty days in other cases, a declaration in writing, signed by him before some officer authorized to take acknowledgments. Upon such declination (or in case of death of a nominee), the executive committee of a party

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or a majority of them for the State, district or county, as the office to be nominated may require, may nominate a candidate to supply the vacancy by filing with the Secretary of State in the case of State or district officers, or with the county judge in the case of county or precinct officers, a certificate duly signed and acknowledged by them, setting forth the cause of the vacancy, the name of the new nominee, the office for which he was nominated and when and how he was nominated. No executive committee shall ever have power of nomination, except where a nominee has died or declined the nomination as provided in this article."

Articles 3172 and 3173 of the Revised Civil Statutes of 1911, which are now codified by Vernon as Article 3165, V. A. C. S., supra, were construed by the Supreme Court of Texas in the case of Gilmore v. Waples, et al, 188 S. W. 1037. We quote from the court's opinion as follows:

". . . The powers of a State executive committee in respect to making nominations for its party are dealt with in Articles 3172 and 3173 of the Revised Statutes. It is provided in Article 3172 that in case of the death of a nominee for a State office, or the declination of such a nomination by a nominee, the State Executive Committee of the party may nominate a candidate to supply the vacancy. The succeeding article, Article 3173, declares:

"No executive committee shall ever have any power of nomination, except where a nominee has died or declined the nomination as provided in Article 3172."

"There is nothing ambiguous about these two articles. Nor is their intention in any wise obscure. They very plainly confer upon a State committee the power of nominating a candidate for a State office in instances where there has been a previous nomination and the nominee has either declined the nomination or has died. Just as unequivocally

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they deny such power to the committee in all other instances. The language of Article 3173 is pointed, clear and certain, and there is nothing about it or its context that would warrant a court in setting it aside. A statute so plain and unmistakable leaves nothing for interpretation or construction. All that courts may do with such a statute is to observe it and enforce it. . . ."

Articles 3124 and 3125, Vernon's Annotated Texas Civil Statutes, provide for the county executive committee to canvass the returns of the election and declare the result. Article 3125 also requires the chairman of the county executive committee to certify as nominee the candidate who received the necessary vote to nominate. Of course, the nominee cannot be officially and legally known until the returns have been canvassed and the results declared in accordance with law.

It is our opinion that your question should be answered in the affirmative, and it is so answered.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Wm. J. Fanning*
 Wm. J. Fanning
 Assistant

WJF:GO

APPROVED AUG 29, 1942
Gerard C. Mann
 ATTORNEY GENERAL OF TEXAS

