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# *State and Local Government in Texas*

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# State and Local Government in Texas

*Third Edition*

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# *Preface*

This book, written to serve as a text for undergraduates in the colleges and universities of Texas, treats all important phases of state and local government in this state. It is our conviction that state government is now so broad and detailed that a text attempting to cover all fifty states will of necessity omit the very things the student needs to make him an intelligent citizen and voter in his own state. The special purpose of this volume is to provide the reader a reasonably comprehensive introduction to the government and politics of the state of Texas.

In these days when a new concept of federalism is emerging, through a mingling of activities on all levels of government, some comprehension of their working relationships is essential. In instances where the tasks are shared by federal and state agencies, the co-operative activities are explained as they apply specifically to Texas.

Substantial revisions have been made in this edition. In this we have been guided by our own experience with the text and by suggestions from others. Simplification of treatment has been a primary objective. Detailed discussions of complicated subjects, such as the state's administrative system, have given way to brief statements of essential principles and procedures. Additional subjects of prime importance have been incorporated. The state's growing water problem and the issues involved in the system of water rights, so significant to every citizen, have been given more extended treatment. The state's political patterns and the development of current political alignments is an important new subject. The problems involved in the current movement toward constitutional revision have been appraised. In preparing the materials, an attempt has been made to give meaning to the factual information by presenting the functions and services of government in the context of the fundamental issues and problems to which they are related.

Our indebtedness to others who supplied materials and advice for this text is a heavy one. Officials in the various state agencies have been co-operative in providing both materials and illustrations. Professor John Tower—of Midwestern University, and Republican State Committeeman—contributed valuable information on the political patterns of the state and especially the role of the Republican party in Texas. Our thanks also go to Dr. David W. Knepper of the University of Houston for his excellent contribution on the municipal government of Houston, and to E. L. Guyon of the State Comptroller's Office for his technical services.

C.P.P.
S.B.M.
G.C.H.

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*State and Local Government in Texas*

# 1....

# *Position and Patterns of American State Governments*

Before undertaking the study of state government as such, or the study of Texas government in particular, we should make a general survey of all the states to see how the governments of these units fit into the national governmental picture. It might have been possible one hundred years ago to study state government as a separate and almost independent unit of government; such a study today would have little meaning. Indeed, so much has the position of the state as a force in government changed in recent years, that there are many who are asking, "Is the state, as a really effective unit of government, on its way out? And if it is on its way to ultimate extinction, is this change being made with the consent and understanding of the people?" Does the reader of this chapter, for instance, as one of the people, really know to what extent he favors taxes levied and collected, funds appropriated, and policies determined for the regulation of business, individual relations, and civil rights by the national government?

Let us take a broad view of this thing we call "the state" so that we may better take an analytical view of one state, Texas, in the chapters that follow.

## THE STATE, WHAT IT HAS BEEN

The American federal system of government was legally created in 1789 by the ratification of the Federal Constitution. The framers of the Constitution, dedicated to the principle of government by consent of the governed, felt it necessary to keep most of the powers of government close to the people. The Constitution therefore emphasized the

sovereign position of the states by providing that the federal government shall be composed of granted or delegated powers only, with all other governmental powers reserved to the states, or to the people. The Preamble of the Federal Constitution set forth as the objectives of government to "establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty. . . ." With the exception of providing for the common defense, these objectives could as well be met by state and local governmental action as by action of the national government.

The superiority of state and local government was maintained practically intact down to the Civil War. That great struggle, together with the knotty problems which followed it, started a trend that has challenged the position of the states as governmental units. Corruption, inefficiency, and a general tone of political depravity weakened state governments so that by the end of the nineteenth century, problems caused by rising corporations, industrial and labor conflicts, and other economic changes which came with a rapidly increasing population, taxed the capacities of state governments beyond their abilities. The first half of the twentieth century with its two major wars and one great depression further emphasized the weakness of state governments as then constituted and functioning. State governments, like the railroads, could have held their own better if they had modernized their structure and organization, and provided the public services which the people were coming to expect from some level of government.

## STATE GOVERNMENT, WHAT IT IS

State government today is, as a rule, organized with almost the same legal foundation it had when it started in 1788. The first eleven amendments to the Federal Constitution were designed to strengthen the place of state government. The Thirteenth, Fourteenth, Fifteenth, and Nineteenth Amendments were designed to limit the actions of state governments in certain respects, particularly in the matter of suffrage. Functionally, the state governments are doing more than they have ever done. In such fields as education, conservation, roads and highways, regulation of business, health, safety, and general public welfare, all states have expanded their services to an extent which would have been unbelievable a half century ago. Local governments within the states, too, are themselves beginning to search for an organization and

a way of operating that will enable them to satisfy the popular clamor for public service. Even the county, the most traditionalized level of government, is bending to the pressures of modern inventions, growing populations, and metropolitan centers.

We should not forget that state and local government has a hand in almost every action that affects individuals. Birth, marriage, and death certificates, with all they represent governmentally, come from the state. Practically all rules that govern the operation of automobiles, trucks, and buses are made and enforced by the states. The safety of our persons and property from criminals is almost completely in the hands of state and local governments and their police officers and judges. Indeed, there is no general federal criminal law or police force. Of course, there are special federal criminal laws, the violation of which brings criminal punishment. And there is a growing trend in the federal government to assume further jurisdiction in the field of general criminal law, a trend which if continued will bring about the need for a federal police force.

Despite the far-flung activities of present day state governments, the states are performing an ever-decreasing proportion of the total government services rendered to the people. Many functions that were once performed exclusively by the states have been shifted wholly or partially to Washington. Thus many "little Washingtons" are being set up in the states. The telephone directories of most large cities and many county seat towns will show many telephones assigned to United States Government offices. Modern inventions with their consequences on economic and social life have almost obliterated state and county boundaries in many areas of human activity. Road building, for instance, is no longer a matter only for the states; it is national and international. Many of the older functions of government and most of the newer ones are similarly characterized. Within the states, many of the older government functions formerly performed at the local level have been reseated in the state government. This has caused, and is causing, a consolidation of governmental units. Likewise, the shifting of former state functions to Washington is causing a concentration of governmental activity there. But this centralization has not resulted in a consolidation of states as is the case within the state. If in the long run certain governmental services can best be administered in units smaller than the nation but larger than the states, smaller than the state but larger than the county, we can expect an expansion of the principle of regionalism, both within our national and our state governments.

## THE STATE, ITS FUTURE

To the typical American the word "government" today means the government centered in Washington, D.C. His newspaper carries daily many stories with Washington date lines. He sees his federal government and its personnel daily on his television set. He would recognize most national governmental figures if he met them on the street. He knows the names of his United States Senators, the Vice-President, the Secretary of State, and Supreme Court members, but cannot name his state senator, lieutenant-governor, secretary of state, or the members of his state supreme court. When he wants more money for roads, schools, old age retirement, or the development of some local governmental project, he not only asks his state legislature for appropriations for these things but he also asks for federal aid. If he thinks some agent of state government is mistreating him, he asks a federal judge to make the state agent change his ways. One might question, upon pondering these phenomena, whether state government has any future at all. He might wonder even more when considering the revenue raising capacity of the federal government as compared with that of his state.

Although the above observations are pertinent, they nevertheless do not mean that the American people are ready to give up their state and local governments as sovereign political units. They want the material and physical things which the money from Washington will buy. They know that in certain areas, like regulation of big business and big labor organizations, federal action is necessary. On the other hand, they know that the bigger a governmental organization becomes, and the farther away it moves from the people, the more difficult it becomes to control. In such personal and individual matters as what they eat and drink, where they live, the kind of profession or vocation they follow, when and where they go, whom they marry, and with whom they associate, they want to make sure that the government that controls these areas will be very sensitive to the people's wishes. They still think the term "federal police force" suggests something bad.

Tradition, the fear of too much centralization of power in Washington, and the increased efforts of state and local governments to become more effective and efficient will likely guarantee the continuance of states as important units of government. They will continue to play an important part in the matter of suffrage, parties, and elections. They

will serve as the basic units for the selection of the members of the legislative and executive branches of the federal government. They will keep a firm grip on the legal actions of the agents of the federal governments so long as the jury system remains in local hands. They will continue to keep the peace among the citizens. For the foreseeable future they will take the lead in providing such services as education, public health, and conservation of certain natural resources.

However, if the states fail to satisfy the people in providing services in these fields, we can expect to see a continuing decline in the relative importance of the states in these areas. And if the federal government continues to preempt the field of income taxes where the maximum tax rate is now 91 per cent, and to move deeper into such tax fields as sales taxes, ultimately most, if not all, public money will have to come from Washington. The culmination of this trend would eliminate the American federal system as a going concern in government.

## THE STATES AND THEIR CONSTITUTIONS

Each of the fifty states has come into the Union with its own state constitution. These constitutions are designed to provide in broad, general outlines the machinery for the states' governments and the legal limitations on the powers which the agents of government may exercise. These state constitutions are usually unable, however, to throw much light on the actual mechanics of state government. This is due to two conflicting factors. First, state constitutions at the outset have been evolved primarily from statutory (or local) origins. Second, constitutional (or federal) provisions of law, which are designed to limit the authority and actions of state and local agents of government, have undergone extensive changes in interpretation in the federal courts.[1] This will be discussed in detail later in this chapter, under the heading "The States and the Fourteenth Amendment."

Today's state constitutions average about seventy-five years of age. They range in length from Vermont's or Rhode Island's approximately 6,000 words to Louisiana's more than 200,000. Most have been freely amended, some as many as 400 times. Amendments are initiated in three ways: (1) by the state legislature; (2) by constitutional conventions; and (3) by formal petition. Most states use both the legisla-

[1] Statutory law and constitutional law are defined in Chapter 2.

ture and the convention methods; about one-fourth use the petition method; New Hampshire uses only the convention method. In all states except Delaware amendments must finally be ratified by popular vote.

## THE STATE AS A POLITICAL UNIT

Being governments of sovereign units, it is natural and essential that state governments make policies for the people of their respective territories. Since governmental policies made at any level of government must reflect the will of the people at that level, it is necessary for the people of the state to select their policy makers, namely, the agents of the legislative and executive branches, then to influence them through petitions commonly known as lobbying. The Federal Constitution recognizes this political function of the state when it provides in Article I, section 2, that the states determine the qualifications for their own voters, not only when these voters are voting for their own state policy making officials, but also when they are voting for the national policy makers.

The states vary considerably in their election laws. In determining qualifications for voters, for instance, all states have general requirements of age, residence, and citizenship; but they differ as to what constitutes the proper measure of age, residence, and citizenship. Georgia and Kentucky have a minimum age limit for voting of eighteen years; Alaska, nineteen; Hawaii, twenty; twenty-one in the rest of the states. About one-fourth of the states permit voting after six months' residence in the state; a few require two years' residence. About one-third of the states require some sort of literacy test for voting. In all states except three some form of registration is required of all prospective voters, and in five states poll tax payments are required. Almost all states exclude felons, insane persons, and the severely mentally retarded from voting. Nominations for some offices are made by conventions in five states, but the direct primary as a nominating instrument has attained almost universal acceptance. Two states, Maryland and Georgia, make use of the electoral college in their state elections. Seventeen states select their high court judges on a non-partisan basis, and two states, Nebraska and Minnesota, select the members of their law making bodies in this manner.

There are about eighteen states that might well be called one-party states, since one party usually wins all the elections in these states.

Five of these states are Republican and thirteen are Democratic. In many of the other thirty-two states there are one-party islands of cities and counties. Much confusion has arisen in these one-party areas in regard to the minority voters. The states cannot provide by law that the minority should win sometimes, as it does in providing for the makeup of juries, without sacrificing the principle of majority rule. The United States Supreme Court has held that in these one-party areas the majority party must let the minority help it select the majority candidates for the general election. Nineteen states have some form of popular initiative for making statutory law, and twenty-one states use some type of popular referendum. Twelve states provide some form of recall procedure.

## THE STATE AND ITS LEGISLATURE

The people in each state have almost a free hand in determining the kind of governmental machinery they will have to make their laws. No two of the fifty states have identical law making bodies, although there are some general features common to the legislatures of all the states.

Forty-nine states have two-house (or bicameral) legislatures; Nebraska has a one-house (or unicameral) lawmaking body. All states use some type of population, district, or territorial unit as a basis of representation. In practically all states the rural areas are over-represented in the legislature. In every state it is possible for less than fifty per cent of the people to elect a majority of the legislators. In about one-fourth of the states less than thirty per cent of the population is needed to elect a majority in the lower house, and less than twenty-five per cent can elect a majority in the senate.

The legislatures vary in size from 52 in Delaware (17 senators, 35 representatives) to 423 in New Hampshire (24 senators, 399 representatives). Nebraska's unicameral legislature has 43 members. No state has devised an accurate measuring stick for determing the ideal proper size for a state legislature.

Compensation of legislators is low in all states, but in some it is lower than in others. About one-third of the states pay on a per diem basis, the daily pay ranging from five to thirty dollars. About two-thirds of the states pay on an annual or lump sum basis; this compensation ranges from $200 to $15,000 per biennium.

About two-thirds of the states now have biennial sessions, but the trend is toward more annual sessions. About one-third of the states limit the regular sessions to sixty days, while two-fifths place no limitations on the length of the regular session.

## Common Problems of State Legislatures

There are certain problems, varying somewhat in detail, that are nonetheless common to all state legislatures. Among these might be mentioned the following:

1. How to establish responsive and publicly recognized legislative leadership. Few state legislatures have the unifying force of good party organization to help them in this respect.
2. How to devise a really true and equitable base for representation of the people. It has been too easy for special interests to exert influence over and beyond their numbers and public importance.
3. How to save the legislators from spending too much time as "errand boys" looking after the personal interests of individuals and small groups.
4. How to change the internal organization and rules of procedure so that important pending legislation can be dealt with in a constant calendar flow rather than "log-jamming" toward session's end. This would enable legislators to give proper time and thought to bills under consideration.
5. How to establish research and auxiliary councils and aides so that each legislator will have access to sufficient and dependable facts on all matters of important legislation.
6. How to familiarize the general public with proposed and pending legislation so that they may know whether they would be its beneficiaries or its victims.
7. How to free the state legislature from undue state constitutional restrictions on the one hand, and undue federal restrictions on the other. Most of the state constitutional restrictions were imposed when the legislators were not called on to legislate in the broad areas which make up the legislative field today. Federal restrictions came from both Congress and the courts. These are keenly felt in the field of taxation.

Many attempts and more suggestions have been made for solving these and other problems of our state legislatures. Unless they are solved in the not-too-distant future, the states will continue to lose their sovereign powers.

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## THE STATE AND LAW ENFORCEMENT

The chief executive, or law enforcement officer of every state is, of course, the governor, an elected official. In 34 of the states his term is for four years. In the remaining 16 states the term is two years. About one-third of the states provide that the governor may not serve two consecutive terms.

The office of governor has during the past several years increased substantially in power and importance. This poses a double-barreled hazard in that he can be potentially much more useful to special interests and groups, and therefore that a gubernatorial candidate must have extensive financial resources at his disposal in order to wage a successful campaign.

The increased strength of the governor's office, however, is due in most instances to his position as party leader rather than to his incumbency in office. For, paradoxically, the functions of the executive branch have tended to be broken up into several separate bureaus and agencies, each with its own office and staff, operating more or less independently of the governor and of each other. This fragmentation, blamed by some students of government for the deterioration of the state vis-à-vis the federal government, has been brought about by several factors. Originally, in the case of most states, departmentalization of the executive started as an outgrowth of the Jacksonian era. Also, independent bureaus are characteristically loath to relinquish authority once it is granted. Professional groups, such as teachers, lawyers, doctors, etc., prefer to be controlled by boards of their own kind. Another factor is that federal aid programs usually rely on independent state agencies for their administration. And pressure is exerted continuously by the legislatures through interim committees seeking to investigate and influence the administration of laws; in some cases legislative budget committees have all but usurped the executive budgetary authority.

This trend might conceivably be halted or reversed by a succession of unusually strong governors seeking to reintegrate the executive. On the other hand there exists a prevailing apathy on the part of most citizens and many responsible officials in all three branches of state government. Therefore the eventual outcome is difficult to foretell.

## THE STATE AND LAW INTERPRETATION

State judicial structures have much less in common than do legislatures or executive systems. Nevertheless there are certain similarities we can observe here. For instance, state courts in general fall into four levels. From the top down they are these: A state supreme court, which is the final judiciary authority in the state. Below this are several appellate courts, which handle primarily appeals cases from the next lower courts. These lower courts, called county and/or district courts, constitute the most important level of the state judiciary, handling, as they do, most criminal cases as well as civil cases. At the bottom, or "grass roots" level are the local courts, generally referred to as magistrates courts; these may be embodied in justices of the peace, in rural areas, or in municipal courts in urban areas.

The dissimilarities between state judiciary structures stem primarily from evolutionary processes. As an example, justice of the peace courts have been under attack in various areas on the grounds that the justices possess little or no judicial qualification, and further that they are frequently reimbursed out of fines collected which is tantamount to being paid by the conviction; several states have met this criticism by abolishing justice of the peace courts entirely. As another example, magistrates courts in some cities handle such a large volume of cases, primarily traffic citations, that court procedure must be swift and highly informal; irregularities and inconsistencies inevitably crop up under these conditions, and all states are making changes to improve their local courts.

Another instance of evolutionary change can be found in the methods by which judges are selected. In the older states, those founded before 1830, selection of judges was by appointment, and their terms of office were usually for life. (This early policy is reflected to this day in the cases of the federal judgeships.) Later, in the Jacksonian era, appointments gave way to elections, and terms were considerably shortened, some to only two years. As it stands now, only one-fourth of the states appoint their judges. The trend now is to increase the length of the terms. About one-half of the states have six or eight year terms and several states provide for ten or twelve year terms or even longer.

So widespread are the activities of the courts, and so immediately do they affect the very existence of human and property rights, that

some sort of unifying force is deemed necessary to help the courts work effectively, fairly, and consistently. In slightly over half the states this need is being met by what are known as judicial councils, made up of both laymen and lawyers, which serve to supervise the court structure, establish administrative rules, recommend statutory changes, and carry on continuous research on judicial problems.

The jury, as an aid to the functioning of the judiciary, is undergoing considerable change in many states. Indictment by grand jury is giving way to indictment by information which in effect means indictment by the state's prosecuting attorney. Some states provide for a public defender, and all will furnish counsel to paupers. One question which is now bothering the policy makers in some states is: Should the state pay the cost of appeals for all persons convicted of crimes when the convicted persons are unable to pay these costs? More than one-half the states permit a jury verdict by less than a unanimous vote in civil cases, and some are recommending such a procedure in criminal cases. Selection of jury panels is by jury commissioners in about three-fourths of the states, with the names taken at random from existing lists of taxpayers, voters, census reports, or other general lists. "Blue ribbon" juries are permitted in some states. There are those who believe that juries should be done away with entirely, but no one has come up with a satisfactory substitute.

## THE STATE AS A FINANCIAL UNIT

A study of such topics as taxation and revenue, expenditures, budget systems, and public debts as these terms apply to the governments of the fifty states, convinces one that there is more variation than uniformity in this area of state government. Yet, some common patterns can be noted. All states make use of the general property tax, but in all states this tax source is losing its importance. No state seems to have worked out a satisfactory plan for valuing property for tax purposes. All states are making an increased use of the sales tax, while approximately three-fifths of the states use some form of income tax. About two-thirds of the states derive considerable income from the operation of public service enterprises, such as port facilities, toll bridges, and airports. Approximately one-third of the states operate alcoholic beverage systems.

In all states, the trend has been to shift more fiscal activity from the

local to the state level. In the near future it might be expected that the states will spend as much money as the local units. Even now approximately one-fourth of what the local units spend is collected by the states, and an ever-increasing amount finds its way to the local governments from the federal government. This trend of having an ever-increasing proportion of total governmental revenue collected by the larger units is very significant in the matter of public finance, as well as in the future of the federal system of government. It provides an index for measuring the extent to which government powers are being centralized.

The raising and spending of public money penetrates and influences every area and function of state governments. Until fairly recent times this whole matter of planning the state finances, if one could call what the states did in raising and spending money a plan, was done by the legislative bodies. Not a state had a budget system in 1910. Sixteen years later all states operated under a budget system. Four-fifths of the states now operate under some sort of an executive budget; the other states use a commission or council for the preparation of the budget. In about two-thirds of the states the governor exerts a strong influence in the preparation of the budget; in the others, his control ranges from moderate to weak.

The adoption of the budget is a legislative function in all the states. About one-half the state legislatures use professional staffs of their own to help them in deciding what to do with the submitted budgets. In Arkansas the original requests of the spending agencies are submitted directly to the legislature with the recommendations of the executive budget officer. A few states forbid the legislature to increase any item proposed in the executive budget, but in all states items may be striken out or reduced. Approximately four-fifths of the states permit the governor to veto any item in the appropriation bill. In about one-half the states the pre-audit function, to be used as a tool of administrative control, is performed by an official, either popularly elected or appointed by the legislature; but there is a growing tendency to assign this function to the governor. All states except two now use some plan of central purchasing.

**State and Local Debt**

Not many factual statements about state and local debt can be made that will apply to all the states, except that in all states there is state and local borrowing, and in all states the debts are rapidly growing

bigger. If the current trend of borrowing continues, in a short time the per capita debt for state and local governments will be over $500. Even with this figure, these governments have kept their per capita debt at a much lower level than that of the national government. Some states, like Nebraska, have kept their debt at a very low figure. Others, like Pennsylvania, have built up tremendous debts.

The people in all the states have tried to discourage excessive borrowing by putting constitutional limitations on the borrowing powers of the agents of government. About three-fifths of the states fix a maximum amount which the government may borrow, while about one-fifth determine the limit by a percentage of the assessed valuation of the taxable property. About one-third of the states permit borrowing only when authorized by a vote of the people. About one-half of the states provide that, when borrowing is done, a tax must be levied to meet the costs of retiring the debt.

There has been a tendency since the end of World War II for both state and local governments to borrow on non-guaranteed obligations. For example, a state college may borrow money with which to build a dormitory, but payments must be made from income of the dormitory. All states exercise some control over the borrowing powers of their cities and districts, such as school districts. All states now are developing more effective supervisory controls of local governmental borrowing. As long as it is easy for individuals and governments to spend their future income for present needs and conveniences, the problem of debt management will require much thought by the best thinkers. If the state fails to meet this problem, it will likely be beset with severe financial difficulties.

## STATE AND LOCAL GOVERNMENTS AS PROVIDERS OF SERVICES

When the American federal system of government was established in 1789, it was expected that the national government would look after such big matters as war and peace, conflicts between states, and matters involving commercial activities of people in different states and nations. The states would keep the peace among their people, would restrict individual initiative of people only from hurting other people, and would supply the people with whatever services they might need or want.

Our nation was still quite young when the people in some of the states began to look to government to help the private institutions and organizations furnish such services as education, roads, and protection from epidemics and diseases. As cities began to grow, their inhabitants turned to their local governments for help in keeping a good healthy water supply, and for protection from fires and other hazards with which individuals could not cope. When the fields of business and industry began to organize and operate on a larger scale, individuals turned to their state and local governments for help. Soon after the Civil War all state governments found themselves rendering more and more services to the people.

Although the educational service is one of the oldest which the states perform, today there is still a great lack of uniformity in the methods and machinery which the various states use in performing this service. More than eighty per cent of the states have some type of state board or council of education. All states have some type of chief school head to execute their school laws. This official is selected by popular vote in most states, but there is a growing tendency to fill this office by appointment. For many years, the matter of operating a public school system was left almost entirely to local districts or cities. In most states the local district still remains the major governmental unit for supplying educational service. Since the depression years in the 1930's there has been a rapidly growing tendency for the states to make more and more educational policies and to furnish more and more money for operating the public schools.

Not only are the states playing a bigger part in furnishing the older services, such as education, health, and roads, but lately they are adding to their list of functions such new services as old-age assistance, unemployment compensation, retirement programs, and special aids for other groups of people. A great dissimilarity of programs is to be found between the various states in these newer services. Some states average three times as much old-age assistance payments to individuals as do others. Despite the unifying force of the federal government in the operation of the unemployment compensation programs, some states pay twice as much to their unemployed as do other states.

As one analyzes the role of state and local governments in all the states, he is amazed at the number and variety of services which these governments render. We find more and more people depending upon these governments for more and more of the very necessities of life. If the state and local governments do not or cannot furnish these

services, the people look to the federal government for them. There is nothing on the horizon, unless it be an overwhelming tax burden, that would seem to change this trend. If there is a great potential for happiness in this way of political life, then there is an equally great potential for unhappiness. This fact makes absolutely essential a politically educated citizenry.

## THE STATES AND THE FOURTEENTH AMENDMENT

No study of the position of the states in the American federal system of government would be complete without a discussion of the impact of the Fourteenth Amendment upon current day state governments.

The portion of the Fourteenth Amendment, adopted in 1868, which has been so broadly used to limit the scope of state authority reads as follows: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law." As interpreted by the Supreme Court of the United States in 1873 in the Slaughterhouse cases, and in 1883 in the Civil Rights cases, this amendment: (1) limited only the actions of states or their agents of government, not actions of individuals in dealing with other individuals; (2) offered protection only to those rights and privileges of United States citizenship, such as traveling from state to state, and not to those rights and privileges growing out of state citizenship—these were, in general, protected by the state constitutions; (3) conferred no authority on any branch of the federal government which it did not already possess. The federal government had no authority to look after such matters as whom the state might permit to slaughter livestock in a city, or whether individuals might refuse hotel or travel service to other individuals. The federal courts could declare any act of a state agent of government void if they thought the act conflicted with the limitations of the Fourteenth Amendment; this authority the courts already had. In 1896 the United States Supreme Court interpreted the "equal protection of the laws" phrase as meaning the state could not by its laws show preference to one race over another race, but could regulate races separately, if equal treatment was accorded to each.

Despite the Supreme Court's opinion in the Slaughterhouse cases, Congress passed a law in 1875 designed to protect the civil rights of persons. Among other things, this law made it a crime, punishable by fine and imprisonment, for any agent of government to willfully deprive any person of a privilege or immunity secured by the Constitution or laws of the United States when such deprivations were based on color or race. This law had the effect of making the Fourteenth Amendment a sort of criminal law, the violation of which by a state officer subjected the officer to a criminal punishment. This law remained inactive until a civil rights section was established in the United States Department of Justice in 1939. The first important case decided under this rejuvenated law (*Screws* v. *United States,* 65 S. Ct. 1031) involved a sheriff who beat a Negro, whom he had arrested, until the Negro died. The sheriff was indicted and convicted. The conviction was challenged on the grounds that it made an act criminal if it violated the due process clause of the Constitution, and this clause is so vague that even the judges differ as to its meaning. Sheriffs and other agents of state government would be even more perplexed as to its meaning. Thus, it was argued that state police officers would be afraid to act, lest they violate such an indefinite law. The constitutionality of the law was upheld by the United States Supreme Court.

The Supreme Court has gone further in holding that the "deprivation of privileges" doctrine applies also to civil privileges, thus making the Fourteenth Amendment limit actions of individuals as well as agents of government. Thus, individuals who make legal contracts where race is involved limiting the privileges of other individuals in the purchase of residential property cannot have these legal contracts enforced in court (*Shelley* v. *Kraemer,* 68 S. Ct. 836). The type of thinking that led to the decisions in the Screws and Shelley cases means that the Fourteenth Amendment is something quite different from what it was in 1868, which was a constitutional limitation on the actions of agents of state government. It has become, in effect, a criminal law to discourage certain actions on the part of state officers, and it has the effect of limiting actions of individuals in cases where race or color are involved.

The broad use of the Fourteenth Amendment as a tool for reshaping the policies of state governments came with the decisions in the so-called public school segregation cases. Before these cases, it was assumed that the "equal protection" clause of the Fourteenth Amendment permitted the states to operate segregated schools, provided the schools

for the segregated race were equal. Few, if any, responsible people assumed that the amendment permitted official unequal treatment of the races.

The Supreme Court's decision in the first *Brown* v. *Board of Education* case (74 S. Ct. 686) released on May 17, 1954, declared that "separate educational facilities are inherently unequal," hence, segregated schools were unconstitutional. Under the normal functioning of the operation of the three branches of government, the court would have stopped here, since it had performed its judicial function by declaring an act of a state agent void. The court would have been giving effect to the purpose of constitutional law, namely, to *limit* the actions of an agent of government when these actions were in violation of a provision of the Constitution.

The fact that the court did not stop here after performing its function of judicial review, but decided to set up a plan for a positive program of action on the part of the states, namely, the creation of a system of integrated schools, is significant. Under our form of government, the creation of positive governmental programs is a matter for the legislative and executive branches of government. None of these branches in either the federal or state governments had created a positive program for integration of schools in the so-called segregated states. That the court intended its judgment (not a law) to perform the function of providing integrated schools is confirmed by its statement in the second Brown case (75 S. Ct. 753) handed down in May, 1955. Here, the court said that the Federal District Court judges would take over the supervision of the public schools in their changeover from segregated to integrated schools. In performing this function, the judges would "consider problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools in a non-racial basis, and revision of local laws and regulations. . . ." These are matters obviously left to the states by the Federal Constitution. Thus, the American people found themselves with a so-called policy of integration of the public schools with no law (statutory or administrative), no governmental machinery, no enforcement officers, nor money to operate such a system in those areas where state government did not want integrated schools. It is not surprising, therefore, that the Supreme Court's judgment fell short of full execution.

The recent trend of the federal courts to use the Fourteenth Amendment as a tool to shape state policies has a significance over and beyond the changes sought in the civil rights areas. Since the Fourteenth Amendment does not mention race, creed, or color, the method of interpreting it as it is being applied to these areas might just as reasonably be applied to any area of governmental control which the state might claim. Thus, state laws dealing with marriage, property ownership, and other matters presumably now under state control may at some time in the future first be limited by federal court order. If the state does not substitute some positive program for the one so limited, then an attempt by court judgment to set up a proper program may follow. Should this method of changing state policy fail, the legislative and executive branches of the federal government could come to the aid of the judiciary if they thought the program desirable.

We see here new patterns being shaped for the future of state governments. In this connection it is well to keep in mind that if the federal government through any of its departments should create a policy strongly opposed by a substantial number of people in several states, and should provide punishment for the violation of this policy, enforcement will be hazardous as long as the jury system remains a functioning part of our government. Lessons learned from the failure of the federal government to enforce the Volstead Act (Prohibition) in "wet" areas can still throw much light on state-federal relations by showing that the states and the people of the states still may play a dominant role in the operation of our federal system.

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# *The Development of Constitutional Government in Texas*

Constitutional government is generally regarded as man's greatest achievement because under it the common man has reached his highest development both spiritually and materially. As a philosophy of government it was first conceived in ancient Greece but was not implemented with a written constitution that organized the government and limited its powers. It remained for our American forefathers to establish the first constitutional government based on fundamental law superior to the acts of the governed.

## THE BACKGROUND OF LIMITED OR CONSTITUTIONAL GOVERNMENT

The evolutionary process by which constitutional government was developed covered a period of many centuries. It is the saga of mankind's experience in evaluating historical events according to the great sounding-board of public opinion. In early England great pressures were exerted and charters issued in an attempt to limit the King's powers and to compel him to rule according to law. This was the beginning. In 1215 the Magna Carta was issued. A struggle ensued which lasted for hundreds of years, eventually culminating in civil war. As a result, in 1649 Charles I was beheaded; thirty-nine years later his son James II fled into exile.

Meanwhile the Magna Carta had been reissued thirty-two times, each time becoming broader in scope and embodying more of the essentials of a true constitution. In 1628 it was supplemented by the Petition of Rights, and in 1689, following the so-called Glorious Revolution, the Bill of Rights was issued giving Parliament title to the

throne and abolishing forever the divine rights of kings doctrine in Great Britain. The king's powers were ultimately transferred into the hands of the House of Commons, the representatives of the people.

John Locke (1632–1704) had been the philosopher of the Glorious Revolution in England. He held that all legitimate governments derive their just powers from the consent of the governed and that all political authority rests in the hands of the people; hence government can be created only by the people in person or by their elected representatives, and can possess only delegated powers which the people can modify or revoke at their pleasure. In 1776 Thomas Jefferson incorporated these same great principles into the Declaration of Independence.

These principles formed the basis for written constitutions for the thirteen states. In 1781, during the American Revolution, a union of the states was established under the Articles of Confederation which were replaced, in 1789, by the Constitution of the United States. For the first time in the history of man, constitutional government was established for a nation of free people. Texas, on admission to the Union in 1845, became the beneficiary of this great heritage.

## THE NATURE OF CONSTITUTIONAL GOVERNMENT

### Constitutional Government Is Limited Government

James Madison, the father of our constitution, regarded the principle of a limited government as the basic foundation of our constitutional system. It is the chief purpose of the American Constitution to limit governmental authority. In fact, only limited governments can be constitutional governments. Therefore, totalitarian governments cannot be constitutional governments because supreme authority cannot be limited. Samuel Adams, the father of the American Revolution, said that the constitutions of all *free states* must be *fixed.* This means that a constitution of a free state must be written and made the supreme law of the land and that it must determine the structure and powers of the government. Our forefathers by virtue of their experience under the English monarchy in both England and colonial America reached the conclusion that only a government limited by a fundamental supreme law or a constitution established by the consent of the governed made possible a society of free men.

### The Advantages of Constitutional Government

An unwritten constitution provides no means for a pacific change in the government or a limitation of governmental powers. If the rights of the citizens are violated, their only recourse is force or violent revolution. This is why our forefathers, believing that their rights, which they called the rights of Englishmen, were being violated, had to revolt and wage war in order to obtain their rights. They decided that there was a better way. They realized that if the constitution was written, they could provide in it a provision for changing it by pacific means. Constitutional government is, therefore, a substitute for revolution and civil war. A constitution became the means of self-government because it was made by the people themselves and therefore was their will. As long as the government and its agents followed the constitution, they were executing the will of the people. If they violated the constitution, which was the supreme law, their acts would not constitute law and would be declared by the courts null and void.

***The Difference Between Constitutional Law and Statutory Law.*** Constitutional law is made by the people in whom all political authority or sovereignty is vested, while statutory law is made by legislative bodies who are only the agents of the people and can exercise only the powers which the people have granted them in the constitution. The people are the creators and legislatures are their creatures. The creator is superior to his agent. It follows, therefore, that a constitution which is the act of the creator is superior to statutory law which is the act of the creature.

## THE COURTS GIVE EFFECT TO CONSTITUTIONAL LAW

Our forefathers, in drafting the Constitution of the United States and the various state constitutions, did not expect them to operate automatically. They did not expect executives and legislators to obey them merely on the basis of their oath to do so. They therefore provided for a system of courts as the machinery by which individuals or groups of citizens might challenge and invalidate such executive or legislative *statutory* acts not in harmony with *constitutional* provisions. If the President, or Congress, or both perform any act contrary to the Bill of Rights, any person can legally demand of the federal courts that

it be nullified. Likewise, if a governor, or legislature, or both violate the state constitution, a citizen has recourse to the state courts.

Ours was the first government in history to provide, in written law, this protection of individual rights. In earlier governments any person challenging the validity of a statute or of an act by an agent of government might likely be considered a traitor and be subject to imprisonment or execution; under our constitutional system he is merely exercising his established right. This is the essence of constitutional democracy.

## THE FOUNDATIONS OF SELF-GOVERNMENT IN AMERICA

### The Importance of State and Local Government

State governments were the first governments established in the country. Some of them were established before the independence of the states was declared in 1776, and all of them were established and provided with state constitutions before the independence of the states was recognized by Great Britain in 1783. Our forefathers had revolted and fought eight years for the right of local self-government. This right was one of the most important features of Anglo-Saxon institutions and has remained a major contribution of English-speaking peoples to the science of government. It was the Anglo-Saxon foundation of local self-government that became the source of Jefferson's doctrine of state rights.

There was very little, if any, difference of opinion between the Englishmen of the mother country and the Englishmen of Colonial America on this subject of local self-government. It was as natural and inevitable that Colonial America should demand the right of local self-government as it had been for the Englishmen at home to defeat the attempts of the Tudors and the Stuarts to establish absolute monarchy in Great Britain. However, the American wanted this right guaranteed by a written constitution that was to be supreme over the acts of executives and legislative bodies. Thomas Jefferson expressed this sentiment aptly when he said, "In questions of power, then, let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution."

The right of local self-government has been the most contentious

issue in American politics from colonial times to the present and will continue to be as long as the American people struggle to maintain our constitutional federalism which reserves this right to the states or to the people. It was the determined effort of some of our farsighted forefathers to preserve this right that produced a complete deadlock in the proceedings of the Constitutional Convention of 1787 which framed the Constitution of the United States.

**The States as Barriers to Despotic Government**

It was the contention of these stubborn members of the Convention that unless the states could be preserved the achievements of the American Revolution would be lost and a crushing centralization would result. They believed that there was a strong bias in human nature in favor of tyranny and despotism which would inevitably be the result of centralization, and that the guaranteeing of the right of local self-government in the hands of the states would provide the strongest barrier to centralization and the surest means of preserving federalism. Jefferson said that state governments are "the surest bulwarks against anti-republican tendencies." And again, "The true barriers of our liberty . . . are our state governments."

Samuel Adams, the father of the American Revolution, said in 1789 in a letter to Richard Henry Lee, who made the motion for independence of the states in the Continental Congress of 1776, "I was particularly afraid that unless great care should be taken to prevent it, the Constitution, in the administration of it, would gradually, but swiftly and imperceptibly, run into a consolidated government pervading and legislating through all the States, not for federal purposes *only* as it professes, but in all cases whatsoever: Such a government would soon totally annihilate the sovereignty of the several states so necessary to the support of the confederate commonwealth, and *sink both in despotism.*" A more accurate formula for what has happened in American politics could scarcely have been proposed.

Hamilton in 1788 said, "We may safely rely on the dispositions of the state legislatures to erect barriers against the encroachments of the national authority." Again he said, "It may safely be received as an axiom in our political system that the state governments will, in all possible contingencies afford complete security against invasions of the public liberty of the national authority." He concluded that Congress would never invade the rights of the states *"unless they became madmen."*

It is clear that one of the great purposes to be accomplished by the reserved powers of the states, specifically provided by the Tenth Amendment of the Constitution of the United States, was to preserve the federal character of our constitutional system of government by preventing the centralization of all the powers of government in the hands of a great national bureaucracy under the control of the President. Jefferson foresaw this when he said, "I am not for transferring all the powers of the states to the General Government and all those of that government to the Executive Branch." The state governments have failed to prevent this trend. There are now more than two million employees in the executive department of the national government.

### Future of the States in Doubt

Unless our state governments become more efficient and receive more attention and support from our people, it may confidently be predicted that our states will be abolished, in effect if not in name, by a complete consolidation of the republic. Chief Justice Fuller said, "It is with governments as with religions, the form may survive the substance of faith." The Senate of the Roman Republic continued to exist after its powers had been usurped by the Roman Emperor. The First Republic of France continued to exist in name after it had become a monarchy under Napoleon. Great Britain remains a monarchy in form long after becoming a democracy in fact. These great transitions take place gradually and almost imperceptibly. The Roman people never knew when the Republic fell. Historians discovered this phenomenon by ignoring the forms and examining the actual processes of government. This same process of transformation may take place with any political order. This is why the great English poet Alexander Pope (1688–1744) said, "For forms of governments let fools contest."

It is a matter of substance. The key is: who really exercises the power of government? Shall the people of the individual states exercise the powers of their state governments, or shall the national government be permitted to usurp these powers?

## THE GOVERNMENT OF TEXAS PRIOR TO STATEHOOD

Prior to the independence of Texas from Mexico in 1836 she had been under the control of Spain from 1690 to 1821 and of Mexico from 1821 to 1836.

## Government of Texas Under Spain, 1690 to 1821

Texas was a separate province of New Spain prior to the independence of Mexico from Spain in 1821. The province was a subdivision of the vice-royalty which was the largest division of New Spain and included all the territory claimed by Spain in the new world. The vice-royalty was headed by a viceroy, a little king who was appointed by the King of Spain for an indefinite term of office but was subject to removal by the king at his pleasure. The viceroy was, therefore, the chief executive in Spanish Colonial America and his most important duties were the establishment of new religious missions, new military posts, and the planning of military campaigns.

***The Governor.*** Under the viceroy the head of the province was a governor, appointed and subject to removal by the king. The governor was captain of the military forces of the province and charged with the duty of looking after the welfare of the settlers, and of protecting them from the Indians.

The governor was constantly subject to a rigid inspection by a royal official, and at the close of his term of office his official record was reviewed and appraised. Texas had twenty-four governors while she was a province of Spain.

The court of the province was called the Audiencia (ow-dī en′ sī ās), whose judges were appointed by the king. The first capital of the province of Texas was Los Adaes (Lōs-ä-dý-ās), a military post fifteen miles west of the Red River in what is now Louisiana. When Spain came into possession of Louisiana, the capital was changed to San Antonio in 1772 where it remained until 1821.

***The Alcalde.*** During the period of Spanish control there were three towns in Texas of sufficient importance to have municipal governments. These were San Fernando de Bexar (San Antonio), Nacogdoches, and Goliad. The mayor of the town and its chief judge was called the Alcalde and was elected by the city council, called the cabildo, which was elected by the voters of the town.

## The Government of Texas Under Mexico, 1821–1836

***The Federal Government of Mexico.*** Mexico revolted from Spain in 1812 and by 1821 had established her independence. She divided herself into states, and by 1824 she had adopted a constitution which established a federal republic modeled after that of the United States. The powers of the central government were divided into legislative,

executive, and judicial departments. The legislative department consisted of a Congress composed of a Chamber of Deputies, elected by the people, and a Senate composed of two senators from each state, elected by a majority of the members of each legislature—a government "partly national and partly federal." The Chamber of Deputies represented the people and the Senate the states. The executive department consisted of a President and a Vice-President elected by a majority of the legislatures of the several states. If there was no majority, the Chamber of Deputies elected the President and the Vice-President.[1] The judicial department consisted of a Supreme Court of Justice, Circuit and District Courts. The division of powers between the central government and the states was very similar to that of the United States. The central government was a national government for all the people of Mexico and had jurisdiction of all domestic matters relating to the general welfare of the nation and of all foreign affairs involving war and peace. The states were given control of local matters of a statewide character. The provinces of Texas and Coahuila were united into a single state within the Republic of Mexico and adopted a constitution in 1827.

## The Government of Texas and Coahuila

The state government was divided into legislative, executive and judicial departments.

***The State Congress.*** The legislative power was vested in a congress of one house composed of twelve deputies elected by popular vote. The congress met annually in regular session and could be called into extra session if the welfare of the state demanded it.

***The Executive Department.*** The executive power was vested in a governor and vice-governor who were elected by popular vote for a term of four years. For police purposes the state was divided into three districts each of which constituted the jurisdiction of a chief of police appointed by the governor to assist him in the administration of the laws of the state. The governor was also assisted by an executive council of three voters.

***The Judicial Department.*** The judicial power was vested in a set of state courts subordinate in authority to the courts of the federal government, having jurisdiction over only minor crimes and civil suits involving small amounts. The citizens were encouraged to settle their

[1] For details of the election process, see the Constitution of 1824, Title IX, section 1, Articles 73–92.

civil disputes outside of the courts. There was a supreme court consisting of three chambers, which sat at the capital of the state, and also district and local courts. Trial by jury was provided in the state constitution but was never established.

***Municipal Government.*** Town government of a state consisted of a mayor, a board of aldermen, and a town clerk. The mayor was called an alcalde, elected by the voters, and exercised, in addition to the functions of an American mayor, the powers of a city judge. The aldermen were called regidares. They were not only a town council but were also the police force of the town. The town clerk was called a sindico.

## Relations Between Texas and Coahuila

The uniting of the provinces of Texas and Coahuilo into a single state was a great blunder and was done to place Texas under the control of Coahuilo because Texas was primarily composed of settlers from the United States. This control was fixed in the hands of Coahuila by virtue of the fact that she furnished three-fourths of the membership of the state congress. This arrangement was supposed to be temporary, but was never changed. Despite the fact that the inhabitants of Texas were primarily Protestants, Catholicism was made the state religion and was financially supported by the state. Every other form of worship was forbidden by the state constitution. Other impositions were: (1) that trial by jury was promised but never established, (2) a public school system was provided by the Constitution but was never put into effect, (3) the laws were published in only the Mexican language which most Texans could not read. The denial of these basic Anglo-Saxon freedoms was more than the Texans could tolerate. The failure to establish a public school system was possibly the greatest grievance of the Texans. The whole scheme of things was a tyranny to the American settlers.

## Attempt to Separate from Coahuila

After repeated efforts to induce the government of Mexico to eliminate these abuses without any success, the Texans held a convention in 1833, to take measures to secure a separate state constitution. The convention drafted a constitution modeled after the Constitution of Massachusetts and thoroughly Anglo-American in spirit, and submitted it to the Mexican Congress for approval.

This constitution provided for a legislature to consist of a senate

and a house of representatives elected biennially. The state was to be divided into ten electoral districts with one representative for each hundred votes. The governor was required to be at least twenty-seven years old and a resident of the state for three years preceding election. His term of office was fixed at two years and he could serve only four out of any period of six years. He was to have the usual executive powers, but legislation could be passed over his veto by a simple majority of both houses of the legislature.

The judiciary was to include a supreme court, three district courts, and such inferior courts as the legislature should establish. The jurisdiction of alcaldes, comisarios and sindicos was to be fixed by law. Judges were to be elected by the legislature for terms of six years, removable by impeachment by two-thirds vote of both houses of the legislature. The supreme court was to be composed of a superior judge, acting with the district judges, a majority forming a quorum.

All male citizens over twenty-one years were to be given the vote, and officials were to be directly elected. A bill of rights of twenty-seven articles was proposed, including a guarantee of trial by jury and the establishment of free schools.

Stephen F. Austin was sent to Mexico City to present this constitution to the Congress of Mexico for approval. He was arrested and put in prison. Thus another important grievance was added to the chain of events which led to the Texas Revolution.

In 1834, the legislature of the State of Coahuila and Texas met in January and made some concessions to satisfy the demands of the Texans, including the establishment of the right of trial by jury. But this proved futile, for about this time constitutional government in Mexico was overthrown and Santa Anna was proclaimed dictator. With the abolition of the ten-year-old Mexican Constitution by the new dictatorial military government came the abolition of the states which the constitution had established.

## THE TEXAS REVOLUTION AGAINST MEXICO

After several months of negotiation the Texans decided that there was no hope of securing their rights under the Mexican government, and that only independence could free them from the tyranny of Santa Anna. Accordingly, they elected delegates to a general convention which met at Washington on the Brazos River in Washington

County and on March 2, 1836, issued a Declaration of Independence. On March 16, 1836, this convention proposed the constitution of the Republic of Texas which was ratified by a vote of the people of Texas on the first Monday of September, 1836. This act of the people of Texas established the Republic of Texas on the basis of fundamental law. Finally, Texas had constitutional government based on the consent of the governed in harmony with the philosophy of the Declaration of Independence of the United States.

The Declaration of Independence of Texas gives further reasons for the separation from Mexico. The most important of them are: (1) the violation of the rights of Texas colonists; (2) the sacrifice of their welfare by Coahuila; (3) the denial of trial by jury; (4) the denial of freedom of worship; (5) the inciting of the Indians to attack them; and (6) the refusal to establish a public school system.

It closed with the following impressive declaration, inspired by the philosophy of Thomas Jefferson: "We, therefore, the delegates with plenary powers, of the people of Texas in solemn convention assembled, appealing to a candid world for the necessities of our condition, do hereby resolve and declare that our political connection with the Mexican nation has forever ended; and that the people of Texas do now constitute a free sovereign and independent republic, and are fully invested with all the rights and attributes which properly belong to independent nations; and conscious of the rectitude of our intentions, we fearlessly and confidently submit the issue to the decision of the Supreme Arbiter of the destinies of nations."

Under the matchless leadership of Sam Houston, former Governor of Tennessee and close friend of Andrew Jackson, the forces of Santa Anna were defeated at San Jacinto, April 21, 1836, forcing him to sign a treaty of peace May 21, 1836, granting Texas independence.

## The Government of the Republic of Texas

***The Legislative Department.*** The legislative powers were granted to a Congress composed of a Senate and a House of Representatives which was to contain not less than twenty-four nor more than forty members until the population of the state became one hundred thousand. Each county was to have at least one representative. The representatives were elected annually by the people and were required to be twenty-five years of age and citizens of the Republic of Texas.

The Senate was to contain not less than one-third nor more than

one-half as many members as the House of Representatives. The republic was divided into senatorial districts of equal population, and one senator was elected from each district by the people for a term of three years. A senator was required to be at least thirty years of age, a citizen of the republic and a resident of the district for one year before election. One-third of the Senate was elected every year.

***The Executive Department.*** The executive authority was vested in the President of the Republic, who was elected by the people for a term of three years and was ineligible for re-election. He was required to be a citizen of the republic, at least thirty-five years of age and an inhabitant of the republic for three years before election. If two candidates for the office received the same number of votes the House of Representatives elected one of the two. There was a Vice-President of the same qualifications as the President, who was elected by the people and in case of a tie between the two candidates the Senate elected one of the two. He was chairman of the Senate and in case of removal of the President by death, resignation, or impeachment and conviction, became President. He also acted as President when the President was absent from the republic.

***The Judicial Department.*** The judicial power was vested in a Supreme Court and such lower courts as Congress might establish from time to time. The constitution required the establishment of not less than three nor more than eight District Courts. A district judge was provided for each judicial district.

The Supreme Court consisted of a Chief Justice and associate justices. The district judges constituted the associate justices, a majority of whom, with the Chief Justice, constituted a quorum. The Supreme Court exercised only appellate jurisdiction. No district judge who had tried a case could sit as an associate justice on the Supreme Court and participate in its considerations. The Chief Justice and the judges of the District Courts were elected by a joint ballot of the two Houses of Congress for a term of four years and were eligible for re-election.

There were also county courts and justice of the peace courts. The Congress divided the republic into counties and these in turn into justice of the peace districts. There was a county court for each county, and as many justices of the peace as Congress saw fit to establish. These lower courts had jurisdiction over only small civil suits and misdemeanors. The county judges and the justices of the peace were elected by the people.

***Citizenship, Suffrage, and Eligibility to Hold Office.*** All white people living in Texas at the time of the issuance of the Declaration of Independence were made citizens. All free white persons who came to Texas after this date could, after a residence of six months, become citizens by taking an oath to support the Constitution of the Republic. Every male citizen of the Republic, twenty-one years of age and a resident of the county for six months, was a legal voter. Every male citizen who possessed age and residence qualifications was eligible to hold office, except that no minister of the gospel or priest of any denomination could be President, Vice-President, Senator, or Representative. The Constitution of the Republic made it the duty of Congress to establish a general system of public education.

### Admission of Texas into the Union

The relations between the Republic of Texas and Mexico were never very friendly. The Mexicans were constantly committing crimes against Texans. This promoted a sentiment in the United States favorable to annexation of Texas. It was a natural step to take. In fact, it was inevitable because the people of Texas were primarily former citizens of the United States. After ten years of existence as an independent nation, Texas under the Constitution of 1845, which was a revision of the Constitution of the Republic, was admitted to the Union by a joint resolution of Congress on December 29, 1945.[2]

## EARLY STATEHOOD, 1845–1861

### The Constitution of 1845

This was the first constitution of the State of Texas as a member of the Union. It was drafted by a convention called by Anson Jones, President of the Republic of Texas, in October, 1845, and accepted by the Congress of the United States on December 29, 1845, the date of the admission of Texas into the Union, although the transfer of authority from the Republic to the State of Texas was not made until February 16, 1846. Contrary to the policy of the first states which adopted short constitutions, the constitution of 1845 was almost twice as long as the constitution of the Republic. The framers used the constitution of the

[2] For a more detailed account of these events see the Report of the Citizens Advisory Committee to the Fifty-Sixth Legislature, March 1, 1959, pp. 4–8.

Republic as a working model, along with the proposed constitution of 1833 and the constitutions of the southern states, especially the newly adopted constitution of Louisiana. It was from the Louisiana constitution that the idea of a long constitution was adopted. Louisiana has the longest constitution of any state in the Union, covering 130 pages. (It has become habitual with the Texas legislature to propose new amendments to the constitution at each of its sessions. It now assumes more the character of a code of laws than that of a constitution containing only the general principles of constitutional government.)

The Constitution of 1845 provided for a legislative department composed of a Senate of from nineteen to thirty-three members and a House of Representatives of from forty-five to ninety members. The senators were required to be at least thirty years old and to be elected for a term of four years, one-half chosen biennially. Representatives were required to have attained the age of twenty-one and to be elected for a term of two years. Legislators were to receive three dollars a day for each day of attendance and three dollars for each twenty-five miles to and from the capital. All bills of revenue had to originate in the House of Representatives, sessions were biennial, and ministers of the gospel were ineligible for membership in the legislature.

The governor was elected for a term of two years and ineligible for more than four years in any period of six years. He had to be a citizen and a resident of Texas for at least three years prior to election, and thirty years of age. He had the power to appoint the attorney general, secretary of state, and supreme and district court judges, subject to the approval of the Senate; but the comptroller, treasurer and land commissioner were elected biennially by a joint session of the legislature. The governor could call and adjourn the legislature in case of disagreement between the two houses, grant pardons and reprieves, and veto legislation, but his veto could be overruled by two-thirds of both houses.

The judiciary consisted of a supreme court, district courts, and such lower courts as the legislature might establish. The judges were appointed by the governor for six-year terms with senatorial approval and could be removed by the governor on address of two-thirds of both houses of the legislature. The supreme court consisted of three judges, any two of whom constituted a quorum. A notable innovation was the extension of trial by jury to cases in equity in addition to its usual requirement in civil and criminal cases. Family homesteads not exceeding two hundred acres of land, or urban property not exceeding

$2,000 in value, were exempt from forced sale. The husband was prevented from the sale of the homestead without the wife's consent, and community property was established—a great advance in the promotion of the rights of women. The establishment and proper maintenance of public schools were mandatory. Emancipation of slaves was legalized.

Amendments to the Constitution of 1845 could be proposed by a two-thirds vote of each house of the legislature. If the amendment was approved by a majority of the voters and by two-thirds of both houses of the next legislature, it became a part of the constitution. Only one amendment was made to the Constitution of 1845, providing for the election of state officials rather than their appointment by the legislature. The Constitution of 1845 is basic in the constitutional development of Texas because its modification over the years has produced our present constitution. This development has now reached such proportions that a careful study of it should be made and a new constitution drafted by experts and submitted to the people for their consideration.

## INTERIM CONSTITUTIONS, 1861–1876

***The Civil War and Reconstruction.*** When Texas seceded from the Union, the Constitution of 1845 was modified to conform with membership in the Confederate States of America by the Constitution of 1861.

Only a few substantial changes were made. Texas citizenship was altered to agree with the Constitution of the Confederacy. All officials were required to take an oath to support the Constitution of the Confederacy. The clauses on slavery of the Constitution of 1845 were changed to provide greater protection to that institution. The emancipation provisions of the Constitution of 1845 were abolished and both masters and the legislature were forbidden to free any slaves.

A change in the mode of amendment of the state constitution provided that the legislature, by a vote of two-thirds of all members of each house, could call a convention of delegates elected by the people to alter or amend the constitution without a referendum to the people. It was also provided that the legislature might propose amendments at any regular biennial session which, when ratified by the people, became a part of the constitution.

***The Constitution of 1866.*** After the war of the sixties, called variously by historians the Civil War, the War Between the States, and a revolution imposed by the North, President Johnson ordered Texas to make a new constitution in line with the changes brought about by the war. Acting on the President's suggestion, Texas called a constitutional convention to meet in Austin on February 7, 1866. This convention proceeded to change the old constitution so that it recognized the abolition of slavery, declared secession illegal, and repudiated the war debt. Little was done to change the political state of the Negro. Under this new constitution, J. W. Throckmorton of McKinney was elected governor, and a legislature friendly to the interests of Texas was elected to aid him in bringing about reconstruction in Texas in harmony with the plans of President Johnson.

At this time, however, the United States Congress unfortunately fell under the control of a few short-sighted radical leaders who felt that the South should be further punished, and that the freedmen should be given a status of complete equality with the whites. In order to accomplish these purposes, the South was divided into five military districts by the so-called Reconstruction Acts, and the states were requested to make new constitutions embodying the wishes of the radical Congress.

***The Constitution of 1869.*** The so-called Texas "radical constitutional convention" assembled in Austin in 1868. This convention was composed of ninety delegates, twelve of whom were Throckmorton Democrats and were friendly to the native element of the state; about thirty were moderate radicals; the remainder, including nine Negroes, were radicals of the scalawag and carpetbagger type. The chief issues discussed by these delegates were: (1) the division of Texas into three states; (2) the causes and cure for lawlessness in the state; (3) railroads; (4) elections; (5) education; (6) centralization of powers in the hands of the governor. After several months of work the convention informally disbanded, and its work was assembled into the Constitution of 1869.

***Texas Under Republican Control.*** Because of the disfranchisement of so many of their party, and the close military supervision of elections, the Democrats did not enter a candidate for governor in the election of 1869. The Republicans elected a member of their radical wing, E. J. Davis, governor, and a legislature friendly to his views.

The 12th Legislature which served Texas during the biennium 1870–1872 was undoubtedly the worst that ever assembled in the state. The

senate was composed of eleven Democrats, sixteen radical Republicans, and three moderate Republicans. The lower house contained fifty radicals, twenty Democrats, and fifty moderates. Among the radicals were two Negroes in the senate and nine in the lower house. Needless to say, this group knew little about how a state government should be operated. As a result of this ignorance there began a period of misrule in Texas which definitely precipitated many of the provisions which were written into the constitution of 1876. The people of Texas had learned through bitter experience that when the government is not properly conducted, their own private interests must suffer. They had seen the state and county tax rate increase from fifteen cents on the $100 valuation in 1866 to two dollars, seventeen and one-half cents in 1871; and they had seen the state debt increase from $400,000 to more than $800,000 in less than six months. The people had learned that not only must they control the officers of the government through their vote on election day, but that there was a need for a form of government which would constitutionally hold in check any dishonest or inefficient officeholder who might be elected to a government office.[3]

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[3] The best account of the background and making of the Constitution of 1876 is that found in *Making the Texas Constitution of 1876*, by S. S. McKay, University of Pennsylvania Press, 1924. *Reconstruction in Texas* (1910) by C. W. Ramsdell, and *The Texas Constitution Explained and Analyzed* (1932), by C. D. Judd and C. V. Hall, also present excellent accounts of the background of the present state constitution. Stewart and Clark, *The Constitution and Government of Texas* (1936) gives a good brief statement on the development of the constitution and an excellent discussion on amendment and revision.

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# *The Texas Constitution—1876—*

## Calling the Constitutional Convention of 1875

As soon as the Democrats regained control of the state legislature in the election of 1872, they began to clamor for a new constitution. Not until 1875, however, did the time seem propitious for the calling of a constitutional convention. On January 12 of that year Senator D. B. Culberson formally brought the matter before the senate, and after several weeks' debate a joint resolution calling for a constitutional convention, to meet in Austin the first Monday in September, 1875, was passed by the legislature and approved by the governor. It provided for a general election to be held on the first Monday in August; voters were to cast ballots "for" or "against" calling the convention, and to elect ninety convention delegates, three from each senatorial district. One hundred thousand dollars was appropriated for convention expenses. After a warm summer's campaign involving both delegates and issues, the voters approved the convention by a vote of 59,583 to 30,549.

***Personnel of the Convention of 1875.*** The list of delegates selected to make a new constitution for Texas was composed of forty-one farmers, twenty-nine lawyers, and twenty others representing merchants, editors, stockmen, and doctors. Seventy-five were Democrats and fifteen were Republicans. Six of the Republicans were Negroes. Nineteen delegates had had experience in the Texas legislature. N. H. Darnall of Tarrant County had been a member of the constitutional convention of 1845. Eight had been members of the secession convention in 1861, and one had been a member of the convention of 1866. There were none elected who had been members of the 1869 convention. Three had served as officers in the Union army and several had held high positions in the Confederate army. The convention contained many names prominent in Texas history and government. Among these

might be mentioned: John Henry Brown of Dallas, Sterling C. Robertson of Bell County, John H. Reagan of Anderson County, Webster Flanagan of Henderson County, J. W. Ferris of Ellis County, W. P. McLean of Titus County, W. B. Wright of Lamar County, L. S. Ross of McLennan County, Charles De Morse of Red River County, C. S. West of Travis County, Jacob Waelder of Bexar County, A. T. McKinney of Huntsville, and many others who were leaders in their respective communities. E. B. Prickett of Galveston was named chairman of the convention.

### The Making and Ratification of the Constitution

Taken as a whole, the convention membership represented the idea of retrenchment in government. This conservative feeling is indicated by the inclusion in the constitution of such provisions as those lowering the salaries of state officials, fixing the maximum deficiency debt of the state at $200,000, and eliminating the office of state superintendent of public instruction. The issues producing the greatest amount of discussion were those involving the judiciary, suffrage, education, the poll tax, immigration, railroads, public lands, and salaries.

Although the final draft represented many compromises, and therefore did not completely satisfy any of the delegates, the completed document was approved by the convention on November 24, 1875 by a vote of 53 to 11. After nearly three months of spirited campaigning both for and against the new constitution, on the third Tuesday of February, 1876 it was ratified by the electorate by a vote of 136,606 to 56,652. An analysis of the vote shows favorable majorities in 130 of the 150 counties reporting; by and large, rural sections were overwhelmingly for ratification, while urban areas were mostly against it.

## GENERAL STRUCTURE AND CONTENT OF THE TEXAS CONSTITUTION

The general structure of the Texas constitution is today what it was when it came from the hands of its makers in 1876. The whole document is divided into a preamble and seventeen articles; each article is subdivided into sections. It now fills about seventy average-size printed pages; this is approximately seven pages more than were contained in the original document.

The content of the constitution is well summarized by the seven-

teen article headings. These are: (1) Bill of Rights, (2) The Powers of Government, (3) Legislative Department, (4) Executive Department, (5) Judicial Department, (6) Suffrage, (7) Education, (8) Taxation and Revenue, (9) Counties, (10) Railroads, (11) Municipal Corporations, (12) Private Corporations, (13) Spanish and Mexican Land Titles, (14) Public Lands and Land Office, (15) Impeachment, (16) General Provisions, and (17) Mode of Amending the Constitution. These seventeen titles represented the main phases of state government as they existed in 1876.

***Amending the Constitution.*** No body of men is wise enough or foresighted enough to make a constitution that will fit all conditions arising in the future; hence provisions are made for amendment. The Texas constitution can be amended only with the combined action of the state legislature and the qualified voters. The legislature, at a regular session, by a two-thirds vote of all the members elected to each house, proposes the amendments. The amendment must be published in a weekly newspaper in each county once a week for four weeks. The publication must begin at least three months before the election. Ratification is effected by a simple majority of the electorate. The amendment becomes operative on the proclamation of the governor. Apparently the amending process adopted in 1876 has proved satisfactory, since the amending article has not been changed since that time.

## CONSTITUTIONAL CHANGES SINCE 1876

The constitution of Texas has been amended 141 times.[1] These additions have brought the total length of the constitution to about 46,000 words. About sixty per cent of the adopted amendments have dealt with the legislative, judicial, educational, and taxing articles.

***Changes in the Legislative Article.*** Three amendments to Article III, the legislative article, have dealt with the structure or organization of the two houses, while sixteen have related to legislative powers. It is interesting to note that each of the sixteen amendments dealing with the powers of the legislature has removed existing limitations on legislative action. In other words, the tendency is to give the legislature a freer hand in regulating the economic, social, and political lives of the people. This tendency would be expected for two reasons: first, the original limitations were placed upon the legislature soon after

[1] Four additional amendments are to be voted upon by the people in November 1960.

the Twelfth or Reconstruction Legislature had so ingloriously misruled the state; second, the natural progress and development of the state have brought forth a need for a broader scope of legislative action. The one exception to this general rule is that contained in a constitutional amendment adopted in 1942. This amendment prohibits the legislature from appropriating more money than the existing revenue laws are expected to produce unless such appropriations are authorized by a four-fifths vote of the total membership to meet an emergency or an imperative public necessity. It is made the duty of the comptroller of public accounts to furnish the legislature with whatever information is necessary to enable that body to keep the income and expenditures of the state balanced. The amendment actually confers a legislative power upon the comptroller since he must approve each bill containing an appropriation before it is sent to the governor for his signature.

***Changes in the Judiciary Article.*** More changes have been made in Article V, the judiciary article, than in any other article of the constitution. This article was almost completely rewritten in 1891, when thirteen amendments were added to it. These changes were made primarily to rectify jurisdictional errors and to speed up court procedure. Four other amendments have been added to this article, the most important of which was that adopted in 1945, increasing the number of judges on the supreme court from three to nine.

***Changes in the Education Article.*** Several changes have been made in Article VII, the article dealing with education. Many of those who helped to frame the constitution in 1875 either opposed the principle of public education or were lukewarm toward it. As a result, the provisions establishing the educational system were too narrow and limited to permit its expansion to meet the needs of the people. Eight of the amendments deal with school taxes, funds, or bonds; one provides for an appointive or elective state board of education, and one permits the selection of school officers for terms not in excess of six years.

***Changes in the Taxation and Revenue Article.*** Although Article VIII, the taxation and revenue article, is one of the shorter articles of the constitution, nevertheless it has been amended ten times. The first change in this article occurred in 1879, when farm products in the hands of the producer and family supplies for home and farm use were exempt from all taxation unless two-thirds of the membership of both houses voted to tax them. Further exemptions dealing with religious and charitable organizations and homesteads were adopted in 1928

and 1933, respectively. Two other changes relate to the office of county tax assessor-collector, one relates to local taxes, another to redeeming property sold for delinquent taxes. In order to encourage the early payment of taxes, an amendment was adopted in 1937 giving a taxpayer a discount of one per cent per month up to three months for paying taxes before January. Under an amendment adopted in 1944 the county commissioners' court is authorized to reallocate county tax levies, provided such reallocations are made within the already existing eighty-cent per $100 maximum. In order to give more stability to highway financing, the voters in 1946 authorized setting aside for highway purposes all new revenues from motor vehicle registration fees and motor fuel and lubricant taxes. A rearrangement of state property tax rates was authorized by the voters in 1947, when the so-called "College Building Amendment Proposal" was adopted.[2]

***Changes Dealing with the Executive.*** Article IV, providing for the executive department, has been amended seven times. Four of these changes have dealt with salary adjustments; one has limited the clemency power of the governor by requiring that exercise of this power follow the recommendation of a board of pardons; another conferred upon the courts a part of the clemency power of the governor by permitting the trial judge to suspend execution of a sentence; and the last one, adopted in 1940, authorizes the secretary of state to appoint a convenient number of notaries public for each county. This change was made as a relief to the governor.

***Changes Relating to Suffrage.*** Four of the five sections in Article VI, the suffrage article, have undergone revision. The first change, adopted in 1891, provided for registration of all voters in cities of over 10,000; the second, adopted in 1921, related to payment of the poll tax; the third and fourth changes, made in 1932, permitted certain persons in military service to vote, and required ownership of taxable property as a qualification for voting in tax or bond elections; the last amendment (adopted in 1945) to the suffrage article, exempted servicemen other than members of the regular established services from payment of a poll tax as a requirement for voting—this exemption to be effective until one year after the close of the calendar year in which the war was terminated.

***Other Constitutional Changes.*** Three fundamental changes have been made in respect to the governing of municipal corporations. An amendment was adopted in 1912 permitting home rule charters in cities of more than 5,000 inhabitants; another, adopted in 1920, pro-

[2] See Chapter 9.

vided for collection of taxes in current money; the third, adopted in 1932, provided for construction of sea walls along the coast of the Gulf of Mexico. The article on railroads was amended, in 1890, to give the legislature more control over railroads; in 1933 a home rule charter amendment for counties was added to Article IX, and two changes have been made in the Bill of Rights.

Fifteen changes have been made in Article XVI dealing with general provisions. The most important of these have dealt with such subjects as the fee system, conservation, terms of office of state board members, prohibition, a streamlined oath which all officers of the government must take, and one, adopted in 1940, permitting a municipality operating under its own civil service rules to set terms for its appointive officers at more than two years.

An amendment adopted in 1946 authorized the legislature to provide a retirement system for appointive officers and employees of the state. Under this plan the employee contributes up to five per cent of his compensation, not exceeding $180 per year; the amount contributed by the employee will be matched by a contribution of the state. The amendment also authorized the counties, by consent of a majority of the qualified voters of the county, to provide a similar retirement system for county employees.

***The Voters and Constitutional Amendments.*** Most amendments have been adopted by the voters in general elections; a few were approved at special elections. There is characteristically an alarming apathy, however, among the electorate when proposed amendments are submitted to them for ratification. The average turnout for these elections is only twenty per cent of the qualified voters. This makes it possible for splinter blocs and self-seeking pressure groups, through organized activity, to put across constitutional changes for their own special benefit. What is needed, it seems, is an educational campaign, financed by the state, to familiarize the citizens with the issues involved. Through such a program enough interest could be engendered to muster a representative vote and thereby obviate unfair tampering with the fundamental law of the state.

## THE CONSTITUTION AND OUR CHANGING AGE

The present constitution of Texas has been in force for eighty-five years. These years have seen the state grow from a raw frontier region into a highly developed agricultural and industrial area.

In 1875 the principal mode of travel was by stagecoach or on horseback; indeed it wasn't until that year that the first railroad reached Fort Worth. The tempo of business for most Texas towns and communities could be measured by the speed of stagecoach, wagon, and pony express. Only the wildest dreamers could have envisioned the state highway system of today.

Riding to Austin to attend the 1875 constitutional convention, delegate Edward Chambers of Collin County had his mind on such problems as opening the county west of Weatherford for settlement, finding means of persuading people to come to Texas, and encouraging the development of railroads in the state. Political leaders of the time would have been nonplussed by such terms as unemployment compensation, old-age assistance, and social security. And few Texans knew the meaning or reasons for the existence of corporations.

As noted earlier, numerous attempts were made—141 in all, prior to 1960—to enable the constitution to continue serving the people of Texas. Despite all these amendments, it remains nevertheless a patchwork of obsolete original provisions, disorganized improvisations, and structural omissions. For this reason there has been for many years recurring agitation for a new constitution, or at least extensive revision of the present one.

## THE MOVEMENT FOR A NEW CONSTITUTION

Currently under way is the latest effort to provide Texas with an adequate, modern constitution. In 1957 the legislature directed the Texas legislative council to make a study of the present constitution and authorized the appointment of a citizens' advisory committee to aid in such work and to make recommendations to the legislature and to the people regarding the character of, and method to be used in such revision.[3]

### Making a New Constitution

If a new constitution is to be made, there are several methods which might be used.

First, in imitation of the 1875 procedure, the legislature could authorize a convention of a given number of delegates elected from

[3] *House Concurrent Resolution Number 13.* The citizens' advisory committee consists of 18 members, the governor, the lieutenant-governor and the speaker of the house, each appointing six. The committee report with recommendations are to be made to the Fifty-seventh Legislature in 1961.

districts, perhaps senatorial districts. These assembled delegates would then work out proposals for a new constitution and submit them to the people for ratification. Many persons have misgivings about this method on the ground that such delegates would be unqualified as to knowledge of constitutional law, and that therefore their proposals would once more encumber the constitution with a burden of statutory material; moreover, there is the possibility that some delegates might represent special interests inimical to the general welfare of the state.

To meet these objections a second method has been employed by several states, including California, Maine, New Jersey, New York, Rhode Island, Vermont, Virginia, and West Virginia. It calls for a constitutional commission made up of appointed persons; the number may be small or larger and more representative. This commission draws up a new constitution, which is then submitted to the electorate for ratification. The principal disadvantage of this plan is that the new constitution is framed too far from the "grass roots" level, and the only voice the public can exercise is a simple "yes" or "no" to the whole document, or at best to complete sections of the document.

A third method has been suggested which combines the virtues of both the aforementioned procedures. Like the second plan above it calls for the appointment of a commission; this commission, however, would be a carefully chosen small group of highly qualified experts, numbering perhaps only seven or nine. They would work out the proper content of the new constitution, and their work would then be published and widely publicized via the press, radio, television, and other media of mass communication. After the public had had this opportunity to familiarize themselves with and to discuss the proposed material, an election would be held to choose, from senatorial districts, about ninety delegates to meet in a constitutional convention. Here the delegates, acting in accordance with the expressions and wishes of their constituencies, would frame a final draft of the proposed new constitution and submit it to the voters for ratification.

This third plan is regarded by many as the most nearly ideal, inasmuch as it provides not only for professional guidance in the preparation of constitutional substance but also for an educated and effectively expressed popular will.

### Why the Constitution Needs Revision

Any casual reader of the Texas Constitution comes quickly to the realization that the document violates most of the basic principles for a body of organic law. No responsible government could operate effi-

ciently under such a framework. The principle criticisms of the present Constitution run generally along the following lines:

***The present constitution is encumbered with obsolete and useless matter.*** Some of the provisions have become obsolete because of the passage of time, some because they have been declared unconstitutional, and others because they were to be used for a limited time only. As examples of the many obsolete sections might be included the prohibition against dueling (Article XVI, section 4); the donation of 160 acres of land to heads of families (Article XIV, section 6); and the twenty-five sections of useless verbiage dealing with railroads, since the roads are now substantially governed by the Interstate Commerce Commission.[4] In like manner many sections covering private corporations are no longer necessary under existing statutory regulation.[5] Similarly, several sections dealing with Spanish and Mexican land titles have become non-operative because of being declared unconstitutional by the U.S. Supreme Court.[6]

Other examples of obsolete matter are amendments that were meant to operate only a short time, such as the one authorizing appropriations for celebration of the Texas Centennial in 1936. Also there are unworkable and unused provisions such as the long county home rule amendment, adopted in 1936 and comprising over 3,000 words; this amendment represented a jumble of compromises, badly and incoherently worded, statutory in nature, unworkable in practice, and it has never been used and never will be.

***The constitution needs codification and clarification.*** The present constitution is badly organized and arranged. Codification pertains to a proper and logical arrangement of its material and the provisions. A glance at the present constitution for example, reveals that the pension and retirement provisions are scattered throughout the document and are found in no less than twenty-three separate sections diffused through seven different articles. The office of lieutenant-governor is discussed in ten sections spread over three separate articles. There are numerous other instances of defective organization.

***The constitution needs abbreviation.*** The present constitution is far too long for the materials it includes. While the original constitution was full of wordiness, another reason for its length lies in the many amendments and the detailed provisions for carrying them out that

[4] Found in Articles XVI, XIV, VIII, and III.
[5] Article XII.
[6] Article XIII, sections 2, 3, 4.

could better have been left to statutes. It appears somewhat ridiculous, for example, that each time another county wishes to set up a hospital district it must seek a new amendment to the Texas constitution. Some of the provisions read like legal essays rather than principles of constitutional government. "One of the worst faults of the state constitution," says an able student of the subject, "is the language in which it is written—lawyerese. There are sentences of 50 and 75 words full of 'herebys,' 'hereinaboves,' 'hereunders' and other verbiage." [7]

Long constitutions are not objectionable just because they are long. The objections must rest on other grounds. First among the arguments against them is the fact that long constitutions interfere with and hamper the normal operations of the legislature. They also place excessive burdens upon the courts. Detailed constitutions need frequent amendments, which in turn serve to further increase their length. And lastly, long constitutions confuse and confound the citizens and make it difficult for them to understand their government and to follow its operations.

***The constitution needs modernization.*** Once the obsolete and transitory provisions of the constitution have been eliminated, a long step toward modernization has been accomplished. A further step requires positive provisions under which the entire system of state and local government in Texas can keep their organization, powers, and procedures up to date to meet the increasing demands of modern society.

## THE PLACE OF THE BILL OF RIGHTS IN CONSTITUTIONAL GOVERNMENT

In many ways the bill of rights is more truly representative of the principle of constitutional government than is any other part of the constitution. Much of the main body of any constitution is filled with provisions relating to the structure and composition of governmental machinery; but the bill of rights is given over entirely to a statement of the relation that shall exist between the agents of government and the governed. It is here the individual can find a specific statement of those rights which he can expect to enjoy free, or nearly free, from governmental restraint. The bills of rights in the American state constitutions are standard; there is very little variation from state to state in the content of this part of the fundamental law. An analysis of the

[7] Stuart McGregor, Editor *Texas Almanac, Dallas Morning News.* March 27, 1960.

Texas bill of rights will be in effect an analysis of the bills of rights of all the other states.

**The General Content of the Texas Bill of Rights.**

Article I of the Texas Constitution contains the bill of rights. This article is divided into twenty-nine sections which deal with the following subjects: (1) state rights and political power, (2) equality of individual rights, (3) religious liberty, (4) freedom of speech and press, (5) protection of persons and property, and (6) rights of persons accused of crime.

The Constitution does not use the term "state sovereignty," but does declare that Texas is "free and independent . . . subject only to the Constitution of the United States." This latter clause is really unnecessary because the "Supreme Law of the Land" clause of Article VI of the Federal Constitution invalidates every section of a state constitution which conflicts with any provision either of the Federal Constitution or valid law of Congress, or of a treaty made under the authority of the United States.

The political power of Texas is declared unreservedly to belong to the people of the state. The constitution, being the basis for a constitutional democracy, could not consistently declare otherwise. There would be no point in having a constitution if the government created by it had more authority than the people who created the constitution. The Texas government is pledged to the faith of the people never to become other than a republic in form. In other words, if the legislature of Texas should decide that it would rather have a monarchy than the present form of government, it could not make the change without violating the bill of rights. But here again the federal government stands as a guard over the state government, and is ready to take charge of any state which threatens to give up its republican form of government.

***Equality Under the Law.*** "All free men," says the constitution, "have equal rights." This statement expresses practically the same thought as that stated in the clause of the Declaration of Independence which declares that "all men are created equal." Neither of these statements can be taken literally as applicable to all conditions. They simply mean that all free men have equal rights in the eyes of the government. In other words, when any free person is brought in contact with any governmental official he is to be treated exactly as any other person would be treated under the same legal conditions. Personalities, wealth,

or social standing are to have no influence whatever upon a public official in forming his decision concerning any case. With human nature as it is, we all know that this is only an ideal; but no matter how difficult, it is an ideal worthy of striving to attain.

The equal rights clause does not prohibit the legislature from classifying persons, organizations, or corporations according to their business and applying different rules to them, provided the classification is reasonable.[8] Ex-soldiers, for example, may be exempted from paying tuition in state-supported educational institutions. A city ordinance, however, prohibiting persons under twenty-one years of age from the streets after nine o'clock at night, unless such person was with parent or guardian or in search of a doctor, would deprive such person of his equal rights.[9]

***Religious Liberty Guaranteed.*** Four sections of our bill of rights contain clauses designed to protect our religious liberty. In the first place, it is emphatically declared that there shall never be a religious test required as a prerequisite for holding any office in the state, provided the prospective officer acknowledges the existence of a Supreme Being. This clause is included because every officeholder is required to take an oath that he will uphold the constitution and laws of the state. A person who did not believe in a Supreme Being would not consider an oath binding on his conscience.

We are guaranteed the right to worship Almighty God according to the dictates of our own consciences. It is the duty of the legislature to pass all laws which are "necessary to protect equally every religious denomination in the peaceable enjoyment of its own mode of public worship." This statement does not mean that a person can do any act and escape the clutches of the law merely by saying that his act was done in the name of his religion. A parent's religion might forbid his giving medical aid to a sick child, but the state can require that aid be given to such child when so recommended by a competent physician. Nor could a man have two wives at the same time merely because his religious creed permitted polygamy. No act which is contrary to the peace and safety of the state can be justified under the guise of a religious belief.

In order that church and state may be kept clearly separate, it is provided that no money shall ever be taken from the public treasury

[8] *Beaumont Traction Co.* v. *State,* 113 S.W. 289. *Insurance Co.* v. *Metter,* 185 U.S. 325; 22 Sup. Ct. Rep. 662.

[9] Ex parte *McCarver,* 46 S.W. 936.

for any church or religious purpose, nor shall the state give any of its property to any church organization. This clause does not prohibit the holding of exercises in our public schools in which extracts from the Bible are read without comment and songs are sung and prayers recited, nor does it prohibit the legislature from exempting from state taxes property used only for church purposes.

***Freedom of Speech and Press Guaranteed.*** There was a time when our ancestors could not criticize a public official regardless of how unjust and oppressive his acts might have been. They did not have freedom of speech and press. The constitution now guarantees to every person the privilege of speaking and writing his opinions on any subject provided he does not abuse the privilege. It is difficult to frame a hard-and-fast rule denoting the limitations on the right to speak and write. Generally speaking, a person is free to say and write what he pleases so long as his words or writings do not lead directly to disorder, violence, or a breach of the law. No one, for example, would have a legal right to cry "Fire!" in a crowded theater merely to see people rush from the building. If words spoken in time of war should indirectly lead to violence, they would probably be suppressed. If one speaks the truth from good motives and for justifiable purposes, even though such speaking casts reflections on public officials or private individuals, he would not likely be punished in court for his conduct. The constitution indicates a wider range of legal criticism of public officials than it does of individuals. A person who uses words maliciously to damage the character or reputation of a person or business, or to stir up a conspiracy against the government, could be subjected to prosecution and punishment for libel or sedition.

***Protection of Person and Property Guaranteed.*** Eight sections of the bill of rights are directly concerned with the protection of persons and property beyond that protection which is provided for those accused of crime. A man's person and property is constitutionally protected from all unreasonable seizures and searches. A person accused of crime also has this protection. If a person has papers which an officer knows could be used as evidence in a criminal trial, such papers cannot be unreasonably seized by an officer of the government to be presented as evidence against the person. Before an officer can legally search a home or possessions of a person, he must have a search warrant based on sworn statements of facts particularly describing the person or thing to be searched, and showing the cause why the search is to be made. These facts need not be sworn to by an eyewitness, but the

source of the information upon which they are based must be stated.

The part of the bill of rights which forbids unreasonable seizures and searches is a very important one for the peace and security of the individual. If an officer could enter any private home or look through the private papers and possesssions of a person at any time, there would be little guarantee that a person would have much enjoyment of his private life. Due to the broad application of this clause and the many different types of cases arising under it, the courts have had much difficulty in determining the meaning of unreasonable seizures and searches. Too rigid an application of this clause would enable criminals to conceal stolen property and in other ways escape from the hands of the law, while too lax an application would permit infringement of the most precious of all our privileges, namely, the enjoyment of our homes and private lives without undue interference from outsiders. Where should the court draw the line between a reasonable search and seizure and an unreasonable one? The courts have held that no officer is authorized to break down the door of a residence in the execution of a warrant unless in search of a felonious offender; but automobiles may be stopped on the highways if there is a strong suspicion that the occupants thereof are law violators.

***Bills of Attainder and Ex Post Facto Laws Prohibited.*** No person in Texas is ever to be found guilty of any crime by a bill of attainder. This is another way of saying that no person can be tried and condemned by a legislative body. Every man accused of a crime has a right to have his day in court before he can be legally punished. As we know, our English forefathers did not always have this privilege.

Punishment is never to be meted out under an ex post facto law. An ex post facto law is one that: (1) makes the punishment for a crime greater than it was when the act was committed, (2) requires less evidence to convict, (3) makes an act criminal which was noncriminal when done, or (4) makes any crime greater than it was at the time of commission. This clause tells us that we need not worry about any unknown penalties which might later be placed upon us for acts which we might do now.

***No Imprisonment for Debt.*** Remindful of the days when people were thrown in jail because they could not pay their debts, the framers of the constitution succinctly provided that "No person shall ever be imprisoned for debt." (This protection does not extend to debts owed the state as a result of criminal conviction; people may be imprisoned to "work out" or "lay out" fines in lieu of cash payment.)

***Agents of Government Must Act in Accordance with Due Process of Law.*** Probably the most inclusive individual guarantee of protection is that which provides that no citizen is to be deprived of life, liberty, or property except by due process of law. There has been no clear-cut definition of "due process" established, but, in general, it means that no citizen is to be in danger of losing his life, liberty, or property to the state except he lose it in accordance with the rules of justice which are laid down: (1) in the statutes as passed by legally constituted legislatures, (2) in the rules of common law which custom has recognized over a long period of time as being of the greatest advantage to mankind, and (3) in the decisions of the judges which have been recognized as fair and just. If, for example, the state should take away any property either by its right of taxation or by eminent domain and give this property to an individual or corporation, this act would be contrary to due process of law, as it is constitutional for the state to take private property only for a public purpose. The courts have consistently adopted the same attitude in interpreting the due process clause of the constitution as they have used in deciding whether a search or seizure is illegal; that is, the judges have decided each case on its own merits without feeling that they are bound by any clear-cut rule or definition.

***Miscellaneous Limitations on the Agents of Government.*** Other clauses providing protection for individuals other than those accused of crime are those which: (1) give us the right to carry arms, (2) forbid military authorities from dominating civilian authorities, (3) prohibit the quartering of troops among the people in time of peace, (4) forbid any law recognizing the principle of primogeniture, (5) declare the right of petition and assembly, (6) prohibit the taking of property without adequate compensation, and (7) limit the power to suspend laws.

***The Right to Bear Arms Limited.*** Every person has the right to bear arms subject to the regulations laid down by the legislature. The right to bear arms as indicated in the constitution refers to the military way of using them rather than to ordinary individual peacetime use. Thus the legislature may prohibit the carrying of concealed weapons or the carrying of any weapons in certain places and at certain times. For example, the legislature may prohibit the carrying of any arms into a schoolroom or assembly of people. In practice the "right" to bear arms becomes the "privilege" of bearing arms and is, therefore, almost completely in the hands of the legislature.

***Martial Law Restricted.*** Lest the people of the state find themselves

subjected to the odious rule of martial law, the constitution declares that the military shall at all times be subordinate to the civil authorities. This does not mean that military authorities can never supplant civil officers. The governor, who serves in a double capacity as head of both the military and civil forces of the state, can call out the militia to take charge of any portion of the state whenever he thinks conditions warrant such action. We should remember that the governor, as commander-in-chief of the state militia, is directly responsible civilly to the people at the ballot box.

The clause relating to the quartering of troops among the people in time of peace indicates the practice of putting certain clauses in new constitutions merely because these clauses were in some preexisting constitutions. Since the state keeps no standing army, it could scarcely quarter troops among the people in time of peace.

***Perpetuities and Monopolies Limited.*** For fear that the spirit of democracy might become dim, the constitution declares that no perpetuities or monopolies shall ever be granted, and that no law of primogeniture or entailment shall ever be enforced. This clause is to forbid public officials from picking out certain friends, and granting to them public favors which would enable them to profit from the people without fear or expense of competition. Certain businesses, such as street railways, water plants, and power plants are by their very nature monopolistic. The state gives permission to establish monopolies in this type of business, but usually classifies them as public utilities and regulates their methods and manner of operation. It is not likely that the legislature would ever attempt to establish a law of primogeniture or entailment; hence, this clause merely serves as a "gun behind the door."

***The Right of Petition Guaranteed.*** There was a time when our English forefathers were not permitted to present their grievances to the agents of government, nor were they permitted to meet together to discuss these grievances. They fought for and finally won the right of petition and assembly. We have tried to keep this right safe by putting it into the constitution. No government could deny this right and at the same time be classified as a democratic government. There is no legal obligation on the part of a state official to act on a petition presented by the people unless such petition is specifically authorized; but in a democratic state any governing official would be wise to take notice of popular petitions.

***The Right of Eminent Domain Limited.*** Ownership of property in

Texas is not absolute. Property "owned" by individuals may be taken by railroad, telegraph, pipeline, and other corporations when such corporations are serving the public, and need such private property to operate their businesses. Adequate compensation must be paid for all property taken. If the buyer and seller cannot agree on the compensation, a disinterested party is appointed by the state to determine a fair and reasonable compensation.

***Only the Legislature May Set Aside Laws.*** When the legislature passes a law setting up a rule of action for the people of the state, no person nor agent of government except the legislature can set aside the law. A city council, for example, cannot pass or enforce an ordinance which has the effect of setting aside a state law. Two individuals cannot make a binding agreement between themselves the effect of which sets aside a state law, nor may a state board or commission issue and enforce any order that conflicts with a state law. This clause assures us that all governmental agents will be bound by acts of the legislature unless a law specifically exempts them from such control.

***The Protection of Persons Accused of Crime.*** The American people have shown a particular dislike, almost amounting to a horror, of any punishment by the state of an innocent person. The constitution makers really believed that it is better to permit ninety-nine guilty people to escape than to punish one innocent person. In order that the innocent shall never suffer at the hands of public officials, the bill of rights lays down a series of protective measures designed to protect accused persons. Among the constitutional guarantees to which a person accused of crime can look for the protection of his rights are the following:

1. He shall have a speedy and public trial before an impartial jury.
2. He shall have a copy of the charge against him.
3. He shall not be compelled to give evidence against himself.
4. He shall have the right to counsel furnished by the state if he is not able to employ it.
5. He can obtain by compulsion any witness in his favor, if he knows of such, provided he has not violated an anti-trust law and provided the witness is not out of the state.
6. In the case of a criminal offense punishable by a term in the penitentiary, the accused must first be indicted by a grand jury before he can be tried and sentenced.
7. Every accused person shall have the right to a writ of habeas corpus. This is another way of saying that whenever a person is accused of a crime, he can demand a preliminary trial in order to determine whether there is

enough available evidence to warrant retaining him in custody. He can demand bail. This demand must be granted in all cases except capital offenses where the proof of guilt is evident. Bail may be granted in these cases if the judge thinks it proper.

8. Excessive bail and fines and any unusual punishment are prohibited. These terms are very vague and indefinite. They have been so broadly interpreted by the appellate courts that the trial court judges are relatively free in setting bail, fines, and punishment, so long as they stay within the limits made by statute.

9. No person shall be put twice in jeopardy of life or liberty for the same offense. If a person is acquitted by any state court in Texas, he cannot be tried in any other state court for the same act. Thus, when the state loses a criminal case, it cannot appeal for a new trial. If a person in Texas commits an act that is a violation of both a state law and a federal law, he can be tried by both governments for the same act, because this act would be an offense against the state government and also an offense against the federal government. A person would be liable to both governments, for example, if he sold non-federal-tax-paid liquor in Texas without a state license.

10. No citizen shall ever be declared beyond the protection of the law, or ever be sent out of Texas for any crime committed in the state. It makes no difference how heinous a crime a person may have committed, the officers of the law are obligated to exert every power they possess to protect him from a mob. Transporting criminals out of the state would not solve the crime problem; other states would probably adopt reciprocal measures.

11. The children of a person convicted in Texas shall never be publicly attainted for the sins of their parent. In the eyes of the law, the relatives of a criminal, unless themselves convicted, are as innocent as are the best and truest citizens of the state. Nor can a person's property be seized by the state as a result of a conviction in court.

12. Treason is the only crime defined in the bill of rights. Conviction for treason can be obtained only on the testimony of two witnesses to the same overt act or on a confession in open court.

That the framers of the constitution intended that the bill of rights should be really effective is attested by the fact that the last section of Article I declares: "To guard against transgressions of the high powers herein delegated, we declare that everything in this 'Bill of Rights' is excepted out of the general powers of government, and shall forever remain inviolate, and all laws contrary thereto . . . shall be void." This sentence needs no comment.

***Separation of Powers Provided.*** Another safeguard of individual rights is incorporated in Article II of the constitution. It is here de-

clared that the powers of government in Texas shall be placed in three separate and distinct departments, and that those who exercise the powers of one department shall not exercise the powers of another unless expressly permitted to do so by the constitution. This doctrine of the separation of governmental powers would be of no avail if there were no machinery established to make these limitations effective. The constitution specifies those instances wherein agents of one department may exercise functions ordinarily belonging to another department. Since the constitution is a law, it is to be interpreted in the courts. When a question arises, therefore, as to whether a power of government is being properly exercised, the courts are to determine the answer; if the power is not being properly exercised, the courts must declare it void.

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# 4

# *Texas Politics and Political Patterns*

The national political parties in America are largely confederations of state parties. In their legal aspects the parties are primarily creatures of state laws. Their organization, nominating devices, and election processes are under state guidance. Voting, suffrage qualifications, and ballot forms are defined by state laws; federal limitations are largely negative. Elections are conducted under county and precinct auspices. Whatever party discipline is imposed must come largely under state restrictions and be applied at the local level. State and local politics is the training school for those who enter the national political arena. "Grass roots" politics best explain political behavior and serve as the directing forces in the democratic process.

## The Role of Political Parties

Probably no institution in a democracy is more essential to its operation than a system of political parties. Though political parties are often maligned, criticized, and ridiculed, it is difficult to conceive of any stable, orderly democratic system operating without them. Wherever free expression and dissent are allowed, and wherever there is a broad base of popular participation in public affairs, the formation of political parties, by which popular consultation is implemented, has become a practical reality. Political parties perform a many-sided role in a free society. They enable like-minded people to speak in a single voice and give expression to political attitudes. The individual citizen must work through interest groups or political parties, in a collective effort, to make his influence felt on the body politic. Professor Lowell G. Field observes that "without well-established organizations, prepared to sponsor programs and candidates, anything approaching ma-

jority agreement among the voters of a modern democratic state would be out of the question." [1]

An informed electorate was considered by Thomas Jefferson to be vital to the success of the American experiment in democracy, and there is perhaps no more important function of the political party than that of keeping the public informed on vital issues. Parties, in their contention for power, by focusing the people's attention on and stimulating public and private discussion of these issues, enable the individual to evaluate both sides in the light of his own philosophy or self-interest.

It is through the party machinery that candidates for public office are chosen and promoted. Parties provide the voters with some distinguishable alternatives as to candidates and policies.

Interest groups tend to rally consistently to the standard of a particular political party. Where there are conflicts of ideas, animosities, or frictions between groups within the same party, the party should serve as a means of resolving differences and softening frictions by providing a means of compromise and by exacting a degree of party loyalty that transcends and tends to minimize the selfish interests of constituent groups.

Party loyalty also serves as a stimulus and an incentive to the citizen to get out and vote.

The charge has been made that political parties precipitate contention and division. Actually, where a party is sufficiently strong to secure control of the body politic, it provides a harmonizing element in government. It expedites the formulation and implementation of policy and the development of leadership through the election of its candidates.

## THE PARTY SYSTEM IN TEXAS

In the English-speaking democracies of the world the two-party system has generally been considered most effectual as a means of securing good government, rather than one-party or multiple-party systems. It dominates the American political tradition on the national level and in many instances on state and local levels as well. However, there are certain historical or regional factors that can and have upset

[1] Lowell G. Field, *Governments in Modern Society*, McGraw-Hill Book Company, New York, 1951, p. 291.

the two-party tradition, with the result that almost half the states are controlled by a one-party dominance, whether it be Republican or Democratic.

Essentially Texas falls among these one-party states. During the Reconstruction era the Republican party fell into disrepute as a result of impositions visited upon Texas, along with the other former Confederate states of the "Solid South," by a vindictive, radical Republican congress in Washington, and also as a result of the concurrent Republican domination of the Texas state government. Between 1872 and 1874 the Democrats secured control of the state government and have held it fast ever since. To be sure, in recent years the Republicans, now far removed in time and thought from the Reconstruction era, and led by able and enterprising citizens, have been able to muster what might be considered something approaching a relatively substantial and sustained following. Republican presidential candidates carried the state in 1956, 1952, and 1928; the Republican candidate for governor in 1924 rallied a threatening vote; and in several scattered county and district contests Republican candidates have made good showings. But except for these isolated examples, Texas remains predominantly a one-party state. Any contest between candidates or issues is enclosed within the Democratic party walls. Whoever wins in the Democratic primary is for all practical considerations already elected to office; the general election amounts to a mere formality.

The political scene in Texas is, therefore, dominated by intraparty issues.

## Where the Texas Party System Fails

The one-party system in Texas fails to perform some of the most important functions for which a party exists. V. O. Key, Jr., has noted: "The Democratic party in most states of the South is merely a holding company for a congeries of transient squabbling factions, most of which fail by far to meet the standards of permanence, cohesiveness, and responsibility that characterize the political party." [2] The Democratic party in Texas tends to be little more than a legal framework within which various factions and personalities contend for power. The one-party system results, therefore, in what is tantamount to no party system at all. Intraparty factions tend to be transitory and unstable.

Lack of party cohesion and stability has resulted in failure to develop

[2] V. O. Key, Jr., *Southern Politics in State and Nation,* Alfred A. Knopf, Incorporated, New York, 1950, p. 16.

responsible party government and provide efficient legislative and administrative leadership.[3]

The one-party system has failed to formulate policies and raise issues on which a party program can be built and promoted; it does not provide the electorate with clear-cut alternatives. As one scholar has observed, "No matter how lightly party attachments may be viewed, the labels in a party system give indication and some meaning to candidacies and thereby provide clarification for the voter." [4]

There has generally been a lack of selectivity in choice of candidates for public office. The voters' verdict is rendered after an emotional campaign, when questions are discussed in passion, and decided largely on the basis of personality and prejudices. Voters tend to array themselves with one bloc or another, and although there is occasionally an outburst of impulsive idealism, there seldom are comprehensive programs with which the members of the electorate at large can align themselves. A principal foible has been described by Key: "Factions that form and re-form cannot become identified in the mind of the electorate, and the conditions of public choice become far different from those under two-party conditions. The voter is confronted with new choices, new faces, and must function in a sort of state of nature." [5]

The one-party system has produced stagnation and apathy resulting in low voting participation in Texas and an uninformed electorate.[6] Much of the indifference of the electorate might be traced to difficulty in learning the facts and issues because of the muddling effect of campaigns and political practices. It is a delusion to expect any electorate, upon its own accord and without program or direction, to become articulate, positive in opinion, and discriminating in the exercise of suffrage. The people of Texas have rarely been presented with a serious and intelligent program of better government.

This criticism of the one-party system is not intended to imply that

[3] See Chapter 8, The Policies of Lawmaking.

[4] A. P. Sindler, "Bi-Factional Rivalry as an Alternative to Two-Party Competition in Louisiana," *The American Political Science Review*, XLIX, September, 1955, p. 660.

[5] Key, *op. cit.*, p. 303.

[6] In the 1956 general election, for example, the state of Indiana with a population approximately one-half that of Texas polled several thousand votes more than Texas. A study made by Cortez Ewing, *Primary Elections in the South*, University of Oklahoma Press, 1953, p. 105, reveals that average voter participation per thousand inhabitants outside the South is much higher both in primaries and general elections than it is in Southern states, including Texas. "Even the runoff primary, which generally attracts fewer voters than the first, is no real substitute for a good general election, since its participants total only about one-third of the voter-participation ratio of general-election participation in the other sections of the United States."

Texas has not produced a number of very able and outstanding political figures, on both the state and national levels. In recent years Texans have played important and statesmanlike roles in national and world affairs. It is probable, however, that Texas would enjoy a more continuing influence in national affairs if it were a two-party state.

**Background—How It All Began**

"Texas," says John Gunther, "is an empire, an entity, totally its own." [7] To grasp the meaning of this fact is the best approach to understanding the state's democracy an its political behavior.

In many aspects the Texas brand of politics is unique. It conforms to no standard or pattern found in other states. The state's democracy reflects an unusual mentality that comes partially from traditions and partially from a combination of other circumstances. Texas is a land of diversity and conflict, constantly buffeted by the winds of change, and perpetually at odds with its own extremes.

The state's history has been unusual. Its political past can be divided into rather distinct historic periods, each of which has made some contribution to its political development.

Texas is the only state in the Union that once was a free republic. The revolution against Mexico, followed by ten hectic years as a republic reflect a legendary glow upon the state's political annals. Enshrined in its hall of fame is a galaxy of traditional heroes—Austin, Houston, Crockett, Travis, Bowie, Bonham, Fannin, and a host of others. These were unusual and picturesque men. Their habits were those of the era, but they represent the "heroic age" of the state's history. When a Texas schoolboy reads about the dramatic episodes of the Alamo, Goliad, and San Jacinto, he finds nothing in the nation's history that has a greater appeal to his interest. Unconsciously he grows up with a feeling of a dual nationality, a sort of divided loyalty which, over the years, has become deeply rooted in the state's thought and political complexion.

Many other factors along the way have had their influence. The facts of geography, the state's Hispanic-American cultural background, the cattle kingdom, the colorful cowboy—today's popular character in fiction and legend, the folklore of the cow camps and cattle trails, and in more recent years the oil empires and booming cities all feature in the same story.

While much of the state's singular type of patriotism is a product of tradition and circumstance, and to that extent real and tangible, some

[7] John Gunther, *Inside U.S.A.*, Harper and Brothers, New York, 1947.

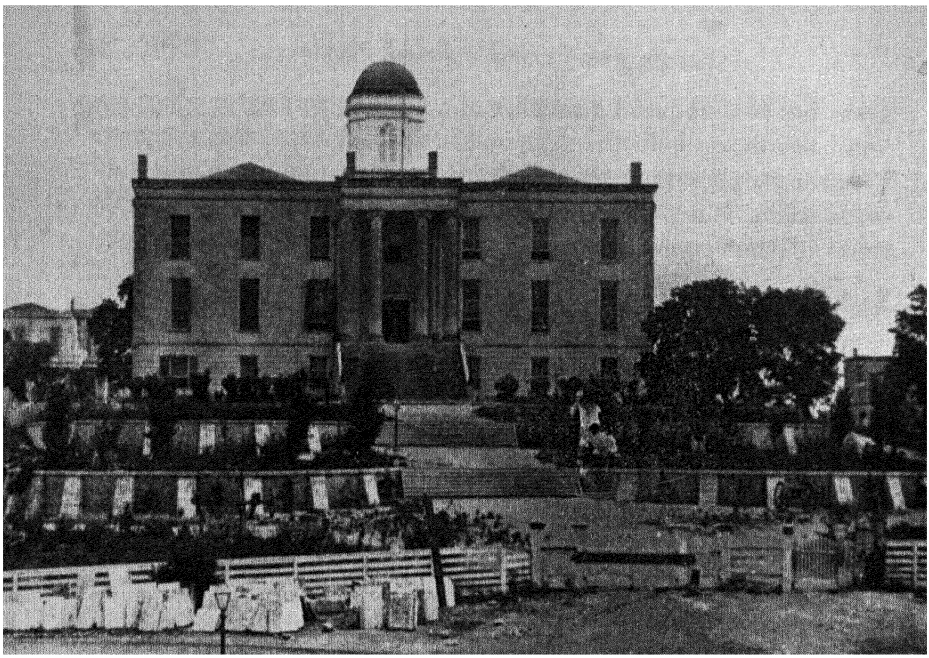

Figure 1. *The Old Capitol.* This building was built in the 1850's and burned down in 1881. In this building Governor Coke was installed at midnight January 15, 1874, after the newly elected democrats had occupied the second floor when the Reconstruction Regime had refused to surrender the governor's office. The era of Reconstruction had ended but its shadows were to reach far into Texas political history. (Courtesy, University of Texas Archives)

of it no doubt is imaginary and mythical. A more critical viewpoint is offered by George Fuerman:

"The spirit of Texas is made of exaltation, zeal, and faith,—defined in the Bible as 'the substance of things hoped for, the evidence of things not seen.' Texas fever is made of exaggeration, enthusiasm and error—an adding machine can manufacture it. The undiluted Texan—he is thought of as typical but is not—is sustained by a fever more than a spirit, and he is the bait of critics. Critics—how that word hounds the Texas story." [8]

***The Shadows of Reconstruction.*** The happy and prosperous antebellum days of early statehood were followed by the years of dismal prostration during Reconstruction and its aftermath. The trail of hatreds and dislocations of this period reached into every aspect of southern life. While the political strategy of the Republican party was to maintain permanent control in Washington, its policies in the South

[8] George Fuerman, *Reluctant Empire.* Doubleday and Co., New York, 1957, p. 226.

contributed to the political solidarity of the entire region under the hard core of the Democratic party. Writing in an Austin newspaper as late as the 1890's, O. Henry observed: "We have only two or three laws [in Texas] such as against murder before witnesses and being caught stealing horses, and voting the Republican ticket." [9] While the comment perhaps was made in jest, it reflected the general political opinion of the period.

While Texas was more fortunate than other southern states, especially in the selection of provisional governors made for them, the supremacy of the Democratic party was made secure for an indefinite future. During these years the growing industrial machine was reaching into the state and the basis for the new economic orders was being laid. Originally with the blessings and protection of the Republican regime, northern capital, seizing "the advantages of history and the fortunes of war," [10] moved in to preempt the best resources and business opportunities, creating a colonial status of the state's economy out of which were to evolve political issues in the years that followed.

***The Beginnings of Reform.*** In the years that followed the Civil War, the political climate for business in Texas was generally favorable. In the latter part of the century, however, the emergence of the railroads and corporations as great powers in the state's economy, and the growing agrarian discontent precipitated a demand for regulation and reform. The movement culminated in the election of James Stephen Hogg to the governorship in 1890. A self-made man, attorney general for the state at thirty-five, Hogg was one of the most colorful and able men in the history of the state. He was the "great commoner" in Texas politics. He had assisted in framing a Texas anti-trust law in 1889. In the 1890 campaign Hogg championed a constitutional amendment authorizing the establishment of a railroad commission to fix freight rates.[11] The amendment was adopted, and soon after Hogg's election the legislature established the commission.

Corporate and railroad regulation issues and reform agitation characterized the politics of the 1890's. The continuation of Hogg's reform policies was assured by the election of Charles A. Culberson to succeed him in 1894. Extreme liberals, however, felt the Democrats moved too

[9] Fuerman, *op. cit.*, p. 57.

[10] Walter Prescott Webb, *Divided We Stand,* Farrar Straus and Cudahy, Inc., New York, 1937.

[11] Hogg pointed out that it was cheaper to ship lumber from East Texas to Nebraska than to Dallas. R. N. Richardson, *Texas, the Lone Star State,* Prentice-Hall, Inc., Englewood Cliffs, N.J., 1943, p. 357.

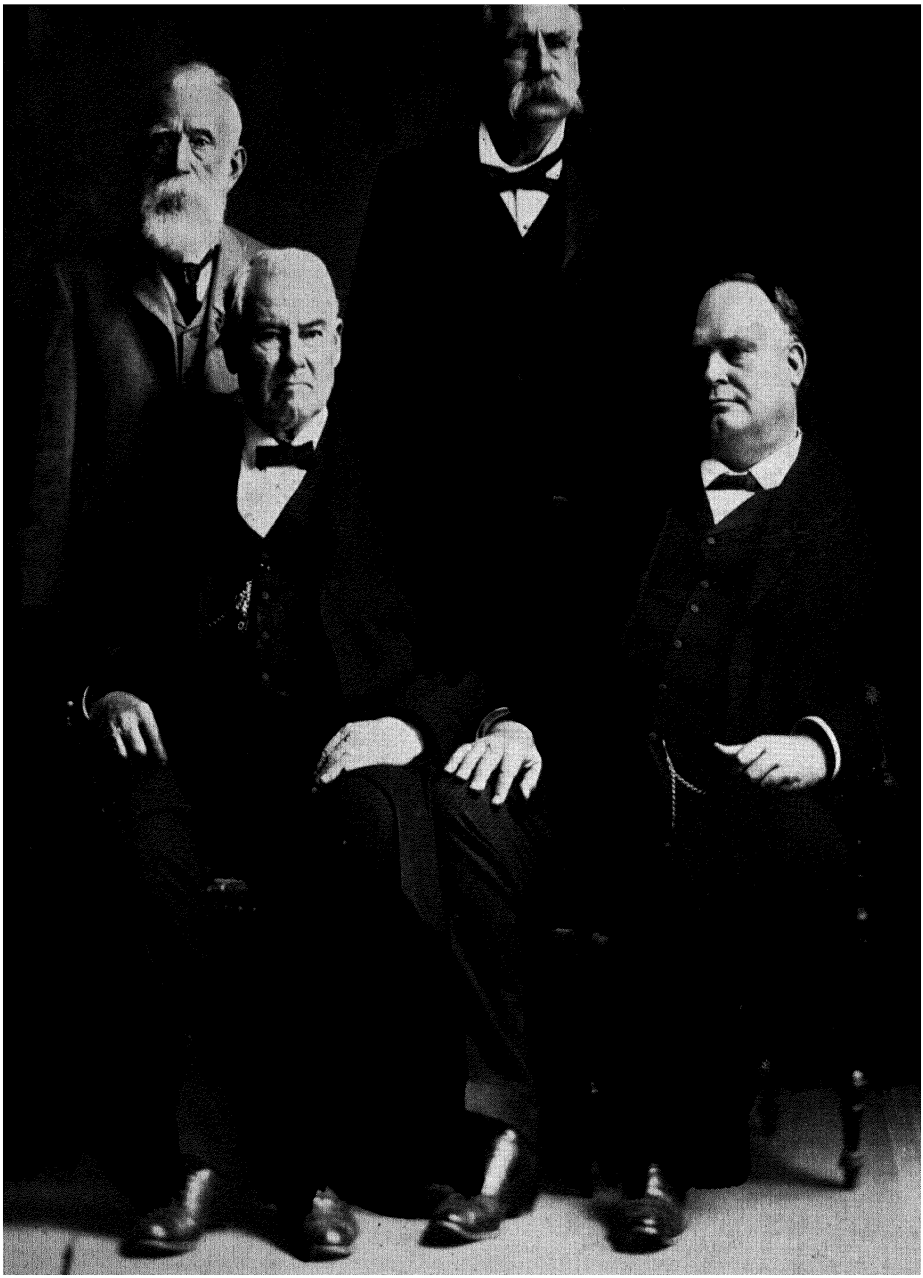

**Figure 2.** ***Four Stalwarts in Early State Politics.*** Standing are Governor F. R. Lubbock and Judge A. W. Terrell. Seated: John H. Reagan and Governor James Stephen Hogg. Such names as Terrell, Reagan, and Sheppard as a rule were unbeatable in Texas politics. Governor Hogg, the first native-born governor, began the Reform Era. (Courtesy, University of Texas Archives)

slowly, and in the 1896 election Culberson was closely contested by the new "people's party" or Populists as they were called.[12]

The Populists enjoyed limited success in legislative races and faded as an organized political force when the Democrats adopted much of their platform. They were, however, an important stimulus to the reform efforts of the 1890's.

The period 1898 to 1906 was marked by an "era of good feeling." The Sayers and Lanham administrations were "characterized by comparatively little political strife and a conservative tone in government; a natural reaction to the agitation and reforms of the Hogg era." [13] However, progressive sentiment stirred again and Thomas M. Campbell was elected governor in 1906 on a platform of tax reform and business regulation. His administration saw the enactment of tax measures aimed primarily at the big oil companies then operating in the state, and insurance regulation requiring the investment of Texas premium income in Texas securities. The latter, bitterly fought, ultimately drove the big out-of-state insurance companies from Texas.

The 1910 election was dominated by the prohibition issue and a reaction to the unfriendly attitude toward big business reflected in the previous administration. The advocates of prohibiting the sale of alcoholic beverages in Texas were well organized and led, and enjoyed considerable success in local option elections. They made common cause with the progressives, but economic issues were completely subordinated to the wet vs. dry battle. The election was bitterly contested and deeply divided the Democratic party. Anti-prohibitionist, O. B. Colquitt, won the gubernatorial nomination in the Democratic primary but the voters approved a referendum calling for the legislature to submit the prohibition issue to the people in the form of a state constitutional amendment. This was done the following year and narrowly defeated in the biggest voter turnout in the history of the state up to that time.

Following the first World War, a degeneracy of the bifactional situation became evident, with alternate bifactional and trifactional situations and occasional periods of virtual political anarchy. It is probable that the dual system primary inaugurated in 1918 precipitated a greater element of personalism and multifactionalism in Texas politics.

[12] The Populists advocated such things as free and unlimited coinage of silver, graduated income taxes, government ownership of railroads and telegraph, prohibition of alien land ownership, eight-hour day, popular election of senators, initiative and referendum.

[13] Richardson, *op. cit.*, p. 364.

***The Ferguson Era.*** From 1915 to 1935, the political scene was intermittently dominated by James E. Ferguson. It was a period "during which emphasis on economic matters diminished and other, often more dramatic questions, monopolized the voter's attention." [14] For these two decades the Ferguson "vest-pocket" vote was a strong factor in yielding the balance of political power in the state. Ferguson served as governor from 1915 until his impeachment in 1917.[15] His wife, Miriam, was elected and served from 1925 to 1927 and again from 1933 to 1935. Ferguson was not unfavorably disposed to business interests but made his primary appeal to and received the bulk of his support from the farmers.

***The "Normalcy" of the 1920's.*** The postwar period to 1930 was marked by the attempts of Governors William P. Hobby (1917–1921), Pat M. Neff (1921–1925), and Dan Moody (1927–1931) to urge passage of certain organic reforms on recalcitrant legislators. The prohibition issue had been largely deadened by the ratification of the 18th amendment to the Federal Constitution. Some administrative, institutional, and fiscal reforms were enacted and government service functions improved and expanded. But the prosperous "normalcy" of the twenties was not conducive to any general groundswell of sentiment for sweeping reform, and the only issues that stimulated much interest were the high-handed tactics of the Ku Klux Klan and "Fergusonism." The liberal coalitions everywhere crumbled in that period. The nation's political thinking drifted into the shallows with Harding or loitered in the backwaters of Coolidge and Hoover. It was no different in Texas.

The presidential election preempted local political interest in 1928. Al Smith, the Democratic candidate, was a Catholic and an anti-prohibitionist. A number of prominent Texas Democrats deserted the party fold to support the Republican candidate; Herbert Hoover carried the state, the first time a Republican had done so. The prevalent issue was Prohibition and the rancor of old reappeared.

***New Deal Liberalism in Texas.*** Although the stock market collapse had occurred in 1929, its full devastating force was not yet felt in Texas during the 1930 primary campaign. The multifactional character of Texas politics at the time was manifest in the fact that eleven candidates, seven of whom were major state political figures, ran for governor

[14] Key, *op. cit.*, p. 263. Some of the issues were the Ku Klux Klan, prohibition, Texas University, the pardoning power, graft, and favoritism.

[15] Seth Sheppard McKay, *Texas Politics, 1906–1944,* Texas Tech. Press, Lubbock, Texas, 1952.

in the first primary. The runoff featured a race between highway commissioner Ross Sterling and Miriam Ferguson, fronting for husband Jim. "Fergusonism" was the principal issue, and Sterling won the nomination in a hot contest, with the strong campaign assistance of Governor Moody. Sterling was an able and conscientious governor. The depression and overproduction in the East Texas oil fields produced crises, however, which were all but insurmountable by even the best governor. Jim Ferguson exploited these crises and put his wife in the governor's office in 1932.

During the Roosevelt era of the 1930's the New Deal was generally supported in Texas, and the administration of James V. Allred from 1935 to 1939 can be characterized as liberal.[16] Since 1939, however, Texas governors have tended to be conservative; control of the party machinery has fluctuated between liberal, moderate, and conservative factions.

***The O'Daniel Interlude.*** The year 1938 saw a political phenomenon unprecedented in Texas history. A flour manufacturer, W. Lee O'Daniel, by dint of advertising techniques, ballyhoo, and lullaby pieties of the "homely philosophy" idiom which had proved fantastically effective in selling his "Hillbilly Flour" over the radio and in establishing him as a legendary personality, successfully wooed the susceptible Texas voters into nominating him in the Democratic gubernatorial primary. A political novice (he hadn't even paid his poll tax), he won the primary over such able and experienced campaigners as William McGraw, Ernest O. Thompson, and Tom Hunter.

His campaign tools, in addition to the Hillbilly Flour radio show on a statewide network, consisted of sound trucks and a troupe of entertainers and hillbilly musicians making courthouse square appearances, attracting huge crowds wherever they went. His platform included "the Ten Commandments, adjustment of taxes, opposition to a sales tax, elimination of the poll tax as a voting prerequisite, and pensions of $30 a month for all persons over sixty-five years of age." [17] His motto was the Golden Rule. His slogan was "Less Johnson grass and politicians; more smokestacks and business men." [18] It is obvious how he stood with the farmers and the old folks.

O'Daniel was reelected governor in 1940. In 1941 he won a special

[16] Allred, former attorney general, was elected in 1934 in a runoff primary campaign against Tom Hunter which was characterized by an absence of divisive issues.

[17] Seth Sheppard McKay, *Texas Politics, 1906–1944*, Texas Tech. Press, Lubbock, Texas, 1952, p. 312.

[18] *Ibid.*

election for an interim term as United States Senator at the death of Senator Morris Sheppard, defeating Congressman Lyndon Johnson who was running with the blessing of President Roosevelt. In 1942 he won a full term in the Senate, defeating James V. Allred and Dan Moody in the primary.

"That by his skill in selling flour over the radio a man could become governor and United States Senator is in itself an eloquent commentary on the one-party system. No political organizations existed to obstruct the rise of a political "out-sider"; moreover, no factional cliques existed with power enough to name their own candidates. Attention-getting antics substituted for organized politics." [19]

***Reaction to New Dealism.*** O'Daniel was succeeded as governor in 1941 by Lieutenant Governor Coke R. Stevenson, a man of many years' experience in legislative leadership. "Calculating Coke" as he was called, was conservative and popular. He was reelected without serious opposition in 1942 and 1944. He served throughout World War II when preoccupation with the national war effort relegated state issues to a secondary role.

Disenchantment with the administrations of Roosevelt and Truman on the part of conservative elements in Texas precipitated bitter intra-party controversy in the 1940's. In 1944, a group known as the Texas Regulars, opposed to the national administration, entered the general election with a slate of presidential electors not committed to any presidential candidate but generally understood to be favorable to the Republican nominees Thomas E. Dewey and John W. Bricker.

The division between liberals and conservatives was further demonstrated in the 1946 gubernatorial election. Candidates of all shades of political persuasion entered the primary. One was liberal Homer Rainey, former president of the University of Texas who had been ousted by a conservative board of regents over the issue of academic freedom; his dismissal from the university formed a *cause célèbre* in the campaign. He was ultimately beaten by Beauford Jester in a bitterly contested runoff. Again, in the 1948 senatorial election the liberal vs. conservative demarcation became more pronounced. On the conservative side were the supporters of former Governor Coke Stevenson; liberals lined up behind Lyndon Johnson, a Roosevelt protégé. Johnson won by a mere eighty-seven votes, out of over a million cast, amid conservatives' allegations of voting irregularities, especially in south Texas.

[19] Key, *op. cit.*, pp. 266–67.

By 1952, the intraparty contest had crystallized along liberal-loyalist, pro-New Deal–Fair Deal lines on the one hand and conservative, anti-New Deal–Fair Deal lines on the other hand. President Truman's veto of legislation confirming ownership of the Tidelands to the states set the stage for a revolt by conservative Democrats against the national ticket in 1952. Governor Shivers led a conservative anti-Truman delegation to the national convention. Dissatisfied with the candidate Adlai Stevenson, on Tidelands, and other issues, Shivers supported Dwight D. Eisenhower in the 1952 presidential campaign and Texas was carried by the Republican candidate.

The administration of Alan Shivers, who was governor longer than any man in Texas history (1949–1957), molded together a powerful conservative organization which dominated the political and governmental machinery of the state during this period. In 1956, however, Shivers, now a "lame duck," lost control of the state conventions to a loyalist center coalition headed by Lyndon Johnson. Again in 1956, Texas was carried by Eisenhower with a campaign effort being directed this time largely by the Republican party organization, buttressed by the efforts and support of dissident Democrats of the Shivers faction. In that year, Price Daniels narrowly won the gubernatorial race in a runoff with liberal Ralph Yarborough. In his bid for the third term in 1960, Daniels led the moderates. He was opposed by an ultra-conservative candidate but was endorsed by union labor and liberal factions chiefly because of his opposition to regressive taxation during the bitter tax fights in the Fifty-sixth Legislature (1959). The liberals offered no candidate that year. This, again, reflects the shifting nature of Texas politics.

## The Changing Political Complexion

Since the advent of the New Deal–Fair Deal era, national issues have imposed themselves on the internal politics of Texas. The rapid industrialization and urbanization of the state have caused the traditional southern agrarian character of Texas conservatism to change to something more closely approximating that of other sections of the country. The old progressivism has given way to New Deal liberalism. Oil-earned capital has been invested in the development of local industry, transportation, and communication as well as into the great national corporations. Expansion of industrial and commercial opportunities has resulted in the emergence of new classes of capitalists and middle management personnel. Organized labor has grown

stronger. The economy is becoming more diversified. Migration into Texas from other parts of the country has had its effect. While the race question is still a major factor in Texas politics, it has in many areas become subordinated to economic and ideological considerations. Texans do not appear to be quite so preoccupied with the question as most southerners.

***Liberals vs. Conservatives.*** Although the basic issues that divide Texans are often obscured by personal power struggles, local issues, traditional ties, the race question, and campaign hokum, the trend of the past two decades has been bifactional with the political struggle developing along liberal vs. conservative lines. Despite the present unstable and transitional situation earlier alluded to, it appears that for the foreseeable future, political battles in Texas will be fought out along these lines.

The liberal faction in Texas is essentially New Deal in its orientation and has a close affinity to the liberal Democrats of the North. They tend, generally, to favor strong central government and federal regulation of big business. This group also supports higher welfare spending and expanded government service functions. They oppose stringent labor union regulatory measures, both federal and state. The bulk of support for the liberal point of view comes from the trade unions, the small farmers, and ethnic minorities, and is aided by a sizable cross section of the electorate generally. They are led largely by lawyers and middle class intellectuals. They cling to strong Democratic party loyalties and constantly seek means of imposing party sanctions against those who refuse to support the ticket in national presidential elections.

The conservatives have a pro-business orientation, are states-rightist in their approach to federal-state relations, and are strongly anti-New Deal. They oppose high taxation, high spending, and extensive federal regulation of the economy, but support legislation aimed at curbing the activities of trade unions and their leadership. Most of this group supported Eisenhower for the presidency in 1952 and 1956. The conservatives are supported for the most part by businessmen, capitalists, professional people, and commercial farmers and ranchers.

All this is not to imply that a majority of the voters arrange themselves neatly into two principal groups espousing all or most of the principles, policies, or prejudices of one persuasion or the other, nor that, indeed, the voter always understands just what the liberal or conservative side of an issue is. Also, many voters are concerned only with how a specific issue will affect them and this attitude is the deciding in-

fluence on their personal political alignment, rather than their general orientation on other issues. Nor are voters consistent. Douglas Weeks speaks of "a great new white-collar, middle-of-the-road middle class, whose political position tends to shift backward and forward between the conservative and liberal poles." [20]

***Race Issues and Ethnic Blocs.*** The race question is a primary concern in eastern Texas where Negroes constitute a relatively high percentage of the population. The segregation controversy has been sharpened in the last decade by a series of United States Supreme Court decisions invalidating some state segregation laws. The most important of these decisions was the case of Brown vs. Board of Education, which nullified laws establishing separate school systems for Negroes and whites on the grounds that such separation of the races was denial of equal treatment and therefore a violation of the Fourteenth Amendment.[21] Since that decision, East Texans have been active in seeking legislation to circumvent the ruling. The two largest ethnic voting blocs in Texas are the Negroes and the Latin Americans. Counties with heavy concentrations of these groups tend to be characterized by a low ratio of voter participation in proportion to the total adult population.

Since the Smith vs. Allwright [22] decision in 1944 there has been very little attempt to prevent Negro voting. The Negro population is largely concentrated in the eastern one-third of the state's area.[23] Since the advent of the New Deal era, Negroes have voted heavily Democratic in Texas as elsewhere in the United States. In Democratic primary elections their precincts tend to return large majorities for the liberal candidates.

The Negro vote is probably more heavily influenced by socio-economic status than by the civil rights issue. In presidential elections results show it to be overwhelmingly Democratic. In local and district races even where moderate Republicans have faced segregationalist Democrats with records of public discrimination against Negroes, the results have been the same.

Concentration of Latin Americans in Texas has been largely in the counties along the Mexican border and in the larger cities.[24] In recent

[20] Douglas Weeks, "Republicanism and Conservatism in the South," *The Southwestern Social Science Quarterly*, 36, December, 1955, p. 250.

[21] 347 U.S. 483 (1954), 349 U.S. 294, (1955).

[22] See Chapter 5, *Party Processes and Elections.*

[23] *Texas Almanac*, 1958–59, pp. 107–109.

[24] In 1950, fifty-five per cent of the Latin population resided in Bexar, Hidalgo, El Paso, Cameron, Nueces, and Webb counties. *Texas Almanac* 1958–59, p. 97.

years however, they have become more widely scattered over the state. The degree of political participation varies from area to area. Their bloc voting habits are usually controlled by a local political organizer who may be an "Anglo" or himself a Latin. In areas where these organizers or "jefes" [25] operate, no candidate or faction can hope to secure more than a small fraction of the Latin vote without their support. Latins' voting record in the area where the vote is deliverable shows a remarkable inconsistency. The vote may be heavily for a particular candidate in one election and as heavily against him in the next, depending on the "jefe's" loyalty at the moment. Because of their generally low socio-economic status, Latins' natural political inclination is liberal.

There are other ethnic groups in Texas including Czechs, Scandinavians, Southern Europeans, and Jews, but they do not vote in cohesive blocs. The Germans are a special case considered later in the chapter.

**The Republican Party of Texas**

Customarily political scientists have classified Republicans in the South as either "Mountain Republicans" or "Presidential Republicans." The latter term applies to those of conservative political persuasion who participate in the Democratic primary that they may have a voice in the state, local, and congressional races, but who vote Republican in presidential elections. Members of this group may variously consider themselves Republicans, Independents, or Jeffersonian Democrats. As a class they do little to promote the development of a strong Republican party in Texas, and many may even be openly hostile to the idea.

The term "mountain Republicans" refers to those Republicans found principally in the mountain areas of western North Carolina, southwestern Virginia and eastern Tennessee who, by virtue of their Unionist sympathies during the Civil War period are Republicans by tradition. Texas has its own brand of "mountain Republicans" in the so-called German counties [26] in the central and west central part of the state around Austin and San Antonio, largely settled by German immigrants prior to 1860. During the Civil War the German settlers in this area were opposed to slavery and remained loyal to the Union. They

[25] *Jefe* is Spanish for chief.

[26] Austin, Comal, DeWitt, Fayette, Gillespie, Guadalupe, Kendall, Lee, Medina, and Washington counties. S. S. McKay, *Texas Politics, 1906–1944,* Texas Tech. Press, Lubbock, Texas, 1952, pp. 1–18.

therefore identified themselves with the Republican party and by tradition have remained loyal to it. This loyalty is always reflected in presidential electoral results and in state and local races when seriously and actively contested by Republican candidates. They have not, however, developed the strong local Republican organizations which characterize the counties of eastern Tennessee and western North Carolina and which are the backbone of the Republican party in those states.

***The New Republicans.*** There is a third type of Republican in Texas today. The "new organization Republicans" are made up of native Texans, disenchanted by the national policies and personalities of the Democratic party and the stagnation of one-party politics at home, and immigrants to Texas from Republican areas in other parts of the United States. These new Republicans are the driving force behind an aggressive and revitalized Republican movement in Texas.

It was not always thus. The end of the Reconstruction period, dominated by radical Republicans, saw the discrediting and decline of the Republican party in Texas and the advent of a period of continuous Democratic control of state affairs. The party still showed some vitality and promise in the 1890's. With the inauguration of the primary system, its political potential died and it degenerated into a disreputable patronage clique of "black and tans" (Negroes and corrupt whites). In the period following World War I some able and responsible people took over the leadership of the Republican party and by exploiting the divisions in Democratic ranks it polled some respectable vote percentages. But during the two decades of the Roosevelt and Truman administrations, control of party affairs devolved on a small group of businessmen known as "the old guard" who were generally antagonistic toward developing a strong "grass roots" organization.

The turning point came in 1952. In that year a bitter fight developed between Taft supporters and Eisenhower supporters for control of the Texas delegation to the Republican national convention. After an intra-party contest featuring rump conventions and contested delegations,[27]

[27] "The old guard" for the most part rallied to the pro-Taft leadership of national committeeman Henry Zweifel. The Eisenhower faction was led by H. J. Porter and Alvin Lane, GOP candidates for United States Senator and governor respectively in 1948. Whereas dissident Democrats and independents joined both factions, a vast majority of them supported the well organized and financed Eisenhower drive. Precinct and county conventions in most counties of the state were taken over by the numerically superior Eisenhower forces with Taft backers holding rump conventions, many of these resulting in the election from some counties of two sets of delegates to the state convention in Mineral Wells whose function it was to elect delegates to the national

a delegation favorable to Eisenhower was seated at the national convention in Chicago and won control of the party in Texas.

The Eisenhower backers in Texas had made a frank and open bid for Democrats to participate in the Republican precinct conventions. After 1952, many of Eisenhower's supporters drifted back into participation in the Democratic party's political processes, but some of them remained to form the nucleus of a rejuvenated GOP movement in the state.[28] Many observers still find it difficult to believe that the new Republican leadership is much improvement over the old. Professor O. Douglas Weeks wrote in 1955, "Little, if any, progress in the development of Republican organization and leadership has taken place since 1952 . . . new Republican leadership of Texas has been uninspired and has done little to stimulate party activity." [29]

***Republican Strategy—Gradual Growth.*** Subsequent events testify to the gradual growth and expansion of Republican party efforts in the state. In each succeeding year more and more Republicans have actively contested the Democratic nominees for state, district, and county offices. In 1956, the Republican presidential campaign organization functioned even more efficiently and with a greater number of volunteer workers than in 1952. Even without the "Trumanism" and Tidelands issues of 1952, Republicans increased their percentage of popular votes for president over that of the previous presidential election. Another major milestone in the progress of Texas Republicanism was the intensive organizational efforts made to elect Republican candidate Thad Hutcheson to the Senate in the special election of 1957.[30] Although Hutcheson ran third behind Ralph Yarborough and Martin Dies, most observers rated his campaign as the best organized and

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nominating convention in Chicago. The party machinery was firmly in control of "the old guard" faction which arbitrarily resolved the delegate contest in favor of the Taft forces, precipitating a rump state convention by the Eisenhower backers and the election of two sets of delegates to the GOP national convention. Eisenhower forces accused the Taftites of trying to "steal" the Texas delegation and the issue was a factor in Eisenhower's winning the nomination.

[28] One notable success was the election to Congress in 1954 of Republican Bruce Alger in the 5th Congressional District (Dallas County) over a former Democratic state chairman.

[29] O. Douglas Weeks, "Republicanism and Conservatism in the South," *The Southwestern Social Science Quarterly,* 36, December, 1955, p. 252.

[30] A special election for the post of United States Senate was held on April 2, 1957, to fill a vacancy created by the resignation of Price Daniel. In that this was a special election, there was no party primary, therefore no official Democratic party nominee. Hutcheson ran as a lone Republican against a field of several prominent Democrats. He was endorsed by the GOP state convention in September, 1956. The election was determined by plurality.

directed. The fruits of the party's efforts were revealed in the fact that the Republican candidate poled a plurality of the total vote in the three major population centers of the state (Houston, Dallas, and San Antonio).

Since 1952, the party leadership has urged Republicans to stay out of Democratic primaries. Despite such setbacks to party morale as the dispatch of federal troops by President Eisenhower to Little Rock in 1957 to enforce a court integration order, and the veto of Texan-supported natural gas legislation, the organization has survived without any major membership losses. Despite the marked progress of Republicanism in recent years, however, the Republican goal of modifying the one-party characteristic of Texas politics will not soon be realized. Many obstacles and frustrations must be overcome before the Republican party can establish itself as a serious challenge to one-party rule. These factors will be discussed later in the chapter.

In contrast to the multifactionalism of the Democratic party, and the diversified political persuasion of those who wear its label, the Republican party in Texas is unified. There have been no major factional fights within the party since 1952 and its committee meetings and convention sessions have been harmonious. The consensus of Republican thinking on national political issues is conservative corresponding to that of conservative Democrats. This is reflected in the speeches of its leaders, resolutions and platforms of its committee meetings and conventions, and the platforms of its candidates. Although the party stresses its conservatism, it has consistently advocated fiscal, administrative, and constitutional reform in the state government.[31] Main stress is laid by the Republicans, however, on the assertion that they can be trusted to be more uniformly and consistently conservative on national issues than can Democrats. The party's appeal is aimed primarily at conservative voters.

## The Outlook

Texans are no doubt becoming more politically sophisticated with the industrialization and urbanization of the state. They are becoming

[31] Its 1958 platform states, "the lengthy, rigid, and statutory patchwork constitution of the State of Texas has proved inadequate to meet the needs of a modern state. . . . Many defects in our governmental system can be traced directly to the faults of our fundamental law. The platform calls for an adequately financed commission to draft a new proposed constitution and a state constitutional convention to consider such a document for submission to the people for ratification." "The 1958 Platform of the Republican Party of Texas," Article I, section 11, *Report of Proceedings of the 1958 State Convention of the Republican Party of Texas.*

more and more insistent that those seeking the mandate to govern clarify themselves on issues. Social and economic considerations are preempting traditional prejudices and emotional reactions as the motivational basis for political behavior. This fact is becoming more apparent in the cities. Over the state as a whole it is less apparent than it should be because of the disproportionate political strength of rural areas through legislative overrepresentation.

Writing in 1956, Samuel Lubell said, "The optical illusion created by the one-party system probably has led us to overestimate the importance of tradition in Southern voting and to underestimate the degree to which the South already has realigned to the issues of our day." [32] Surveying the 1952 presidential election results in several Southern cities, including Houston and Dallas, Lubell found them "mirroring the same economic cleavages which prevail in the rest of the country." [33] It is certain that Texas is gradually losing its identity as a Southern state.

This would appear to enhance the prospects for a realignment of political forces in Texas along logical liberal Democratic lines and conservative Republican lines, with the GOP emerging as a major party in the state. Texas is generally considered to be one of the three or four Southern states with the most favorable climate for the growth of a genuine two-party system. It appears that Texas can be considered in the future as a marginal state in presidential elections. But many factors combine to delay if not to postpone indefinitely the coming of two-party government to the Lone Star State.

Because of the disproportionate influence in state politics wielded by the older eastern part of the state, the race issue remains a substantial obstacle. Lubell notes, "The areas of the South which are most sensitive to the race issue are precisely the areas which are most insistent upon maintaining a one-party system locally and a solid Democratic delegation in Congress. The surge of racial sectionalism, it should not be forgotten, is to keep the South separate and solid from the rest of the nation. The seniority system in Congress tends to perpetuate Texas Democrats in important committee chairmanships when their party controls Congress." [34]

Conservative Democrats in Texas, in their desire to retain control of the only currently effective instrument of popular consultation—

[32] Samuel Lubell, *Revolt of the Moderates,* Harper and Brothers, New York, 1956, p. 184.
[33] *Ibid.*
[34] *Ibid.*

the Democratic party machinery, are antagonistic toward Republican efforts to recruit conservatives. It is held that this divides conservative strength in the face of liberal threats.[35] Republicans are urged to abandon their hopeless struggle and come to the Democratic primary to support the conservative candidates. Republicans who heed this admonition are of course sabotaging GOP efforts to build a party.

***Obstacles to Overcome.*** The Republican party, in the conduct of election campaigns, in its need to educate the electorate to the advantages of two-party government, and in carrying on the continuing political activity necessary to a successful political party, requires a considerable amount of money to offset the natural Democratic advantage. This money is hard to come by. People are reluctant to contribute to the campaign chests of candidates with the built-in disadvantage of the Republican label. Some conservatives, antagonistic toward GOP efforts to build a party in Texas, will contribute only to presidential campaign funds. Others, though sympathetic to the party's efforts, may refuse to contribute because they fear the power and influence of well placed Democrats.

The complex and confused Texas election law imposes hardships on the Republican party as does the practice of holding primaries for nominees for county offices. Many citizens who desire a voice in the election of their county officials feel compelled to participate in the Democratic primary even though their sympathies are Republican. This system, too, tends to perpetuate the court house clique as a basis for factional organizations or personal machines. It is difficult to get able Republicans to run against Democratic nominees for county offices. It has been suggested from several sources that the Republican party cannot hope to achieve electoral success until it can enter full slates of candidates in general elections. This suggestion fails to comprehend the practical difficulty in recruiting candidates and raising campaign funds. For this reason the minority party has taken the opportunistic approach, concentrating limited available manpower and money in active campaigns against vulnerable spots in the Democratic ticket and actively contesting special elections where simple pluralities are sufficient to win. This strategy has met with some limited success. Certainly the GOP has nothing to gain in dissipating its efforts on mediocre or half-serious candidates just for the sake of a contest.

[35] Much bitterness toward Republicans was precipitated by the 1957 special senatorial election. Conservative Democrat Dies and Republican Hutcheson split the conservative voting strength, polling an aggregate of 510,460 votes. Liberal Democrat Ralph Yarborough polled 364,878, or 74,009 more than runner-up Dies for a plurality victory.

Republican candidates fare best against liberal Democrats in general elections. Conservative voters, particularly in the cities, tend to be less loyal to the Democratic label than to their political principles. A strange voting coalition of liberal-loyalists, Negroes, and east Texas "black belt" whites votes the Democratic ticket with unshakeable regularity regardless of the liberal or conservative character of the candidate.

The metropolitan daily newspapers pay lip service to the idea of a two-party system and usually support the Republican presidential nominee. They do little, however, to encourage genuine Republican efforts to build a party, seldom endorse Republican candidates for state and local offices, and normally encourage conservatives to participate in Democratic party processes for the sake of maintaining conservative control of the government and the party machinery and the perpetuation of the southern Democratic bloc in Congress.

Whereas the GOP has shown itself more adept at campaigning in the party organizational medium and is well organized and led in most major urban areas of the state, it has met with little success in the small towns and rural areas. Though Republican candidates may sometimes poll respectable percentages in the cities, they always lose heavily in the country.[36] Here old prejudices and traditional loyalties run deeper. This factor combined with perennial agrarian discontent makes Republicanism unpopular. It is difficult to get respected citizens to serve as county chairmen, and even then they are likely to be only interested in dispensing patronage rather than making an effort to attract popular support to the party. Ostracism and business boycotts of outspoken Republicans is not uncommon in these rural areas.

Two other obstacles must be overcome by Republicans before their goal can be realized: the apathy of the national Republican organization, and the "defeat psychology" or "minority complex" which haunts them. There are signs that the national organization's interest is increasing. It has recently been less tight-fisted with funds for GOP candidates in Texas congressional races and has dispatched prominent party personalities to the state to participate in party meetings and rallies. This has partially offset morale loss from deferential treatment to Democrats on some patronage matters. The morale problem is conceivably the most formidable. When Texas Republicans can strengthen their resolve to do what is necessary to build a party from the ground

[36] Except in the German counties and the sparsely populated ranch country of south and west Texas.

up, to resist the urge to go into Democratic primaries to help the conservative Democrats, and to accept the reality that success will not come overnight but gradually as a result of sustained effort, only then can they hope for status as a major organized opposition party.

The future prospect for liberal-conservative realignment into a two-party system probably will depend as much on what happens within the Democratic party as on what the Republicans do. The consensus of opinion seems to be that the best chance for Republican growth in Texas is through the absorption of conservative Democrats and independents. Failure of conservatives to resist national Democratic policies and candidates, and the consequent seizure of the Texas Democratic party by liberals would doubtless hasten the process. This is contingent of course on the ability and the inclination of the Republican party to remain consistently conservative without drifting either to liberalism or reaction.

**Liberalism in the Future**

In the Democratic camp, the changing character of the state favors eventual liberal supremacy in the party. The heyday of conservatism probably was in the 1950's. Since then its tide has been ebbing. Industrial immigration has brought many wage earners to Texas with a liberal political orientation. Rural people, driven from small farms to the cities by declining farm income, have swelled the ranks of the liberals. The growing success of the trade unions in organizing workers not only for bargaining purposes but for political activity is already reflected in the outcome of recent elections in the industrial cities. The political awakening of the Negro contributes numbers to the liberal cause. The inclination of the moderates and conservatives to compromise with the liberals on some intraparty political issues reveals a sense of weakening confidence and resolve. Too, the Republican effort, however gradual in its effect, is slowly eroding conservative strength in the Democratic party. Most important, the liberals seem to possess a group dynamism that conservative Democrats do not possess.

While the consensus of political thought in Texas appears to be moderately conservative, it is receptive to change. That the social and economic character of the state is changing is certain. It is equally certain that new trends in political thinking and behavior are being established. It is reasonable to assume that bipartisan development on the state level will depend largely on what happens to the two-party system nationally. Here the situation is extremely fluid. Party cohesion

everywhere appears to be weakening. As a result the ranks of independent voters are growing. The fact is that more and more voters are paying less and less attention to party labels, and curiously enough, so are many of the leaders. The average voter can discern only shades of difference between the two major parties on national issues. The old division lines have been blurred, if, indeed, any basic interparty issues exist at all. Both parties follow about the same policies on foreign affairs. On major domestic issues, such as the farm program, social security, taxation, tariffs, and public housing, both parties look fairly alike.

At best, it appears that both of the old parties are in a dilapidated intellectual state. Both are burdened with internal grievances, rent by divisions, and weakened by frustrating bewilderment because of the lack of direction.

Whether these trends will become manifest in the form of a two-party system or a stabilized bifactional situation within the Democratic party in Texas is uncertain. Continued realignments seem inevitable. Traditional factors, however, will lend a dominating influence for some time to come. In the words of Douglas Weeks, "Political grooves are the hardest of all to get out of, even in the face of logic and changed conditions." [37]

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# 5....

# *Party Processes and Elections*

## Party Organization

The regulation of political parties is left largely to the states. Every state in the Union now has legislation governing, in varying degrees, the organization and instrumentalities of political parties. Party organization is similar throughout the Union, although the relative importance of the different units vary somewhat according to the political complexion of the state. State party machinery is made up of a series, or hierarchy, of committees prescribed by law and selected biennially. The committees constitute a part of the national organization on the one hand, and direct local party affairs on the other. In Texas these party committees are charged by law with the duty of providing for and conducting all primary elections in accordance with numerous regulations under the state's election laws.

***The State Executive Committee.*** This committee heads the state party system. Its membership is elected at the party convention held in September of even-numbered years. The committee is composed of 62 members, or two representatives (one man and one woman) from each state senatorial district.

The chairman of this committee is the nominal head of the party and occupies the most important position in the state party organization. In the Democratic party, as a rule, he represents the choice of the governor selected in the primaries immediately preceding the convention and belongs to the governor's political bloc or faction.

The state executive committee is the party's chief organ and is the interim governing body of the party between state conventions. It receives the requests of candidates who are entitled to have their names printed upon the primary ballot and it certifies these names to the chairman of the county executive committee. It canvasses the

returns for state and district offices at a meeting held on the second Tuesday after the first primary and announces the results.[1] In all offices where a majority is lacking, the committee certifies the two highest candidates in each race to the county chairman to be placed upon the ballot for the second, or runoff, primary.

On the second Saturday after the second primary the committee again meets and canvasses the returns which it certifies to the state convention. These are certified to the secretary of state, who in turn transmits the names to the county clerks, who have them printed upon the general election ballot in each county.

***The County Executive Committee.*** The county executive committee is composed of the county chairman, elected from the county at large in the first primary, and one committeeman from each voting precinct elected at the same time.

This committee occupies a key position in party affairs. It receives and passes upon applications or petitions for positions on the ballot, arranges the names on the ballot, levies assessments upon the candidates to defray the expenses of the primary election, and makes arrangements for holding the election. Following each primary election the committee canvasses the returns, and the chairman certifies to the county clerk the results of the election. He also certifies the results for district and state offices to the chairman of the state executive committee. The county executive committee also designates the time and place for the holding of the county convention and prepares the temporary role of delegates to that convention.

## The Convention System

Another organ of the political party is the delegates' convention. A series of these conventions—the precinct convention, the county convention, and the state convention—constitute the party convention system. The precinct conventions are held on the same day as the first primary (first Saturday in May) ordinarily in the afternoon or evening.

When the precinct convention is called to order, the first procedure is to elect a permanent chairman and such other officers as shall be necessary to conduct the convention's business. When organized, the chief function of the precinct convention is to select delegates to the county convention. The precinct is allowed one delegate to the county convention for each twenty-five votes, or major part thereof, cast in the precinct for the party's candidate for governor in the preceding

[1] The committee meets in Austin for this purpose.

election. It is in the precinct convention that controversies between different factions of the party are set in motion which carry on through the state convention and sometimes into the national convention. The chairman of the precinct convention is a member of the county executive committee from his precinct. He frequently runs the convention.

In many precincts a caucus of leaders is held a day or two before the convention. The purpose of this caucus is to have the political

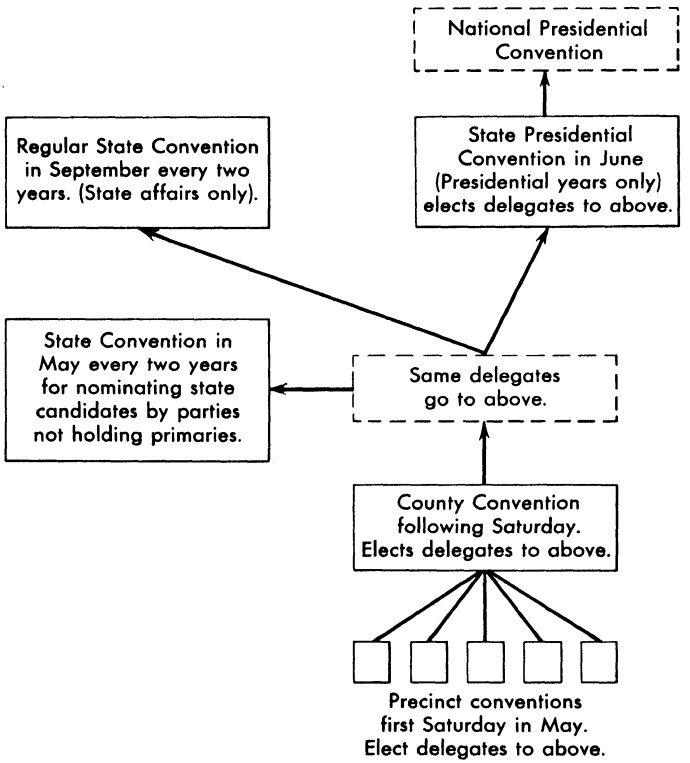


**Figure 3.** *The Party Convention System in Texas.*

machinery well oiled in order that the steamroller, unless it meets unexpected opposition, will ride through the convention, resolutions and all.

The county convention meets on the following Saturday and selects delegates for the state convention, apportioned on the basis of one delegate for each 300 votes cast in the county for the party's candidate for governor in the preceding general election. Generally, the procedure is similar to that of the precinct convention.

***Work of the State Convention.*** The state convention which meets the third Tuesday in September has three primary duties to perform: (1) to canvass the returns of the primary electon for all state offices, (2) to frame and adopt a declaration of party principles or platform, and (3) to select the new state executive committee and its chairman who are to serve as the party's officers for the ensuing two years.

The convention is composed largely of politically active men and women from the respective counties. Most of the newly elected state officials, including those elected to the legislature, are in attendance. Unlike the national party convention, almost anyone who desires to attend a state convention may do so, especially those from the counties that are some distance away, as few people wish to incur the expense of the trip. The usual quota of office seekers is also present. Political manipulators and representatives of lobbying interests are also numerous in and around the convention.

The platform of the party, insofar as state issues are concerned, is framed and passed upon by this convention. The successful party candidate for governor in the primaries, as a rule, dominates the Democratic convention, and the platform committee members hold similar political views to his own.

The preliminary groundwork for the convention's course of action is largely laid by a caucus of delegates and their friends before the formal opening. Occasionally the convention becomes rowdy and unmanageable on certain points and issues, but as a rule it acts according to plan.

There is much which is perfunctory and pretentious in an ordinary state convention. The delegates making up the state convention are probably selected by less than five per cent of the voters attending the precinct conventions. The people generally take little interest, regarding it as a politicians' event. It is a blustering affair, but in any event a most interesting and colorful sideshow in state politics.

The platform which the Democratic state convention frames, other than being a ratification of what the successful gubernatorial candidate has already advocated, and ramified with a few high sounding but meaningless declarations, has little else to do with the larger affairs of state policy. The legislators have already been nominated in the primaries, which is tantamount to election in Texas, on their own individual platforms or pledges to their respective constituencies; they feel few, if any, obligations toward the convention's platform. In fact, the work of the convention as such, insofar as formulating and determining legislative principles and policies, is largely forgotten by both

the legislators and the people generally before the legislature meets to formulate its policies.

***The Presidential Convention.*** Not to be confused with the regular state convention described above are the state conventions occurring in June [2] of each presidential election year held by both parties for the purpose of selecting delegates to represent the state in the national presidential nominating convention. A law passed by the Fifty-sixth Legislature in 1959 provides that delegates elected at the county conventions in May shall be delegates to all state conventions held throughout the remainder of the year. In the case of the Democratic party this means that the same delegates attend the presidential state convention as attend the regular party convention in September.[3]

The presidential state conventions are primarily a part of national party operations and have no direct functions in state affairs. Both Democratic and Republican parties in Texas have the maximum number of delegates to the national convention allowed by national party rules establishing criteria for apportioning delegates.

## The Texas Primaries

Perhaps the most important of the many functions political parties perform is that of insuring the orderly operation of the electoral system through the nomination of candidates for public office. In Texas two methods of selecting party nominees are prescribed by law: direct primary election system and the convention system. The purpose of these devices is to select the party's nominees whose names are to be submitted to the voters in the general election in November.

The law defines a primary as "an election held by the members of an organized political party for the purpose of nominating candidates of such party to be voted for at a general or special election or to nominate the county executive officers of a party." [4] The primary is

[2] The law states that this convention shall be held on the second Tuesday after the second primary.

[3] Because of confusion in the election laws, Texas Republicans elect a number of delegates at their county conventions based on one delegate for every 300 votes cast in the county *either* for the party's candidate for governor in the last general election *or* the party's candidate for president in the last presidential election, whichever is greater. The voting strength of the county at the state nominating convention in May and the organizational convention in September is based on gubernatorial vote. The voting strength at the presidential state convention is based on presidential vote. Therefore, although the same delegates attend all state conventions, the value of their votes varies according to the type of convention. Delegates present from any county at a state convention may cast the entire vote to which their county is entitled.

[4] Texas Election Laws (1928), Article 3100.

mandatory upon each party casting as many as 200,000 votes for governor in the last general election. This in effect means the Democratic party.[5] The law affords to parties polling less than 200,000 votes the alternative convention method of selecting nominees.[6]

Texas employs a dual primary system. The first primary is held the

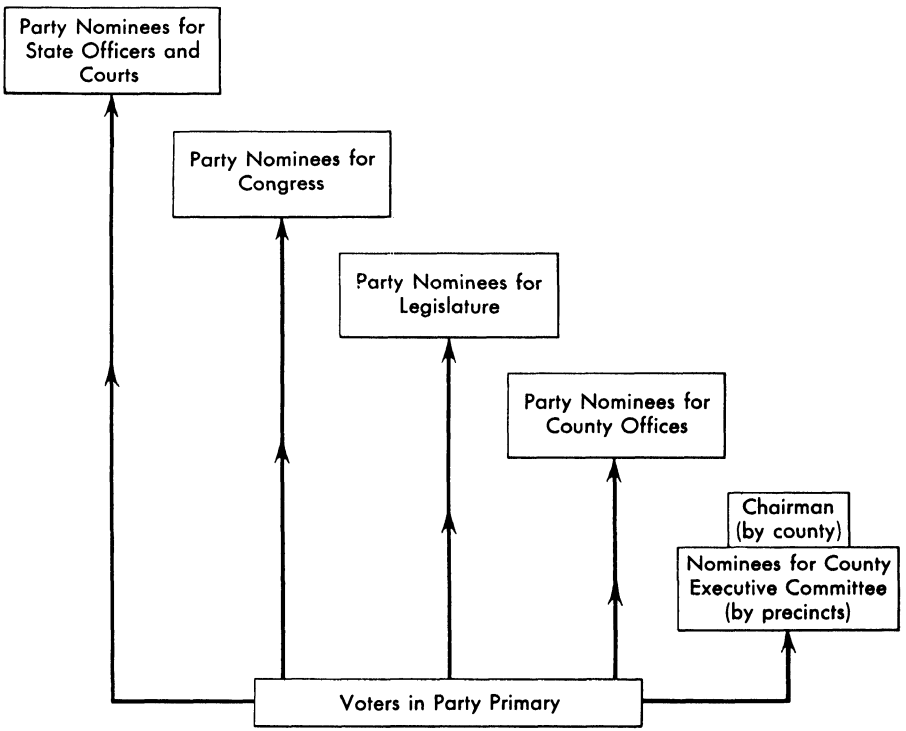


**Figure 4.** *Nominations by the Primary System in Texas.*

first Saturday in May and the second, or runoff, primary is held the first Saturday in June of election years.

Usually there is a large number of aspirants in the first primary for most of the state and local offices. There are rarely less than five or six candidates for governor, although as a rule only two or three of

[5] The primary system was inaugurated in 1903 by the Terrell Election Law which, with amendments in 1907, ended the convention method of selecting party nominees. The first primary election was held in 1906. The dual primary was established by law in 1918.

[6] The Republican party has held primaries in 1926, 1930, 1934, 1954, and 1958 by virtue of having polled a sufficient number of votes in the election years preceding to be required by law to nominate by the primary method.

them receive any considerable vote. For all state, district, and county offices an absolute majority of the total vote cast is necessary to nominate. Where no candidate has polled a majority of the total vote cast for all candidates for the nomination to a particular office in the first primary, the names of the two candidates polling the highest number of votes for that office are entered on the second primary ballot.

***Getting a Name on the Ticket.*** A candidate for nomination to precinct, county, or district offices secures his place on the official primary ballot by filing his application with the chairman of the county executive committee and paying the fee. Candidates for state offices file their applications with the chairman of the state executive committee who certifies their names to each county executive committee. All candidates must file not later than the first Monday in February preceding the primary. Each candidate must also pay the application fee, and the assessment made by the county executive committee to defray the expenses of the primary. The assessments are prorated among the various candidates according to the salary of the office. In the smaller counties, the amounts may vary from a few dollars to two or three hundred dollars. In the larger and more populous counties, candidates for such positions as the county tax assessor-collector, the sheriff, the county clerk, and similar offices may be required to pay as much as $1,000 to $2,500.

Party officials have virtually no discretionary power in the matter of accepting or refusing application for a place on the primary ballot, even though there might be valid grounds for questioning the applicant's party loyalty by virtue of his public acts or statements. The Supreme Court of Texas has held: "A request made under the provisions of Article 13.12 [7] for a place as a candidate on a party primary ballot imparts a present good faith intention of affiliating with the party. Past or present words or conduct may open that intention to doubt and question. But party officers and Executive Committees may decide the issue against the candidate and so deciding refuse to place his name on the party primary ballot." [8]

***Voting.*** The conduct of elections is primarily a local affair. The state

[7] A provision of the Texas Election Code relative to filing.

[8] *Cantrell* v. *Carlson,* 314 SW 2nd 286 (1958). Cantrell had filed for a place on the Republican primary ballot in Dallas County as a candidate for the nomination to the U.S. House of Representatives in opposition to incumbent Bruce Alger (R-Tex). He was reported in the press as having stated at the time he filed that he was really a Democrat but felt he had a better chance of nomination on the Republican ticket. The Republican County Executive Committee refused to accept his application. See also *Love* v. *Wilcox,* 28 SW 2nd 515 and *McDonald* v. *Calhoun,* 231 SW 2nd 656.

seeks to control and safeguard the elections by passing numerous laws governing the manner in which they are conducted. Election control is legislative rather than administrative, as there are no state officials supervising or directing the process.

The county executive committee makes the preliminary arrangements for voting. It prints the official ballot upon which the names for each position are determined by lot. It appoints a presiding election judge for each voting precinct. For assistants, the presiding judge appoints the associate judge and the clerks. Each election judge is supplied with a list of qualified voters. In addition, the voter may be required to make an affidavit as to his qualification to vote.

The form of the ballot is carefully prescribed by law. The ballot must be on plain white paper printed in black ink. A variation of the Australian, or secret ballot is used, upon which the candidates are listed in a single column by groups under each office. The voter marks this ballot by scratching out all the names under each position except the candidate's name for whom he is voting. Only one unscratched name must be left among the candidates for each position if the vote for that office is to be counted.

The ballot carries upon the "top right hand corner a detachable stub formed by a perforated line . . . upon this stub so formed there shall be no printing or writing except the number of such ballot and the date and designation of the election, and the words, 'Note: Voter's Signature to be Affixed on the Reverse Side.' "

All ballots prepared for the election must be numbered consecutively beginning with No. 1, and the identical number that appears on the stub must also appear on the left-hand corner of the ballot. The election judge is instructed by law to check all ballots in advance and see that they are properly numbered, removing any unnumbered or mutilated ballots. He must thoroughly disarrange and mix the ballots so that they no longer are in any sequence of arithmetic progression, and then place the ballots face down in a stack or stacks, allowing each voter to take his ballot from any position in the stack and without the number being known or written down in any manner by the election judge. "The election judge is to make a record of the list of voters showing the particular person has voted, but shall make no record of the ballot number."

When the voter has prepared his ballot, he must detach the perforated stub and affix his signature on the back of it. He then deposits the ballot in the ballot box and the detached stub in the stub box with-

out disclosing to anyone the number. The voter must not discuss matters pertaining to the candidates or electioneer in any way with others either in the polling place or within 100 feet of it. Each ballot also contains the "test" or party pledge, described later in this chapter.

In some large counties voting machines are used. With the voting machine the candidates' names are printed on small cards and affixed to the machine. The voter casts his vote by pulling a small lever under the candidate's name and the vote is mechanically recorded. The use of machines simplifies and expedites the counting of votes, especially in populous precincts, and ensures a fair and accurate count.

The second primary is conducted in the same manner as the first, and is held for the purpose of securing an absolute majority for cases where such contests were not settled in the first primary.

***Campaign Regulations.*** While there are no limitations placed upon the amounts that may be spent for campaign purposes, the statutes are very strict in requiring full publicity of all campaign contributions and the purposes for which they are spent. Candidates and campaign managers in state and district races must make itemized reports under sworn statements to the secretary of state showing all contributions in excess of $25.00, the names of the contributors, all other monies borrowed and spent, and the purpose of each expenditure.[9] County and precinct campaign officials report such information to the county clerk.

Only the candidate or the campaign manager can legally receive contributions for campaign purposes. Corporations, labor unions, and other organizations not organized specifically for political purposes, are prohibited from making campaign contributions. Heads of state departments are forbidden to receive campaign contributions from their employees. The same law also applies to county and precinct officeholders. A person may contribute his own personal services as well as his personal expenses, such as travel and hotel expenses, in the interest of a candidate.

Considering the size of Texas, and the cost of radio, newspaper, and television exposure, it is estimated that a statewide campaign cannot effectively be conducted for less than $100,000. In the more important races, such as for governor and United States Senator, the amount may approach one-half million dollars. Even in races for the state senate, conducted only within a senatorial district, the expenditure often runs as high as $15,000 or $20,000.

[9] Expenditures of $10 or less need not be reported.

***Contested Elections.*** Election contests based on fraud or illegality may be brought either before the state executive committee in the case of state races or before the proper executive committee in district or local races.[10] Appeals from the executive committee may be carried to the district court. The district court may take cognizance of all events incident to the campaign or the election.

## Nomination by Convention

State law provides that parties polling not less than 10,000 or more than 200,000 votes for governor in the last general election may nominate candidates for the public office and elect county party officials by the convention method. Because of the expense and effort involved in holding primaries and the lack of competition for nominations, the Republican party adopts the convention system whenever it is not required by law to do otherwise.

County party officials and candidates for county offices are elected at the regular precinct and county conventions in May of election years. Candidates for district offices are chosen at district conventions held on the Saturday preceding the last Tuesday in May and comprised of delegates elected by the county conventions in the district. Candidates for state office are nominated at a state convention held on the Monday preceding the last Tuesday in May.

## General Elections

General elections are held on the first Tuesday after the first Monday in November of every even-numbered year. The procedure followed is similar to that of the primaries with the exception that the cost is met by the county and the county commissioners court performs the administrative and canvassing functions performed by the county executive committee in the conduct of primaries. The commissioners' court designates polling places,[11] appoints election judges, and canvasses the returns for county offices. Returns for state and district offices are filed with the secretary of state in Austin.

Candidates' names are entered on the general election ballot by

[10] "Contest must be brought within five days after the results of the election have been declared by the committee or convention, or in the case of the governor's race, if contest is filed in district court, it must be done within ten days after certificate of nomination is issued by the state convention." *Texas Election Laws* (1928), Articles 3148, 3152.

[11] The commissioners' court is also responsible for dividing the county into voting precincts.

party slate in vertical columns in an established order according to office. One may vote a straight party ticket by crossing out all but the column of the party slate for which he is voting.[12] He may split his ticket (vote for individual candidates of various parties) by scratching the names of all candidates for a given office but the candidate for whom he is voting.

***Suffrage Qualifications.*** In order to be eligible to vote in Texas, one must be a United States citizen, twenty-one years of age, and a resident of the state for one year and of the county or district for six months. Payment of poll tax is required of all those between twenty-one and sixty years of age unless disabled. Those above sixty must secure an exemption certificate if living in a city of more than 10,000 population. This exemption certificate must be secured prior to February first of the year in which the election occurs. Exemption certificates are not required of persons over sixty years of age if they live in a town of less than 10,000 population.

Persons reaching twenty-one years of age during the year for which a poll tax is levied, or on or before the date of the election the following year, are permitted to vote without having paid a poll tax, provided they receive an exemption certificate from the tax assessor-collector. In interpreting this provision it is necessary to keep in mind the fact that the poll tax is levied for the year immediately preceding the year for which it entitles a person to vote. As an illustration, the poll tax is levied on January 1, 1959, but is payable any time between October 1, 1959 and January 31, 1960. The tax receipt is valid for voting purposes through January 31, 1961. Under this theory, any person becoming twenty-one at any time during 1959 would be entitled to vote in any election after February 1, 1960 and up through January 31, 1961, without having paid a poll tax, provided he applied for and received an exemption certificate before January 31, 1960. Anyone turning twenty-one during an election year may apply for an exemption certificate up to thirty days before the election in which he wishes to vote provided he has reached twenty-one on or before the date of such election.

Those in the active military service of the United States may vote only in the county in which they were resident at the time they entered service. This precludes voting in Texas by citizens of other states who are stationed in Texas in the armed forces. Paupers receiving county

[12] In counties using voting machines one may vote a straight party ticket by pulling one lever that automatically records his vote for every candidate on the ticket.

aid, and persons who are insane or under conviction for felonies are denied suffrage under the Texas law.

***Absentee Voting.*** Any qualified voter who, through the nature of his business or because of sickness or physical disability, is absent from the county of his residence or his poll precinct on the day of the primary or general election, may vote by absentee ballot. In order to vote an absentee ballot he must secure from the county clerk of his home county an official ballot. At any time not more than twenty days or less than three days prior to the date of such election the voter may appear before the county clerk of the county of his residence and make application for the official ballot. If his application shows reasons (by taking affidavit) why he cannot appear on election day, he is entitled to receive the ballot which he marks in the presence of the county clerk.

If the voter is away from his voting precinct both prior to and during the election, he can arrange to secure his ballot by mail. By written application to the county clerk of his place of residence, not more than twenty days or less than three days prior to the date of such election, and accompanied by his poll tax receipt (enclosing 15¢ postage) he will be sent an official ballot. The voter then must mark his ballot in the presence of a notary public or any person qualified under the law to take acknowledgements, who certifies the ballot and mails it back to the county clerk. This marked ballot must be in the hands of the county clerk on or before the third day prior to the election.

***The Party Pledge.*** Texas conducts what is known as the Closed primary. The parties are required to hold their primary elections at separate places. There is also a statute dating from 1907 which requires a party test, or pledge, of each voter. This pledge reads as follows: "I am a ——— (inserting name of party) and pledge myself to support the nominees of the party." [13] The law provides that "no official ballot for primary elections shall have on it any symbol or device or any printed matter except a uniform test." [14]

The meaning of this provision has led to much controversy and wide differences of opinion in Texas. In the governor's campaign in 1924, and again in the presidential election of 1928, there appeared extensive bolting of the party in defiance of the pledge. The courts,

[13] *Revised Civil Statutes,* Article 2956, 1925, as amended by *Acts of Forty-third Legislature,* Chapter 4, 1933.

[14] *Texas Election Laws,* Article 3100, 1928.

however, have held that such votes are valid.[15] In other words, the pledge appears to be largely a matter of moral allegiance to the party and has no legal significance. The party pledge, however, can be exacted from those attending the state convention held to send state delegates to the national presidential convention.

In short, the party as a political organization is permitted the authority to make reasonable rules and regulations, including the pledge, for those participating in party affairs such as the conventions. In the election processes, however, including the primaries, such pledges are not legally binding upon the voter, but instead represent political obligations to the party of one's membership.

***Party Registration.*** In an effort to preserve some semblance of party integrity, the Fifty-sixth Legislature (1959), noting that "some persons who belong to one party have attempted to infiltrate and destroy another political party by participation in its convention procedures," [16] passed an act requiring a mild form of party registration. The act prescribes a new form for poll tax receipts and exemption certificates which includes a space for stamping in the holder's party affiliation.

Primary election judges are required to stamp the receipt or exemption certificate of the primary participant with the name of the party in whose primary he is voting. To hold party office one must qualify as a member of the party by participation in its primary or precinct convention. To qualify to participate in the precinct convention of a party holding a primary, one must first vote in the primary. One may participate in the precinct convention of a party not holding a primary provided he has not participated in the primary of another party. In such conventions the precinct chairman is required to stamp the party designation on the participant's receipt or certificate.

One whose poll tax receipt or exemption certificate has been stamped with his party affiliation remains a member of that party for the duration of the poll tax period.

***Equal Suffrage.*** For many years attempts were made in Texas to prevent Negroes from voting in the Democratic primary through a series of legislative acts and party regulations. These attempts precipitated a series of litigations culminating in 1944 in the case of *Smith* v. *Allwright* (321 U.S. 649). In this case the United States Supreme Court held that the party's nominating system, regulated largely by law, had become so much a part of the official election system as to make it

[15] *Cunningham* v. *McDermott,* 277 S.S. 218 (1925).
[16] H.B. 26, Fifty-sixth Legislature, 1959.

an "agency of the state in the selection of public officials." [17] Thus the party's rule making power becomes subject to the same constitutional limitations as did earlier statutes regulating voting and elections, which, pursuant to the Fourteenth Amendment, the court had declared unconstitutional. This decision overturned an earlier ruling by the court which held political parties to have essentially the same character as clubs and other private institutions and therefore free to regulate participation in its internal affairs.[18]

Since the *Smith* v. *Allwright* decision, only scattered attempts, legal or otherwise, have been made in various parts of the state to prevent Negroes from voting either in party primaries or general elections. Currently a relatively high percentage of Negroes participate in the Texas electoral processes as compared to other southern states.

***The Poll Tax.*** Only five states, all of them southern, still levy the poll tax. Although the average southerner is somewhat resentful of all efforts to impose reforms from the outside, it is apparent that his attitude toward the poll tax is changing. Several of the southern states have abolished it.

Citizens of the poll tax states are beginning to see that the requirement really disfranchises as many whites as Negroes. It admittedly has many undemocratic and undesirable features, particularly as it contributes to such large numbers of nonvoters in such states. Nonvoting, however, is one of the unsolved problems of modern government. There are many other contributing factors, such as indifference, apathy, and outright unwillingness on the part of many to make even a minimal effort to qualify for the suffrage privilege.

Several responsible groups and some very powerful party leaders in Texas have advocated abolition of the poll tax by amending the state constitution. The tax is coming to be regarded as a nuisance and an anachronism, and it is probably only a question of time before it is repealed.

## The Task Ahead

Several changes are needed in the Texas election laws. In the first place the statutes are too detailed. They are a vertible maze of conflict and confusion, which seems to be compounded by each session of the legislature through hastily devised laws. It is difficult or impossible to follow them to the letter. Election judges commonly do

[17] *Nixon* v. *Herndon,* 273 U.S. 536 (1927). *Nixon* v. *Condon,* 52 S. Ct. 485 (1932).
[18] *Grovey* v. *Townsend,* 295 U.S. 45 (1935).

not understand them and therefore disregard their provisions. The detailed statutes leave little to administrative discretion and fail to make allowances for as many varieties of election law enforcement as there are precinct election boards. The laws should be clarified, and the power to elaborate the statutes should be vested clearly in a proper state authority.

In like manner Texas needs an adequate system for registration of voters. At present, Texas is one of only three states without such a system. The most popular plan of registration is that which provides for a permanent registration of voters on a statewide basis so long as they occupy the same address. Transfers are made by signed request, and identification at the voting boxes is established by signature. The complete secrecy of the ballot should be safeguarded. An honest election is the very basis of popular government. After voting qualifications are determined, a simple but adequate registration system enables the voter to meet these requirements and establish his eligibility.

Several other closely related problems are emerging in Texas politics. The question of lowering the voting age limit to eighteen, already adopted in Georgia and Kentucky, is becoming an issue in these and other states.

There is also considerable dissatisfaction with the Texas primary system, although there is little probability of returning to the convention plan for nominations.

These problems, along with the many others, will press for consideration as apparent needs arise and public opinion demands.

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# 6

## *The State Executive*

The executive function poses perhaps the thorniest aspect of governmental structure. The problem is how to provide an executive authority strong enough yet not so strong as to be potentially dangerous.

European history and the pre-Revolutionary period in America were characterized by struggle against executive rule—or misrule. As a reaction to their bitter experiences with the English king and his appointed royal governors, our colonial forefathers in writing their original state constitutions provided for only the minimum authority to be vested in the executive. Indeed only one state, South Carolina, conferred upon the governor the power of veto; and this was withdrawn two years later. The Articles of Confederation provided for no executive at all.

During the Jacksonian era two changes occurred which further weakened the executive: (1) the office of governor was stripped of almost all but its title of chief executive, most official functions being delegated to sub-executives and bureaus; (2) these sub-executives were rendered subject to popular election inasmuch as their piecemeal powers were derived from the office of governor, an elective office. The theory behind this development was that its authority thus being brought closer to the electorate, the executive function would be made more democratic. This democratic characteristic was further embellished by an expansion in suffrage.

What is indicated here is actually an extension of the doctrines of separation of powers and checks and balances to the executive powers, in that they were divided among a number of executives who were made individually responsible to the electorate. A plural executive was established without collegiate or collective responsibility. The application of the principles of separation of powers and checks and balances to executive powers is, however, not unlike the separation of legislative

powers by bicameralism with a view to each house being a check upon the other. In fact, the judicial powers in the nation and the states are also separated by means of a highly differentiated set of courts, each with its separate jurisdiction and each with a certain amount of final jurisdiction. There is the principle of separation of powers inside the judiciary. Some of the jurisdiction of the lower courts is always subject to review by appellate courts. In other words, there are checks and balances in the judiciary. The popular election of the state judges from counties, districts, circuits, and the state at large tends to give a certain amount of individuality and independence to each division of the state judiciary and also to serve as a check on the power of judges.

It is clear, therefore, that fragmentation or diffusion of authority in American political institutions, especially state institutions, is not restricted to the separation of departments, but has been extended into and within the departments themselves, whether executive, legislative, or judicial.

By the time Texas became an American state in 1845 these disintegrating influences had materially influenced the structure of American state government. In many respects the early history of Texas duplicated and reinforced American experience in general. The Texas revolution was also a revolt from an executive type of government. The Texas forefathers were independent and self-reliant and felt little need for a strong government. In fact this feeling still exists and is not restricted to state government. It is therefore not surprising in the least to find that the executive side of the government of Texas is similar in structure to that of the typical American state. It consists "of a Governor, who shall be the Chief Executive Officer of the State; a Lieutenant Governor, Secretary of State, Comptroller of Public Accounts, Treasurer, Commissioner of the General Land Office, and the Attorney General." [1]

## THE CHIEF EXECUTIVE: THE GOVERNOR

***Qualifications.*** The constitutional qualifications for the governor are that he shall be: (1) thirty years of age, (2) a citizen of the United States, and (3) a resident of the state for at least five years immediately preceding his election.[2] This last requirement is to guarantee

[1] *Texas Constitution,* Article IV, section 1.
[2] *Ibid.,* Article IV, section 4.

that the governor will be adequately familiar with the problems of the state and the character of its citizenship. No member of Congress, nor officer of the United States or of any other state or foreign government is eligible to any office of profit or trust in the state. The governor of Texas is debarred from holding any other office, whether civil, military, or corporate, during his term of office, though the courts have ruled that this limitation does not extend to *ex officio* membership in a state board.[3] While the constitution speaks of the governor in the masculine, practice has determined that a woman possessing the constitutional qualifications is equally eligible to the office of governor in Texas.

While there are millions of Texans who possess the constitutional qualifications for the office of governor, there are personal qualifications which are more important from the point of view of a successful gubernatorial administration. While these qualifications are not constitutionally necessary to secure the office and are purely extra-legal in character, they may be necessary for election, are certainly needed for a successful administration, and therefore likely to be a factor in reelection. A governor should be a person of broad experience, liberal education, business ability, honesty, integrity, courage, broad sympathies, and skill in public relations. The ability to lead by persuasion and sanity of views rather than by coercion is a supreme prerequisite in dealing with the legislature. Some governors utterly fail in their dealings with the legislatures through a lack of personal fitness. In such instances the tragedy is not restricted to the mere failure of a governor but frequently its consequences seriously affect the welfare of the state and its institutions. It is not too much to say that the voters, in selecting a governor, are not merely passing on his constitutional qualifications primarily—these are regarded as a matter of course—but are really passing on the personal fitness of the candidate for this high office. A governor is far more than a mere item of the constitution.

***Nomination.*** The nomination of candidates for the office of governor of Texas is in some respects the most important step in the process of election. In the first place, no one can be a candidate for the office without being formally nominated. In the second place, because of the dominance of the Democratic party, nomination of its candidate is tantamount to election.

Candidates for governor may be nominated by two methods: (1)

[3] *Arnold* v. *State,* 9 S.W. 120 (1888); *Missouri, Kansas & T. Ry. Co. of Texas* v. *Shannon,* 100 S.W. 138 (1907).

by a primary system, and (2) by a convention. A political party whose candidate for governor in the preceding general election received as many as 200,000 voters must nominate its candidate by the primary system. The Democratic party falls in this class, and therefore must always use the primary method. A party whose candidate in the preceding general election received between 10,000 and 100,000 votes may use either the primary or the convention system for nomination. No system of nomination for new parties or parties not falling within one of the above classifications is provided by law. Presumably such a party would use the convention system, though it might have some difficulty in getting the name of its candidate placed on the ticket.[4]

The primary system consists of a first and a second primary in the event there is no nomination in the first. The first primary is held on the first Saturday in May of the even-numbered years and a candidate must poll a majority of all votes cast by his party to be nominated. If none of the candidates of a party receives such a majority, that party must hold a second primary on the first Saturday in June following the first primary. Only the two candidates receiving the highest number of votes in the first primary of their party may participate in the second primary.[5]

***Election.*** Following the nomination of candidates by the various parties, the general election is held on the first Tuesday after the first Monday in November of the even-numbered years. The election returns of each county are compiled by the county judge, sealed, and transmitted to the secretary of state, who delivers them to the speaker of the house of representatives as soon as he is elected.

The votes are counted by committees appointed by the presiding officers of the two houses of the legislature. These committees make a report of the results of the election to a joint session of both houses of the legislature, which declares the candidate having received *a plurality* of all the votes cast to be elected governor. If two or more candidates have received the highest and same number of votes, one of them is chosen governor by a joint vote of both houses of the legislature. Election contests for the office of governor are determined by a joint session of both houses of the legislature.

The qualifications, nomination, and election procedure for the office

[4] *Texas Election Laws* (1928), Articles 3101, 3154, 3155. For a careful analysis of the Texas primary system, see O. Douglas Weeks, "The Texas Primary System," *Southwestern Social Science Quarterly*, XIII, (1932).

[5] *Texas Election Laws* (1928), Article 3102. Votes cast for an ineligible candidate must be counted. *Allen* v. *Fischer*, 9 S.W. (2d) 731 (1928).

of governor apply also to the office of lieutenant-governor. Both are inaugurated with appropriate ceremonies in the presence of both houses of the legislature on the first Tuesday after the organization of the legislature or as soon thereafter as practicable.[6]

***Term, Residence, and Compensation.*** The governor is elected for a term of two years or until his successor has been duly elected and inaugurated. He is constitutionally indefinitely reeligible to election but custom until recently has been strong enough to limit his election to two terms. However, this tradition was broken by the election of Governor Allan Shivers to three consecutive terms. The tradition of an endorsement term has made it relatively easy for a governor to succeed himself for one term with few exceptions.

While the legislature is in session the governor must reside where its sessions are held and at other times at the capitol unless he is required or authorized by law to reside elsewhere.[7]

In 1954 an amendment gave the legislature the power to determine the governor's salary subject to a minimum of $12,000. In 1955 the legislature fixed his salary at $25,000. In addition he enjoys the use of the governor's mansion and its furnishings. Biennial appropriations are made by the legislature for the maintenance of the mansion, but no part of such appropriations can be used for groceries for the governor and his family.[8] The governor is forbidden to increase his salary by any kind of service rendered during his term of office.[9]

***Removal and Succession.*** The governor may be removed from office by charges of impeachment brought by the house of representatives and sustained by the senate. Mere impeachment by the house of representatives does not remove the governor from office. He must be convicted of the impeachment charges by the senate sitting as a court of impeachment. Conviction requires a two-thirds vote of the senators present and not only removes the governor from office, but disqualifies him from holding any office of honor, trust, or profit in the state government. He is also still subject to criminal prosecution according to law for any crimes he may have committed against the state. During the trial of the governor by the senate for impeachment charges he is suspended from performing the duties of his office.

The lieutenant-governor becomes governor "in case of the death, resignation, removal from office, inability or refusal of the Governor to

[6] *Texas Constitution,* Article IV, sections 3, 4.
[7] *Ibid.,* Article IV, sections 4, 13.
[8] *Terrell, Comptroller of Public Accounts* v. *Middleton,* 187 S.W. 367 (1916).
[9] *Texas Constitution,* Article IV, section 6.

serve, or of his impeachment or absence from the State," and serves until another governor is chosen at the periodical election and is duly qualified or "until the Governor impeached, absent, or disabled, shall be acquitted, return, or his disability be removed." [10] If, during the vacancy of the office of Governor, the Lieutenant Governor should die, resign, refuse to serve, or be removed from office, or be unable to serve: or if he shall be impeached or absent from the state, the President of the Senate, for the time being, shall, in like manner, administer the government until he shall be superseded by a Governor or Lieutenant Governor." [11] The lieutenant-governor and the president of the senate receive for their services as governor the same compensation as the governor himself receives and are subject to the same restrictions and inhibitions.[12]

## The Powers of the Governor

The governor has a wide range of powers which in some instances are not capable of very definite classification. Possibly as satisfactory a classification as can be made would group his powers under the headings of: (1) executive, (2) administrative, (3) legislative, (4) judicial, and (5) miscellaneous.

***Executive Powers.*** The governor is the official head of the state and in this capacity represents the state on many ceremonial occasions and in conferences with other state executives. He is also the channel of communication between the state and other states and with the national government. He exercises the power of extradition of fugitives from justice. He is commander-in-chief of the military forces of the state except when they are in the service of the United States under the President. He biennially appoints the adjutant general and twelve aides-de-camp who constitute his military staff. In cases of an invasion of the state, insurrection, unlawfulness, or breaches of the peace, or on any occasion when in his judgment the situation requires it, he may call the militia into service to maintain law and order. If he thinks it is necessary he may subject any county or city to martial law and use the military forces to aid the civil authorities in the maintenance of law and order. By virtue of his police powers he may also use the Rangers anywhere in the state to enforce the laws of the state. In fact, the Rangers, who have the powers of peace officers, are his most efficient

[10] *Ibid.*, Article IV, section 16.
[11] *Ibid.*, Article IV, section 17.
[12] Ibid., Article IV, section 18.

means for enforcing the laws in cases of emergencies. It is by means of his executive powers that the governor is able to "cause the laws to be faithfully executed." [13]

***Administrative Powers.*** The administrative powers of the governor are those by which he is able to give direction to administrative agencies and exercise control over their activities through appointment, removal, supervision, or financial means. For various reasons these powers are very inadequate and as a result the governor is unable to discharge his responsibility to the state. State administration is chaotically disintegrated and its control is divided between the governor, the legislature, and the people. A more inefficient and irresponsible system could scarcely be devised by the ingenuity of man.

*The Appointment Power.* The governor has power to appoint only one of the constitutional executive officers, the secretary of state, since the commissioner of education is appointed otherwise, and all of the other executive officers are elected. However, he has the power to appoint numerous individual officers and the membership of many boards and commissions which constitute the chief agents of state administration.[14] He also appoints the members of the commission which assists the court of criminal appeals and part of the membership of the judicial advisory council. He appoints a few local government officials such as public weighers, pilot boards, and wreckmasters in the maritime counties of the state.[15]

The governor also fills by appointment vacancies in state and district offices except those in the membership of the legislature. These appointments must be confirmed by two-thirds of the senators present if the senate is in session. If recess appointments are made, the names of the appointees must be sent to the senate during the first ten days of the next session for confirmation. In case of the rejection of such appointees by the senate, the offices immediately become vacant, and new names must be sent to the senate at once.

Any rejected appointee to a vacancy is disqualified for appointment to any other vacancy. But the governor may fill these other vacancies with new appointees if they have not already been filled by a regular election.[16]

If the senate takes no action to confirm or reject an appointment,

[13] *Ibid.*, Article IV, sections 1, 10.

[14] For a complete list of these positions see *Guide to Texas State Agencies,* Institute of Public Affairs, University of Texas, 1956.

[15] *Texas Constitution,* Article IV, section 12.

[16] Stewart, *op. cit., passim.*

such inaction is considered silent approval, and the appointee remains in office until the next election.

There are several limitations on the governor's power of appointment which destroy the unity of state administration as well as prevent the establishment of an effective personnel policy. In the first place, the power of appointment does not extend to all heads of the executive departments, six of which are chosen by popular vote. In the second place, the power of appointment is subject to approval by two-thirds of the Senate—a rather high majority. In the third place, the membership of many boards and commissions is based on overlapping terms with the express purpose of limiting the governor's control. In the fourth place, technical qualifications are required for some offices. Finally, the members of some boards must represent certain economic interests, geographical sections, and in some instances must be appointed from a list submitted by the profession that is involved.

*The Power of Removal.* There are four methods of removal provided by the constitution and the statutes: (1) impeachment by the legislature, (2) by the governor on address by two-thirds of the legislature, (3) by *quo warranto* proceedings, and (4) by the governor alone. Elective constitutional officers are removable by impeachment. The legislature has the power to provide the method for the removal of officers in the absence of constitutional provision.[17] In the exercise of this power it may choose impeachment, removal by the governor, or *quo warranto* proceedings. By several statutes the list removable by impeachment has been increased, including secretary of state, commissioner of insurance, banking commissioner, and "all other State officers and heads of State departments or institutions of any kind, and all members, regents, trustees, commissioners having control or management of any State institution or enterprise." [18] It is also provided by statute that the governor on address by two-thirds of each house of the legislature may remove the commissioners of agriculture, insurance, and banking for willful neglect of duty and other specified offenses.[19] "For good and sufficient cause" [20] the governor alone may remove all officers who are appointed by him or elected by the legislature provided there is no other method of removal provided by law. The reasons for such removals must be a matter of record in the gov-

[17] *Texas Constitution,* Article XV, sections 2, 7.
[18] *Revised Civil Statutes* (1925), II, Article 5961.
[19] *Ibid.,* II, Article 5964.
[20] *Texas Constitution,* Article XV, section 7.

ernor's office and be reported to the next session of the legislature.

*The Power of Supervision.* While the constitution makes it the duty of the governor to see that the laws are faithfully enforced, it nowhere gives him means for the performance of this duty, nor have they been granted him by the legislature. The chief means for accomplishment of this purpose would be the power to remove officials who refuse to enforce the laws. From the above discussion of the removal powers, it is doubtful that the governor has the independent power of removal in a single instance. The legislature has refused repeatedly to grant the attorney general, upon direction of the governor, the authority to institute *quo warranto* proceedings against local law enforcing officials who wilfully refuse to dispatch their duty.

The power of removal is a more effective means of control than the power of appointment. Even the latter power of the governor is only nominal and does not extend to the whole of state administration. While the governor receives reports from many administrative agencies and may require special reports and while he must approve many administrative details, these processes may increase his knowledge concerning state administration, but they do not increase his authority over it.

*Financial Powers.* The financial supervision by the governor of state administration, though recently strengthened by the budgetary law of 1931, is, like his other administrative powers, very inadequate if not entirely ineffective. While the heads of departments and institutions are required by the constitution to keep an account of all funds received and disbursed and to make a semi-annual report to the governor, such information is rather in the nature of a post-audit and in no way constitutes a constant and continuous power which is necessary for effective financial control. The governor may require special reports from such heads of departments and institutions at any time and may inspect the records of their offices. While this provides a possible check, it lacks the power of direction and supervision to enforce a real control.

In 1927 an office of state auditor and efficiency expert was created, and under the direction of the governor was given rather extensive investigatory powers relative to the financial administration of the state.

The governor has the power of approval of deficiency claims not in excess of $200,000 for all purposes. He also possesses a veto power

over appropriations bills known as the "item veto," which will be discussed later under legislative powers.

***The Governor's Legislative Powers.*** In the field of legislation the governor lacks the power of an American president or an English prime minister, because he is unable to control his party. In fact he is frequently elected on one program while the legislature is elected on another. The governor as well as the individual members of the legislature, while rendering lip service to the platform of the party, meaning of course the Democratic party, almost invariably have their personal issues which are the main basis of their election campaigns. Since there is no effective opposition party, there can be no real party discipline which the governor can use in either policy forming or legislative enactment. His legislative powers are primarily his constitutional powers and personal influence.

*His Control Over Organization and Sessions.* While the resignations of members of the legislature are sent to the governor, vacancies are filled by special elections which are called by the governor but over which he has no special influence. The two houses of the legislature organize themselves without any constitutional supervision from the governor. The governor in a purely personal way might be able to influence the election of the speaker of the house of representatives and as a result the committee system of the house and its legislative policy, but such results would not be achieved by constitutional or party processes. The time of meeting of regular sessions of the legislature and their duration are fixed by the constitution and statutes and are therefore free from gubernatorial influences. Even a deadlock between the two houses of the legislature over the date for adjournment cannot be resolved by the governor.

The governor does have the power to call the legislature into extra sessions and to fix the subject matter of legislation for such sessions. By this means the governor can force a consideration of his legislative program, but he cannot compel actual legislation. To secure favorable action on matters proposed in his proclamation calling special sessions he is generally forced to grant the consideration of other matters upon which legislative groups or special interests desire legislation. Such matters are included in special messages to the legislature. The result is, therefore, that the governor's actual control over special sessions of the legislature does not materially differ from that over the regular sessions. While the governor's power to limit the subject matter of

legislation in special session gives him a trading opportunity, this limitation does not apply to executive and judicial matters such as confirmation of appointments or impeachment.[21]

*His Legislative Messages.* "The Governor shall, at the commencement of each session of the Legislature, and at the close of his term, give to the Legislature information, *by message,* of the condition of the State; and he shall recommend to the Legislature such measures as he may deem expedient." [22] He is required to give the legislature an account of all public moneys received and disbursed by him from any funds subject to his order. At the beginning of each regular session he is required to present estimates of the amount of money which he considers necessary to raise by taxation for all purposes. The messages of the governor may be classified in the following categories: (1) a formal message at the opening of the regular session of the legislature, reviewing the condition of the state and his campaign and party pledges, and making recommendations for legislation on important subjects; (2) special messages during the session of the legislature, urging special legislative measures; (3) a final message at the close of his administration, a sort of swan song, reviewing the accomplishments of his administration.

While the constitutional method of communication between the governor and the legislature is *by message,* he may, upon invitation from the legislature, deliver his message in person before a joint session of the two houses. His messages are printed in the daily journals of both houses and are always discussed and sometimes are printed in full in the newspapers of the state. Of course, there is no constitutional prohibition on "fireside chats" by the governor over the radio or on television with the people of the state as a means of creating a public opinion to reenforce his legislative messages.

*The Veto Power.* A legislative act, to become law, must be first passed by both houses of the legislature, then submitted to the governor for his approval; if he signs it, it becomes law and is filed with the secretary of state. If the governor disapproves, however, he vetoes it and sends it back to the house of its origin with his reasons for the veto. Gubernatorial veto may be overridden if both houses repass the bill by a two-thirds vote—*on a recorded roll call;* it is then filed as law with the secretary of state. If, however, the vetoed bill fails to pass

[21] *Ferguson* v. *Maddox,* 263 S.W. 888 (1924).
[22] *Texas Constitution,* Article IV, section 9.

either house by a two-thirds vote, it is dead for the current session of the legislature.

During the sessions of the legislature the governor has ten days, exclusive of Sundays, to consider bills which are presented to him. If he does not sign or veto a bill within this time limit, it automatically becomes law. He has twenty days including Sundays after the legislature has adjourned to sign bills which are presented to him during the last ten days of the season. His veto of these bills is final; they cannot be considered by any subsequent session of the legislature. If he vetoes any of these bills he gives notice by public proclamation. Those not signed within the twenty-day limit become law without his signature.[23] The governor of Texas does not have a "pocket veto." If he neither signs nor vetoes, the bill becomes law.

The governor also has the power to veto items in appropriation bills. The item veto may be overridden by a two-thirds vote if the legislature is in session, but since the appropriation measures are generally passed at the close of the session, the power of the governor over items of such legislation becomes absolute. However, he cannot reduce items nor can he eliminate qualifications placed on appropriations or directions for their expenditure.[24] If the governor files objections to items in an appropriation bill during the session of the legislature, he cannot veto other items in the same bill after adjournment.[25]

The item veto of governors is assuming increasing importance throughout the field of state government because legislatures are evading their responsibilities by placing the burden of cutting appropriations upon the governors. "Governors throughout the country," says Professor Mathews, "are exercising the power of vetoing items of appropriation bills with increasing frequency, and the number of occasions arising where the action of the legislature renders the exercise of this power necessary or desirable is also on the increase. . . . Legislatures have sometimes, either by inadvertence or design, placed the Governor in an awkward and embarrassing position by adjourning after making appropriations largely in excess of anticipated revenues or of what the state treasury will bear. In order to preserve the financial integrity of the state and avoid a deficit, the Governor is then forced to reduce the total amount of the appropriations, though knowing that by so doing he will incur the displeasure and criticism of the persons,

[23] *Ibid.*, Article IV, section 14.
[24] *Fulmore* v. *Lane*, 140 S.W. 405 (1911).
[25] *Pickle* v. *McCall*, 24 S.W. 265 (1893).

institutions, or interests who would otherwise benefit thereby. . . . In cutting down appropriations, therefore, the Governor must usually be imbued with a high order of courage and a deep belief in the support of his action by the mass of the people." [26]

By way of summary, it may be said that the general tendency throughout the country is that the influence of the governor over legislation is increasing. In contrast with the members of the legislature, he represents a statewide constituency. Mass democracy is now the order of the day. The claims of local constituencies are not in harmony with this conception, and the local representative is as a consequence losing his individuality and importance. This same process tends to destroy the leadership of the members of the legislature and to place their responsibility upon the governor. Collectivism whether in the state or nation demands a unified leadership which our legislatures in the absence of cabinet or some other form of collegiate leadership cannot furnish. Without a change in the organization and procedure of our legislatures under collective or group leadership it is difficult to see how they can maintain their position in our constitutional system. The reduction of legislatures to the agents of the executives means the end of democracy.

While this tendency has not developed to an alarming extent in Texas, it is seen from the above discussion of the legislative powers of the governor that there is some foundation for his office's being called the "third house" of the lawmaking process.[27] His personal and political leadership, his power of appointment, his veto power on legislation, his control of the subject matter of special sessions of the legislature, his advantages in formulating and directing public opinion, and his machine of able politicians easily make him potentially the most powerful force in state politics. Whether he is able to articulate his forces and to realize on all his possibilities is solely a matter of his personal qualities. The full stature of a governor of Texas is therefore not determined altogether merely by his constitutional and political powers.

***The Governor's Judicial Powers.*** The governor's power to fill vacancies in the judiciary prior to the regular election, though a part of his constitutional appointive power, in fact gives him a greater control over the personnel of the judiciary than is generally recognized.

[26] John M. Mathews, *American State Government*, 1924, p. 229.

[27] Frank M. Stewart and Joseph L. Clark, *The Constitution and Government of Texas*, Rev. Ed., p. 66, D. C. Heath and Company, Boston, 1933.

Statistics show that judicial appointee-incumbents are almost invariably elected to these vacancies when the regular election is held. His power to determine a large part of the personnel of the judiciary might well be considered a part of his judicial power. The character of the personnel of the judiciary is undoubtedly the most important item involved in a judicial system.

His power to pardon and remit fines, et cetera, is, of course, the power to nullify the verdicts of juries and the decisions of courts, and amounts to a considerable control over the enforcement of the criminal law of the state. This power is granted in the constitution of the state in the following language:

> In all criminal cases, except treason and impeachment, he shall have power after conviction, to grant reprieves, commutations of punishment and pardons; and under such rules as the Legislature may prescribe, he shall have power to remit fines and forfeitures. With the advice and consent of the Senate he grants pardons in cases of treason and to this end he may respite a sentence therefor, until the close of the succeeding session of the Legislature; *provided,* that in all cases of remission of fines and forfeitures, or grants of reprieve, commutation of punishment or pardon, he shall file in the office of the Secretary of State his reasons therefor.[28]

In the performance of these very important and responsible functions the governor is assisted by a Board of Pardons and Paroles composed of three members, one appointed by him, a second by the chief justice of the Supreme Court of Texas, and a third by the presiding justice of the Court of Criminal Appeals. The members of the board are appointed for terms of six years with the advice and consent of two-thirds of the senate present. They must have been residents of the state for two years immediately preceding their appointment and the term of one member expires every two years.

By a recent amendment, the governor's pardon powers have been severely limited. After conviction in criminal cases, except treason and impeachment, he may grant pardons and reprieves and commutations of punishment only upon the written recommendation of the board or a majority of its members under such rules as the legislature may provide. He may remit fines and forfeitures, and in a capital case he may grant one reprieve not to exceed a period of thirty days. He may re-

[28] *Texas Constitution,* Article IV, section 11. This section was modified by an amendment adopted November 3, 1936.

voke paroles and conditional pardons, and with the advice and consent of the legislature he may grant reprieves, commutations of punishments and pardons in cases of treason.

***Miscellaneous Powers.*** The office of governor is a tremendously burdensome job. Official and unofficial functions, so numerous and widespread that they can be neither classified nor listed completely, comprise his overwhelming workload. He must hold hundreds of conferences, deliver countless addresses, read and sign thousands of documents; by virtue of his office he is a member of many state boards; he must constantly be available to the press. As governor he must meet with other governors, and make frequent trips to Washington. As party leader he must keep his political fences mended. As the father-figure for the state he must exert every effort to be wise in all matters. It is an exhausting regimen, and governors seldom leave office with the same degree of popularity which bore them in.

## OTHER EXECUTIVE OFFICERS

The other executive officers fall into two groups: (1) those provided by the constitution and (2) those established by statute. In the first group belong the lieutenant-governor, secretary of state, attorney general, comptroller of public accounts, treasurer, and commissioner of the general land office; and in the second, the commissioner of agriculture and the commissioner of education. The commissioner of agriculture under statute is nominated and elected by the voters for a term of two years at the same time, by the same process, and under the same conditions as the governor. The secretary of state is appointed for a two-year term by the governor with the advice and consent of the senate. The commissioner of education is appointed by the state Board of Education.

### Lieutenant-Governor

The lieutenant-governor, because of the possibility of his succeeding the governor in case of a vacancy, must have the same qualifications for office as the governor.[29] He is president of the senate and has the right to debate and vote on all questions when the senate is sitting as a committee of the whole. He has the deciding vote in case of a tie

[29] *Texas Constitution,* Article IV, sections 16, 17.

when the senate is sitting as a house. As president of the senate he has the power to appoint its legislative committees and for this reason may be more influential over legislation than the governor. He receives the same compensations and mileage for his services as senators, though while acting as governor, he receives the compensations of the governor.

### Secretary of State

The secretary of state is closely associated with the governor and for this reason is appointed by him.[30]

His duties are numerous and important. He is custodian of the records of the state and of the seal of the state with which he attests the signature of the governor to all commissions, proclamations, and certificates of an official character. Upon request of the legislature he will lay before it or either house such of the official records as may be desired for inspection. He has charge of distribution of all records or reports of officers and departments of the state which are printed by order of the legislature. At the beginning of each regular session of the legislature he presides over the house of representatives until a speaker is elected.[31]

In connection with elections, he furnishes the election supplies, receives the returns, and serves as a member of the state election board which canvasses the returns and declares the election results. He issues certificates of incorporation to domestic companies and licenses to foreign corporations, and administers the "blue sky" laws. He serves as a member of the intangible tax board.

### The Attorney General

The attorney general is the chief law officer of the state. It is his duty to give legal advise to the governor, the legislature, and all officers of the state upon request. He represents the state before the supreme court and courts of civil appeals in cases to which it is a party. He advises district and county attorneys who represent the state in the lower courts.

It is his business to see that the corporations doing business in the state obey their charters and to prosecute them for violation of their provisions. He examines all county and municipal bonds and approves their validity if they conform to constitutional and

[30] *Ibid.*, Article IV, section 21.
[31] *Revised Civil Statutes* (1925), I, Articles 4330–41; II, Article 5424.

statutory requirements. He is a member of a number of important state boards. He is assisted in the performance of his duties by several assistant attorneys general whom he appoints. He receives a salary of $20,000 a year.[32]

### Treasurer

It is the duty of the treasurer to receive all moneys paid into the treasury of the state on the warrants of the comptroller of public accounts, and to countersign and pay all warrants drawn by him on the treasury. He keeps the money of the state in the vaults of the treasury or places it in responsible banks.

He keeps accounts of all receipts and expenditures of public moneys and opens accounts for all appropriations made by law. He makes an annual report to the governor on the financial condition of the treasury on the first Monday of November and at such other times as the governor may request. He is also a member of several state boards. His salary is $17,500 a year.[33]

### Comptroller of Public Accounts

Although the constitution establishes this office, it does not set forth its duties. However, the comptroller has been made by law the chief fiscal officer of the state. He exercises control over state expenditures and the collection of revenues. He keeps all accounts of the state, audits the claims of all persons against the state, and settles the accounts of all persons indebted to the state. He draws warrants on the treasury for payment of all moneys directed by law to be paid out of treasury. He serves as a member of several state boards.

### Commissioner of the General Land Office

The duties of the commissioner of the general land office are fixed by law. He is charged with the control of the conduct of all the subordinate officials of the general land office and with the execution of the laws with respect to the public lands and the rights of individuals in relation to these lands. He must reside at the capitol during his tenure in office and make such reports concerning the public lands or the general land office as the governor and the legislature may require. He is a member of several state boards.

[32] *Texas Constitution,* Article IV, section 22.
[33] *Ibid.,* Article IV, section 23.

### Commissioner of Agriculture

This office is established by law and the salary of the commissioner is fixed by statute. The commissioner must be an experienced and practical farmer and possess a general knowledge of farming, manufacturing, and industry.

It is the duty of the commissioner to promote the development of farming, to establish organizations of farmers, to study soils and drainage problems, to develop markets for farm products, to study the diseases of farm plants and to promote their eradication. He is expected to promote the planting of trees.

He is also to encourage the raising and improvement of livestock including hogs, sheep, horses, mules, cattle, fowl, and fish. In general his duty is to promote the conservation and improvement of the soil and methods for improving farm products.

### Commissioner of Education

The commissioner of education is the chief executive official of the public schools. His office is not provided in the constitution but was established by the legislature.

The salary of the commissioner is fixed by law, and his duties are to act as secretary of the state Board of Education, to procure and disburse free textbooks, and to direct and supervise the administration of the public schools of the state.

The functions of this department are numerous and important and extend to the certification of teachers, the supervision of the work of the county superintendents, the inspection and grading of the public schools and the maintenance of healthful and sanitary conditions of their premises, and the distribution of the funds to equalize educational opportunities for the public school children of the state. In fact it has charge of the biggest and most important business of the state in all of its ramifications.[34]

## THE GOVERNOR'S COMMITTEE ON INTERSTATE COOPERATION

In 1941, the Forty-seventh Legislature provided for the establishment of some new machinery designed to improve the relations of

[34] See Chapter 10.

Texas with the other states of the Union. By legislative authorization there was established a committee known as the Governor's Committee on Interstate Cooperation. This committee consists of the secretary of state, the attorney general, and three other administrative officers appointed by the governor. The chief executive serves as an honorary nonvoting member.

## STATE ADMINISTRATION

By strict definition there is no such thing in Texas as a truly effectual state administration. The many executive agents are elected by the people and are independent of each other and of the governor. They are responsible only to the people who, of course, have neither the time nor the information to supervise the daily performance of the functions of such a multiplicity of governmental agents. The people are not organized so as to act as supervisors of administration. Furthermore, the election process does not give them the necessary information. Moreover, elections come too late to correct damage already done.

The governor should possess most of the executive power. Like the President of the United States, his administration should be a unit responsible to him, and he responsible to the people. He should have the power to appoint the heads of administration with the approval of the senate and the independent power of removal for incompetence or misconduct in office. This system of administration should include all the present executive heads and the administrative boards and commissions. The subordinates of the administrative heads should be employed under a competitive merit system under the control of a civil service commission, but geared to departmental levels in such a way as to give the departmental heads the necessary supervisory powers over their employees. There are many advantages of such a system. It fixes the responsibility for administration in the governor. It simplifies the problem of the electorate because the people have to pass on only the conduct of the governor. It shortens the ballot and eliminates the election expenses of the present elective officials. It eliminates much of the factional politics from the administration and therefore makes administrative positions more remunerative because of the elimination of election expenses. The wear and tear and expense of a political campaign, frequently two, primary and regular elections, are not only physical ordeals but are so expensive as practically to exclude people

of moderate means from office unless they are sponsored by political or economic groups. This is undemocratic and makes for divisions and deadlocks in administration. Fixed responsibility is the key to good government. It simplifies the problem of control. It prevents the evasion of duty.

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# 7....

# *The Texas Legislature*

The legislature is the chief policy forming branch of the state government. It determines the services to be performed. It also must set up the governmental machinery to be used in performing these services and how they are to be financed.

## THE TASK OF LAWMAKING

In formulating public policy on the state level, the legislature must decide many matters that lie very close to the daily lives of the people. Laws pertaining to family affairs, marriage and divorce, the education of the children and their training for citizenship are largely within its domain. In fact the whole range of civil law, that is, rules governing property rights, wills, deeds, inheritances, corporations, contracts, and many other civil matters, lie within its broad scope of state authority. The legislature also enacts the primary criminal code which defines crimes and punishments.

Under the police power, or regulatory authority, the legislature lays down rules for the conduct of business, the professions, and other activities of the people. In this wide field of authority it formulates measures for the protection of the public health, morals, safety, and welfare of the people generally.

The legislature regulates suffrage and elections and other political processes. Within the limits of the state constitution it has considerable power over local governments. It is chiefly responsible for the construction and maintenance of the vast highway system. The institutions and hospitals for the care of the mentally ill and of other unfortunates are at its mercy.

The legislature also cooperates with the national Congress in providing for the execution of many broad programs of a social welfare

nature. In this growing field of functional cooperation between the two governments, the state legislature assumes a place of increasing importance in governmental policies in this country.

## LEGISLATIVE FUNCTIONS CLASSIFIED

The primary function of the legislature is that of lawmaking. There also are several nonlegislative tasks that it performs. First among these is its role in amending or rewriting the constitution. This is known as the *constituent* power. All proposals for amending the constitution must be initiated by the legislature. If the people wish a new constitution, or a more complete revision of the present one, a constitutional convention would be the only feasible procedure. Again the power to initiate such a procedure lies solely with the legislature. It also ratifies amendments to the Federal Constitution.

Another power of the legislature is that of exercising general supervision over the entire administrative system. This usually is termed the *supervisory power.* Gubernatorial appointees, who are responsible for directing many of the state's services, must be confirmed by the senate.

The legislature can investigate any agency of the state. Such investigations, as a rule, are conducted by committees set up for the purpose. These committees have the power to issue subpoenas, compel the attendance of witnesses, and administer oaths. The committees' findings are submitted to the legislature as a basis for any action the body may wish to take.

In like manner, comprehensive surveys of important state functions may be authorized by the legislature. Both private and public groups may be enlisted in the conduct of such surveys, as was the case in the Gilmer-Aikin school study that later became the basis for comprehensive legislation for the public schools.

The legislature also arranges for the inauguration of the governor and lieutenant-governor. Returns of the election of certain officials are canvassed in the presence of both houses, and the legislature has jurisdiction over contested elections.[1]

### The Impeachment and Removal Power

Another power of the legislature, although rarely used, is that of impeaching and removing from office officials of the state government.

[1] These officials are: governor, lieutenant-governor, comptroller, treasurer, land commissioner, and the attorney general. (See Constitution, Article IV, section 1–4.)

The constitution names six executive officials, besides the judges of the state courts, that can be removed by the impeachment procedure.[2] In addition the legislature can provide by law for the "trial and removal from office of all other officers of the state, the modes for which have not been provided in the Constitution." [3]

***The Impeaching Procedure.*** The impeachment and removal procedure in Texas is similar to that in the federal government. The power to impeach is vested in the house of representatives. The term "impeach" means to accuse a public official. The act is somewhat analogous to that of indictment by a grand jury in criminal procedure before the courts.

Articles of impeachment are presented to the house of representatives, where a majority vote is necessary for accusation or impeachment. The senate acts as a court for trying the impeachment case, where a two-thirds vote of all members is required for conviction. Unlike the courts, however, the trial in the senate is not a criminal procedure. If the official is involved in a crime he may be tried in the courts after his removal from office.

Impeachment and conviction by the legislature removes an official from office and bans him from holding any other public office in Texas.

## LIMITATIONS OF THE LEGISLATURE

The state legislature has the power to enact all types of laws that are not in conflict with the constitution, laws, and treaties of the federal government and not specifically prohibited by the state constitution. The Tenth Amendment reserves to the states, or to the people, all powers not delegated to the federal congress. Thus the state's powers are residual and cannot be completely listed.

***Limitations under the Federal Constitution.*** The first source of limitations upon the state legislature is found in the Federal Constitution. These pertain to such matters as foreign affairs, coinage of money and regulation of the currency, the postal system, the regular military forces, the regulation of foreign and interstate commerce, and other powers delegated exclusively to the Congress, or have been held by the courts to be exclusive functions of the federal government. Under the

[2] These are the governor, lieutenant-governor, attorney general, treasurer, commissioner of the general land office, the comptroller of public accounts, and the judges of the supreme court, the courts of civil appeals, and district courts.

[3] For special procedures as set up for the removal of judges of the state courts, see Chapter 18.

commerce clause, as an illustration, the legislature cannot levy a tax upon the flow of natural gas through pipelines from the wells in Texas to other states.

The Fourteenth Amendment forbids state laws that would deprive any person of life, liberty, or property without due process of law, or deny any person equal protection of the law, or abridge his equal privileges and immunities under the law. State school segregation laws have been held as violating this amendment. The Texas "White Man's Primary" law and party rules excluding Negro voters were invalidated under both the Fourteenth and Fifteenth Amendments.

The fact that federal laws may cover certain subjects not denied to the states, does not prevent the legislature from passing similar laws provided there is no conflict. Almost identical provisions may be found in both state and federal labor laws. Both federal and state laws, as another example, may protect migratory game birds, or provide for welfare programs of the people generally.

***Limitations Under the State Constitution.*** The framers of the Texas Constitution were firmly convinced that many strict limitations should be placed upon both the legislative and executive branches. Numerous changes through amendments have gradually extended legislative powers, but the legislature must operate under many specific limitations of the state constitution.

The present limitations may be grouped into several broad classifications according to the nature of the legislation they were designed to guide or restrict.

First, there is the bill of rights, which reserves as inviolate the basic liberties of the people. The legislature cannot impair or deny these rights by legislative acts.

A second group defines the general structure of government and stipulates the election procedure, terms, and powers of the chief officials. The legislature, through its power of finance, may extend the powers and duties of such officials but it cannot impair their constitutional prerogatives. In like manner, the authority under which local governments operate, and their functions in general, are beyond legislative control.

In the third place the constitution prescribes some of the suffrage qualifications which the legislature cannot change. If the people wished to reduce the voting age, for example, a constitutional amendment would be necessary.

In the fourth group are several important limitations on the taxing

and spending functions of the legislature. Taxes must be equal and uniform and must be levied by general laws and for public purpose only.[4] Appropriations cannot be made for more than two years in advance and cannot be authorized in amounts beyond the anticipated revenues for the biennium.[5] Unlike the Congress the legislature has no authority to borrow money or create a debt against the state.[6] Important trust funds, such as the permanent school fund and the university fund can be used only as the constitution designates. Several operative funds, those for spending purposes, such as the available school fund, the teacher's retirement fund, the veteran's land fund, the state and college building funds, and the highway fund are creatures of the constitution. Limits are placed upon expenditures for old age assistance, dependent children, and blind and disabled citizens.

And finally, the legislature itself, being a creature of the constitution, has many limitations placed upon its organization. The principles and processes of representative government are laid down. The terms, eligibility, privileges, and compensation of its members are defined. Although each house adopts its own rules of procedure, a number of basic requirements are stipulated. Bills must be read on "three several days" in each house, committee reference and report are required, and all revenue measures must originate in the lower house. Special sessions are limited to thirty days and can consider only such legislative measures as the governor submits. Special sessions cannot submit constitutional amendments to the people and neither house can adjourn more than three days without the consent of the other.

There are, of course, many other provisions in the state constitution, such as the basic provisions for the liquor control system, the uses and disposition of the public domain, the protection of homesteads from forced sale, and a number of other miscellaneous provisions that guide or limit the legislature in the making of laws.[7]

[4] See Chapter 9 for explanation.

[5] *Texas Constitution,* Article III, section 49a.

[6] *Ibid.* This section permits debts to be created not to exceed $200,000 at any time to supply the deficiencies in the revenue.

[7] The Texas Homestead Law originated under President Lamar of the Texas Republic and has been incorporated in each state constitution since then. No mortgage, trust, deed, or other lien on the homestead shall ever be valid except for the purchase money therefor, or improvement made thereon. Article III, section 50.

## BASIS OF REPRESENTATION

The Texas Legislature is composed of two houses—the senate with 31 members, and the house of representatives with 150 members. Representation in the senate is based upon the number of qualified electors (voters). The state is divided into thirty-one senatorial districts with provisions that no county may have more than one senator. Multiple-county districts must be composed of contiguous counties and no county can be divided to create senatorial districts.

Representation in the house of representatives is apportioned according to the total population. In the case of a surplus, a county may be joined with a contiguous county or counties in the legislative district and be permitted to elect a flotorial representative as a means of providing representation for the extra population.

The constitution provides that no county shall have more than seven representatives until the county has reached a population of 700,000. After a county has reached that figure it is allowed one additional representative for each additional 100,000 population in excess of 700,000. This amendment reflects the traditional rivalry between the rural and urban areas, and its purpose was to curb the rising political power of the cities and maintain the supremacy of the rural and small town areas.

**Mandatory Reapportionment.** The constitution requires that representation in the legislature shall be reapportioned after each decennial census. Notwithstanding this mandatory provision the legislature did not reapportion after censuses of 1920, 1930, and 1940. In 1948 an amendment was adopted which will insure reapportionment after each census. In case the legislature, in its first regular session after each census, fails to reapportion, the duty is assigned to an agency called the legislative redistricting board.[8] The supreme court has jurisdiction to compel the board to perform this duty. It is not likely that the board will ever be used for this purpose as the legislature will prefer to redistrict itself.

***The Problem of Unequal Representation.*** The small towns and rural areas still dominate the legislature. In the senate the constitution freezes representation from the larger cities under the provision that

[8] The board is ex officio in composition and is composed of the lieutenant-governor, the speaker of the house, the attorney general, the comptroller of public accounts and the commissioner of the general land office.

no county can have more than one senator. As a result, the four most populous counties, with over forty per cent of the state's total population, have only four of the thirty-one senators.[9] If the population continues to rise in the major cities, representation from these areas may become proportionally even less. Representation in the lower house also is still in favor of the rural and small town areas. The provision in the constitution which limits each county with population in excess of 700,000 to one representative for each 100,000 persons, assures domination by the rural bloc for some time to come. With the state's growing population, however, each new census will show a shift from the rural and small town areas toward the metropolitan centers, which will tend toward equalizing representation as the general ratio increases and the number of rural districts are reduced.[10]

Districts with rural and small town backgrounds naturally cling tenaciously to their special advantages and are indifferent toward the principle of equal representation for the rapidly rising urban centers. The fact, however, that most of the larger cities, the chief victims of such a provision, voted in favor of the amendment to limit their representation, must be explained on grounds other than strictly a rivalry between the rural and urban blocs. The whole issue seems to convey marked overtones of political philosophy regarding the control of future legislatures. This fact again was borne out by a similar proposal severely limiting big city representation which passed the lower house by a topheavy majority in 1959.[11] Several of the most conservative members, who represented the larger cities, voted for it. It appears that some of the most conservative interests, fearing the rise of liberalism in the larger industrial centers, prefer to risk their future with the more stable legislatures dominated by the traditional small town and rural conservatism.

***Qualifications, Terms, and Compensation of Members.*** In order to be a candidate for the state legislature one must be a qualified elector of Texas; that is, a qualified voter. In addition a senator must be at least twenty-six years of age and a representative must be twenty-one. A senator must have been a citizen of Texas for at least five years pre-

[9] Harris, Dallas, Bexar, and Tarrant Counties.

[10] The average constituency of a member of the house of representatives is about 60,000 people. This number, of course, is increasing with each decennial census.

[11] This amendment was offered by Representative Ehrle of Childress. Under the proposal no county would be allowed more than nine representatives. An amendment offered by Hughes of Dallas would have allowed one representative for each additional 400,000 in population. The proposal passed the house by 109 to 32, but was lost in the senate.

ceding the election and the residence requirement for a representative is two years. "No judge of any court, Secretary of State, Attorney General, clerk of any court of record, or any person holding a lucrative office under the United States, or this state, or any foreign government shall during the term for which he is elected or appointed, be eligible to the Legislature." [12]

The constitution originally set the members' pay at five dollars per diem for the legislative session. This was raised to $10.00 per diem in 1930. In 1954 the pay was raised to $25.00 per diem for the 120 day session. An amendment adopted in 1960 places the members on an annual salary of $4,800.00, with an additional compensation of $12.00 per diem for the session to help care for their living expenses while in Austin.

No member of the legislature can be questioned in any other place for words spoken in debate in either house. Members are protected from arrests while attending a session and when going to or from the session except for treason, felony, or breach of the peace.[13]

## SESSIONS

There is no actual limit on the duration of the regular session, although the per diem pay ends with 120 days. A special session ends automatically at midnight on the 30th day unless the two houses have set an earlier hour for sine die adjournment. Unlike the president, the governor cannot convene either house alone into special session. It has been held that the senate has no authority to convene itself for consideration of the governor's appointees.[14] Neither house can adjourn for more than three days without the consent of the other. When either house wishes to adjourn for more than three days, which often occurs in the early days of the session, a simple resolution is passed by both houses which gives legal sanction to such an adjournment.

Sessions must be open to the public, except in the senate when in executive session. This does not mean that the public generally is admitted upon the floor of the house or the senate, but the balconies are always open where the citizen can see and hear what is going on. Upon the theory that a man's fitness for public office can best be dis-

[12] *Texas Constitution,* Article I, section 19.

[13] The principle of protecting law makers against arbitrary arrests and from prosecution for what they have said on the floor was borrowed from England where it was used by the House of Commons in its struggle against arbitrary kings. A similar provision appears in the Federal Constitution for the protection of the members of Congress.

[14] *Walker* v. *Baker,* 196 SW 2nd 324.

cussed in secrecy, the senate is permitted to hold secret, or executive sessions for considering confirmation of the governor's appointees.

Two-thirds of the members must be present in order to constitute a quorum. This means 21 in the senate and 100 in the house of representatives. Of course, if no roll call is taken and no one makes a point of order, the house may proceed temporarily without 100 members actually being in the chamber. Each house has the authority to compel the attendance of its members by voting a "call of the house" and directing the sergeant-at-arms to bring in the absent members.

## ORGANIZATION FOR BUSINESS

Both houses of the legislature organize at the beginning of each regular session, which convenes on the second Tuesday in January of odd-numbered years. The lieutenant-governor is the presiding officer of the senate. The senate elects a president pro tem from its own membership who serves in the lieutenant-governor's absence.

The lieutenant-governor exercises the usual powers and functions of a presiding officer of a legislative body. These include the enforcement of parliamentary rules, keeping order, putting questions to vote, and recognizing members who wish to be heard. He interprets the standing rules of the senate and rules on all points of order. He appoints members of all standing and special committees and the minor employees such as the clerks, stenographers, and pages. He is not a member of the senate and can vote only in the case of a tie. In general his powers and duties are similar to those of the speaker of the house of representatives; the importance and implications of these powers are discussed more fully below in connection with the speakership.

The fact that the lieutenant-governor is elected previously by the people gives him an opportunity to confer with the senate members in advance and work out agreements with them and tentative plans for the organization of the senate. As a result the organization of the senate is more or less a routine affair, and after the election of a few of the more important employees and perhaps a few resolutions, the body is organized and ready for work.

### The Speakership

Organization in the house is usually a more prolonged affair, especially if there is a contest for the position of speaker. The secretary of state presides in the house during the preliminary session, at which

time the seats are selected, the oath of office is administered to the members, and the speaker is elected.

The speakership is a very important position during the legislative session. The speaker is selected from among the experienced members and must be familiar with the intricacies of parliamentary procedure. This position is eagerly sought, and the actual election is frequently preceded by hotly contested campaigning for the position. The contest, as a rule, has its beginning during the latter days of the previous regular session when certain members, usually by petition, start a movement in behalf of their favorites as a sort of political buildup for them in advance.

Soon afterwards, press accounts convey the news that certain members have announced definitely that they are in the race for the speakership. After the primaries the campaign takes on a more definite aspect and as a rule centers on two leading candidates. A nucleus of the membership forms in each camp and a campaign of extensive correspondence and personal contacts ensues. Candidates have been known to travel virtually into every legislative district of the state in order to contact and secure pledges from the members of the incoming legislature.

Shortly before the new session convenes, campaign headquarters are established in Austin for intense activity. Political factions and group interests begin to align themselves according to the political leanings and legislative views of the respective candidates.

The outcome of this contest may presage the character, if not the fate, of much of the more controversial legislation for the session. Being aware of this fact, the powerful economic interests, whose spokesmen constitute much of the so-called "third house" during the session, quietly exert their influence in the race.

The incoming governor, too, after going through a bitter campaign, may have his own personal likes, dislikes, and political alignments; in any case he is interested in making the way as easy as possible for his legislative program. While most of the incoming executives have taken little part in the speaker's race, others have been known to exert every effort by such means as the normal influence and patronage of the office, and through local political organization and friends.

A combination of factors ordinarily determines the circumstances under which an individual member makes up his mind in this contest. Personal likes, political inclinations and connections, and views on controversial issues are likely to be considered. With many the primary

concern is to guess the winner in order to be on the "bandwagon" and on preferential lists when committee assignments, house patronage, and other favors are to be passed out.

The actual election of the speaker takes place in the opening session, and after a number of nominating speeches, the voting is done by secret ballot. The choice of virtually all members, however, is known in advance.

The rather prolonged process by which the speaker is selected constitutes the first chapter in the session's law making. By its outcome, the stage is set for the fate of much legislation. To the average citizen, viewing from a distance the course and logic of such events, the whole thing may appear but a nebulous maze of political activity; yet enshrouded within it many things of far-reaching significance occur that are never dreamed of in his political illusions.

***The Powers of the Speaker.*** By way of summary, the powers and influence of the speaker are derived from the following sources:

*As presiding officer of the house* he has the power of recognition of members requesting the floor, and makes rulings in accordance with the rules of the house and the state constitution. In his discretion he can do much toward expediting procedure in the house. Occasionally he may exercise the power of recognition for political purposes since he can recognize anyone he pleases without appeal to the membership as to his decisions of recognition. By skillful rulings on points of order, on germane amendments, or by avoiding direct votes upon a measure, he can exercise considerable influence upon legislation. As a rule, however, the speaker finds it wise to be fair and impartial in his exercise of the chair, for resentment and even revolts are easily precipitated if the members feel he is abusing his powers for personal or partisan motives. A thorough, practical knowledge of parliamentary rules, an appearance of impartiality in applying those rules, a genial personality, tactfulness, adaptability, and the talent to apply an occasional touch of grave-saving wit and humor—these are the attributes of a masterful speaker of the house.

*The speaker's power to appoint the committees* conveys far-reaching influence in legislation. This influence begins with his power to appoint and largely control the committee on rules.

A more important source of the speaker's power lies in his privilege to appoint the membership of all standing committees. It is here that some of the major political maneuvering takes place in the first week of the session, and favorites may be awarded important committee

assignments. By carefully allocating such appointments and chairmanships, the legislative views of the speaker and his political faction can be given the right-of-way in certain strategic committees. In fact, the complaint is heard frequently that this or that committee has been "stacked" for or against certain important policies. Bills that do not receive a favorable committee report are severely handicapped in that such bills can be brought out only on minority report, which in turn requires a majority vote of the house to order them printed and placed on the calendar. Here again the house occasionally revolts against the action of such committees by ordering substitute measures to be printed, or by diverting similar measures to entirely different committees where they will receive a more favorable consideration.

The speaker, in cooperation with the president of the senate, also appoints all conference committees. Since each contested measure ordinarily winds up in a conference committee, the purpose of which is to adjust the differences between the houses, its ultimate nature, or even its fate, rests largely in the hands of this committee. In the legislative "log jam" which occurs in the closing days or hours of the session, these committees exercise almost autocratic powers, since each house is compelled to accept their reports or stand the responsibility for killing the legislation.

*Other miscellaneous powers* of the speaker include the right to refer bills and the power to pass out the patronage of the house, which includes the appointment or discharge of all house employees such as the stenographers, parliamentarian, committee clerks, and pages. Those designated as officers of the house are elected by majority vote of the house.[15]

## The Committee System

The legislature does the major part of its work through committees. By organization and division of matters in this way it can give careful and comprehensive consideration to each type of legislation. Before the committees, the public and interested groups are given hearings and an opportunity to voice their reactions on the proposed legislation.

There are separate committees in each house, which means that before a bill can become a law it is subjected to consideration by a house committee and a senate committee. There are several types of

[15] These officers are secretary, assistant secretary, journal clerk, assistant journal clerk, calendar clerk, engrossing clerk, enrolling clerk, sergeant-at-arms, assistant sergeant-at-arms, doorkeeper, chaplain, and such others as the house by majority vote may determine.

committees, such as standing committees, conference and other joint committees, committees of the whole house, and special committees. The standing committees are those which constitute a part of the regular organization for the entire session and to which bills are referred for hearings and deliberations.

The important house committees usually consist of twenty-one members each, and in the senate they vary in size from about twelve to twenty-one, at the discretion of the lieutenant-governor. Joint committees are appointed as either standing or select committees for the purpose of considering subjects jointly between the two houses. Special committees are appointed for specific purposes only. Conference committees, investigation committees, and committees to arrange for celebrations or special occasions are examples of this type. Most of the work in each legislative session, however, is limited to less than a dozen of the major committees in each house.[16]

## The Rules System

Each house conducts its business by its own rules of procedure which are prepared by the committee on rules. These rules pertain to the powers and duties of officials, committees and their work, the procedure in law making, messages, debate, and order of business. As noted before, there are many constitutional limitations on the legislature and its procedures. The presiding officer, with the assistance of the parliamentarian, interprets and enforces all rules. The two houses adopt joint rules for guidance in matters requiring joint action of the

[16] Although there are about forty committees in each house, the following are the most important:

| *House of Representatives* | *Senate* |
|---|---|
| Appropriations | Finance |
| Revenue and Taxation | State Affairs |
| Education | Educational Affairs |
| Constitutional Amendments | Constitutional Amendments |
| Highways and Motor Traffic | Highways and Motor Traffic |
| Judiciary | State Institutions and Departments |
| Labor | Labor |
| Oil, Gas, and Mining | Mining, Irrigation, and Drainage |
| Privileges, Suffrage, and Elections | Privileges and Elections |
| Municipal and Private Corporations | Town and City Corporations |
| State Eleemosynary and Reformatories | Departments and State Penitentiary |
| Insurance | Insurance |
| Public Health | Public Health |
| State Affairs | Stock and Stock Raising |
| Agriculture | Agriculture Affairs |
| Game and Fisheries | |

two houses. Either house may make changes in its rules at any time during the session by a two-thirds vote (except the constitutional rule in reference to business to be considered, which of necessity requires a four-fifths vote.)

## PROCEDURE

### The Split Session

The Texas Constitution provides for what is known as a split session. Under this plan the regular session of 120 days is divided into three parts. The order of business is prescribed as follows:

1. The first thirty days are to be devoted to the introduction of bills and resolutions, action upon emergency matters, and confirming the recess appointees of the governor.
2. The next thirty days are to be devoted to committee hearings and such emergency matters as may be submitted by the governor.
3. The last sixty days are to be devoted to legislative consideration and action upon bills and resolutions, and upon emergency matters submitted by the governor.

"Provided, however, that either house may otherwise determine its order of business by four-fifths affirmative vote of its membership."

The clear intent of the above amendment was to prescribe an order of business and procedure for the legislative session. Like many other governmental prescriptions, however, it has meant little in legislative practice. In the final analysis, a legislative body largely determines its own order of procedure, especially in matters not expressly forbidden. A strict interpretation and application of this amendment would be thoroughly impractical, if not an actual interference with feasible procedure. By following the strict meaning of the second provision, for example, neither house could hold sessions or transact any business during the second thirty days except emergency matters.

In the light of such circumstances, the legislature has construed these provisions as neither mandatory nor exclusive, and formulates its own rules for such procedure. The period for introducing bills ordinarily is limited to the first sixty days of the session except by consent of a four-fifths vote of the house or senate members present, which permission is usually granted if requested.

## HOW A BILL BECOMES A LAW

### Introduction and First Reading

The fundamental characteristics of legislative organization and procedure are similar in all state legislatures, although the forces that influence the course vary greatly with local circumstances.

In the bicameral system each bill must take the long and devious route before it finally becomes a law. All bills, except revenue measures which under the constitution must originate in the house of representatives, can originate in either house. Let us, for the sake of convenience, trace the progress of bills originating in the lower house.

Bills may be introduced by members filing them with the chief clerk, or they may be introduced from the floor. The actual origin of the bill is frequently some interested person or group outside the legislature.

There are several strict rules and constitutional requirements regarding the form of bills. A bill, other than for appropriations, must not deal with more than one subject, which must be expressed in summary in the title. This rule is designed to protect the legislator from devious practices so that he will not find himself for instance voting for legalized horse racing under the guise of a revenue measure or an act to promote agriculture.

***Legislative Aids.*** Many bills are quite complicated, and drafting their language is no easy task. This is chiefly the work of the legislator with whatever assistance he may secure from other members or other sources, especially from the attorney general's office. Occasionally, bill drafting experts are employed to assist the members in this work. The legislative reference librarian in the state library collects materials and references from all states on various legislative problems; this material constitutes a valuable source of information for the legislator.

Following the example of many other states, the Texas legislature in 1949 set up a legislative council to serve as a general research agency for the state government. The council consists of five senators appointed by the president of the senate and ten representatives appointed by the speaker of the house. The president of the senate and the speaker of the house are ex-officio members and serve as chairman and vice-chairman respectively of the council. A technical staff and assistants are employed by the council.

The council is empowered to make all investigations and surveys of all state departments and agencies, to hold hearings, to issue subpoenas for witnesses and compel the production of records, papers, and other documents. Its chief purpose is to serve the legislature as a research agency on any and all matters pertaining to legislative policy under the state government. It conducts studies and gathers information for the use of the legislature. Much of this work is conducted during recess between legislative sessions. The council's studies and recommendations are reported to the legislature along with such drafts of legislation as it deems proper.

***Committee Consideration.*** The chief purpose of the committee consideration is to give more careful attention to the proposed laws and to afford interested citizens and organizations an opportunity to present their case before the legislation is enacted. The afternoons and evenings of the first sixty days of the session ordinarily are available for committee hearings and work.

The hearings on important and controversial measures frequently are prolonged and test the endurance of committee members. Such hearings on a tax proposal, for example, may extend over a period of several weeks. It is the custom of committees to give everyone who wishes to be heard an opportunity to speak, even though some of the discussion is little short of ludicrous, and much of it affords nothing of value to the committee.

Much of the detailed work of the main committee is done in subcommittees. The committee may report the bill in its original form, amend it, or offer a substitute measure for any one or a combination of bills before it. A majority vote is required for a favorable report. In case the bill receives an unfavorable report, it can be printed and placed upon the calendar only by minority report and order of the house, which is done upon motion and by majority vote of the body. Much of the committee work is perfunctory, especially on uncontested measures and bills of minor importance.

### Second Reading, Amendments, and Debate

This stage of a bill's progress represents the crucial period, for it is here that the majority attack is waged. Here also is where amendments are usually offered because a two-thirds vote on amendments is needed later.

The daily order of proceedings in the house is as follows: (1) prayer by the chaplain; (2) excuses for absence of members and officers; (3)

first reading and reference of bills; (4) requests to print bills and other papers, requests by committees for extension of time, and all routine motions not otherwise provided for; (5) resolutions offered from the floor; (6) unfinished business; (7) disposal of business on the speaker's table.

The last above item, the speaker's calendar, constitutes the bulk of the day's business, and is taken up in the following order:

1. Resolutions lying over from previous day
2. Reports of conference committees
3. Senate amendments to house bills and resolutions, requests for conference committees, and all matters of disagreement
4. Reports of standing and special committees
5. Postponed bills to be laid before the house and motions of a privileged nature
6. Bills on their third reading
7. Bills on their second reading.

It will be noted that the second reading comes last in the order.

The bills are brought out in numerical sequence. This rule may be suspended, however, by a two-thirds vote (on "suspension day," usually a Monday, a majority vote will do) assigning a specific day for the consideration of a particular bill regardless of its numerical order.

Local bills and uncontested measures may be considered at any time, usually at night, when so ordered by a two-thirds vote.

Emergency appropriation bills and emergency measures submitted by the governor ordinarily take precedence over all other bills during the first sixty days of the session.

Speeches are usually limited to ten minutes, unless an extension of time is granted by the house.

### Third Reading and Final Passage

Unless the constitutional rule requiring that bills be read on "three several days" is suspended by a four-fifths vote, the measure must resume its place on the calendar and await its turn for third reading and final passage on some succeeding legislative day. Uncontested measures are usually passed immediately by suspension of this rule. After the third reading and final passage, the bill is sent by special messenger to the other house.

Generally speaking, the measure goes through the same procedure

when it reaches the other house. This includes committee hearings, committee action, second reading, debate and amendments, third reading and final passage. If passed without amendments it goes to the enrolling clerk, is signed by the speaker of the house and the president of the senate, and is sent to the governor.

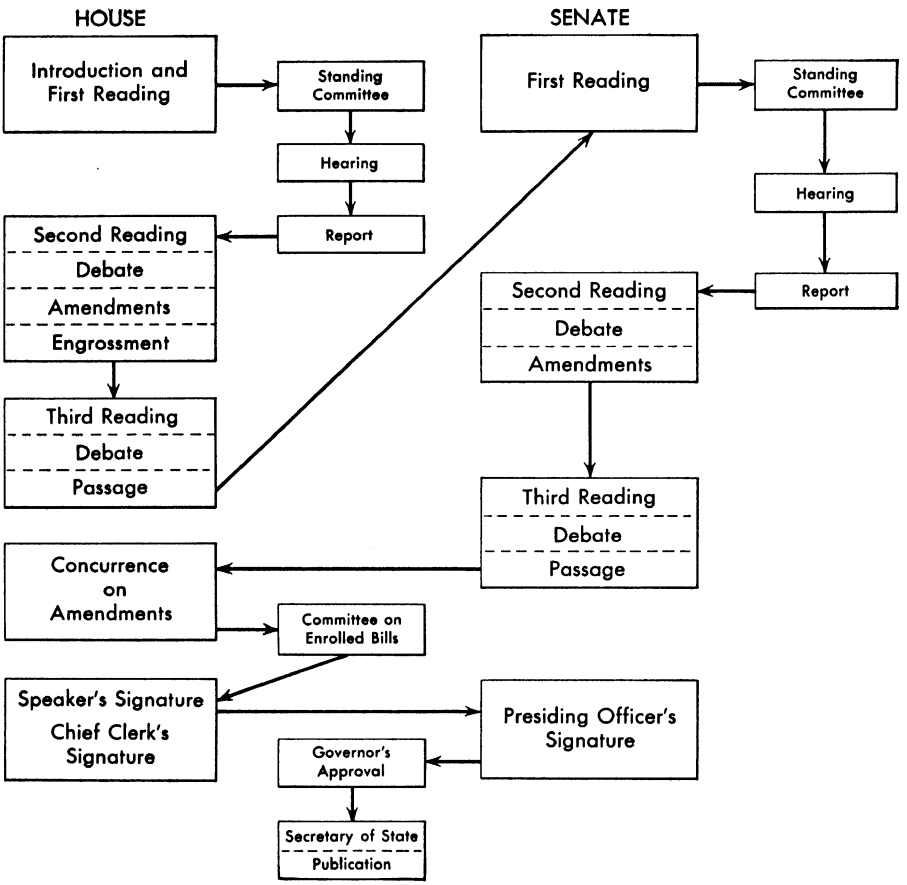


**Figure 5.** *How a Bill Becomes a Law in Texas.*

***The Conference Report.*** Few important measures, however, get through without several amendments in the second house. The first house then may reject these amendments. In such a case a conference committee consisting of members from each house is appointed to adjust the differences. This committee usually works behind closed doors and has in its hands the fate of the measure. It may remodel the meas-

ure but only within certain limitations. If it is unable to agree, other conferees may be appointed. If an agreement is reached, the measure is sent to each house as the conference report. Such a report cannot be amended or modified. It must be accepted or rejected. This is the final step for the measure before going to the governor. If the two houses cannot agree at this stage, the bill is killed.

A bill, when signed by the governor, becomes a law in ninety days after adjournment of the session unless it is enacted with the emergency clause which requires a two-thirds vote of the membership of each house, in which case it is effective upon the signature of the governor or upon being filed in the secretary of state's office without a veto.

The general appropriations budget becomes effective on September 1, the beginning of the state's fiscal year, and is not bound by the ninety days provision. Emergency appropriations, however, to become effective immediately must carry the emergency clause.

### Resolutions

There are three kinds of resolutions known to legislative procedure. Simple resolutions deal with the affairs of the one house only and are enacted by one vote without committee consideration. Concurrent resolutions require the action of both houses and are used to adopt joint rules for the two houses, state the legislative interpretation of laws, give permission to sue the state, memorialize a person, or send a request to Congress. Such resolutions are ordinarily voted on only once without committee consideration and must be sent to the governor for his approval or veto. Joint resolutions are used to propose amendments to the state constitution or to ratify an amendment to the Federal Constitution. Their procedure is the same as that for bills, except that proposals to amend the state constitution require a two-thirds vote of each house.

### The Bill with the Governor

After passage by both houses of the legislature the bill is sent to the governor. He can sign it or veto it or do nothing about it. What happens to it then is described in detail in the preceding chapter.

Thus a bill, after its long and devious course, eventually reaches the statute books. The process described above is an oversimplified statement of the formal legislative procedure, and necessarily omits the maze of influences and circumstances through which any important measure must weave its way. Other aspects of law making are considered in the following chapter.

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# 8....

# *The Texas Legislature: The Legislator and His World*

## THE LEGISLATOR'S TASK

With the growing complexity of our civilization, the problem of making laws becomes correspondingly involved and difficult. The legislator of fifty years ago, living in a day of simple economy, faced problems of an elementary nature compared with those of today. A few bills pertaining to the civil and criminal laws, school laws, some changes in local government, and an appropriations budget of less than five per cent of today's amount probably constituted his main tasks.

The railroads were the greatest trouble makers in those days. Few measures regulating business were ever considered. Taxation was simple, as virtually all revenues were secured from the property tax. Such complicated questions as labor laws, social security, public health, sanitation, morals, trade practices, and business regulations could take care of themselves as far as the legislator was concerned.

Today he works in a swirl of social change and ferment, and in a welter of conflicting and clashing interests. Dozens of varieties of taxation, limited only by the ingenuity of a similar number of members to originate the spending budget—which now far exceeds a billion dollars annually, and an endless variety of other problems confront the legislator in over a thousand bills each session. Moreover, he labors under the constant scrutiny and harassment by endless pressure groups and lobbies with whom politics is a normal part of present day business, and whose pressure upon the legislature is directed with ever increasing intensity.

### Sympathetic Understanding Needed

It is under these circumstances that we must appraise our legislative operation. The casual observer witnessing the day-by-day performance of an ordinary legislature receives an impression that the situation in Austin is all but hopeless. He sees what appears to be a maelstrom of impulsive opinions, a blundering procedure of chronic disorder and muddling that culminates invariably in the wreck of constructive legislation and produces instead a maze of promise and error. But the same observer, in all probability, does not realize the handicaps under which the legislator labors, the complexity and scope of the problems, the intense conflict of contingencies pressing upon him, the hampering constitutional restrictions under which he operates, and the defects of the system which tend to complicate and impair the legislative process. The legislature is blamed for the laws its passes, as well as those it does not pass. Other organs of government, too, can easily lay the blame for their failures upon the legislature, since it formulates the policies and machinery for all of them.

Regardless of viewpoints or handicaps, the essential fact remains that adequate state and local government, to meet the problems before us, must depend on an adequate law making machine. This is all the more reason why the citizen should examine and attempt to better understand this central powerhouse of the state government.

### Handicaps to Legislation

What are the circumstances that may explain to some extent the present predicament of our state legislature? To begin with, we must remember that this body is composed of citizens who are brought together from all walks of life, over one-half of whom have had little or no previous experience in matters of government. Most of them are honest, conscientious, and sincere in their efforts to serve the people. They are compelled to work under strange surroundings and to follow a confused and complicated procedure. With little or no leadership, they are expected to enact scores of laws dealing with varied and difficult problems which must stand the tests of the courts as well as those of practical administration.

### The Daily Work Load

Sitting at the desk and voting is the easiest part of the serious legislator's tasks. The toilsome routine comes with the ceaseless round of com-

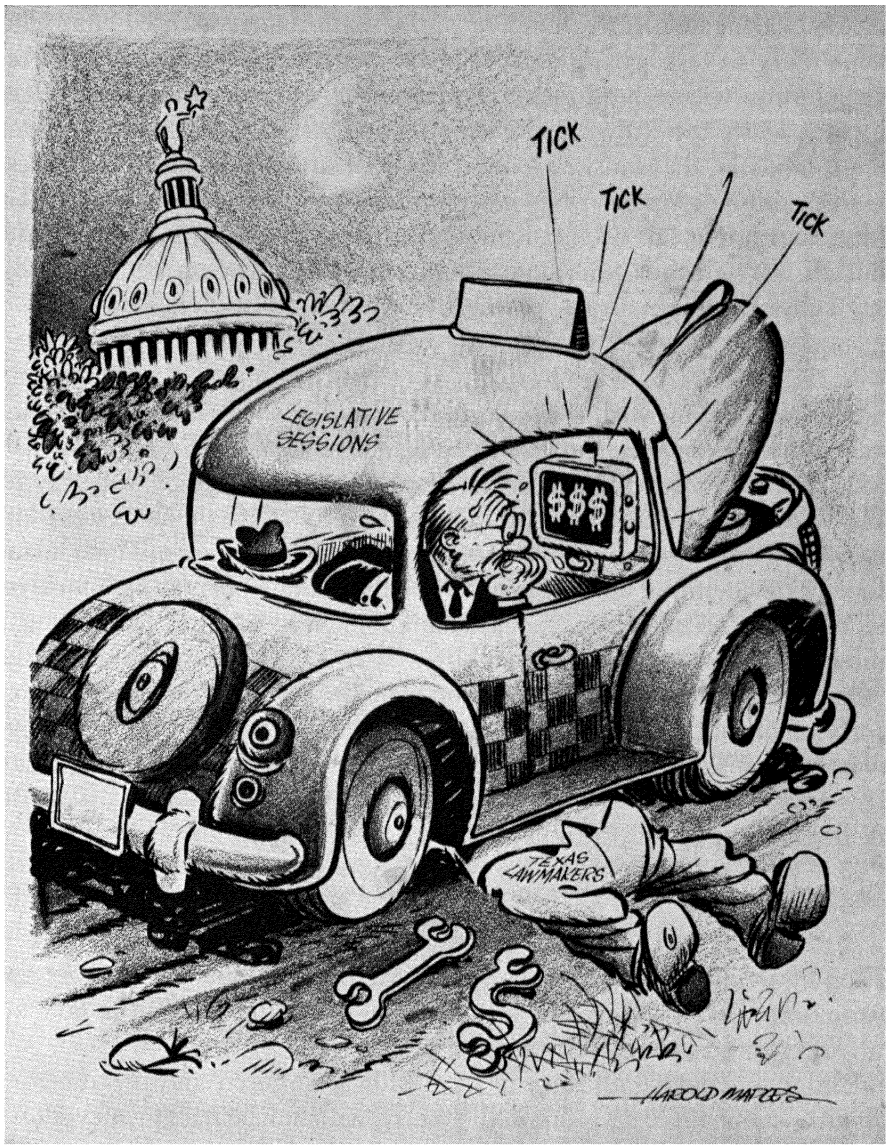


**Figure 6.** *"Nothing Ticks but the Meter."* To the average citizen the day-to-day performances in the Legislature often appear as little more than a series of endless squabbles, perpetual tinkerings with non-essentials, and a waste of the taxpayers' money by delays. (Courtesy, *Fort Worth Star-Telegram*)

mittee hearings morning, noon, or night; conferences with citizens who come daily to talk with members; attempts to satisfy the job hunters; consultation with other members; attempting to read all bills; and, last but not least, the growing correspondence, often aggregating dozens of letters daily, that must be looked after. Even with the best of motives, he finds difficulty in securing pertinent and reliable information on the given legislative subjects. It is humanly impossible for him to acquaint himself with all the varied matters presented, and he must necessarily rely substantially upon the opinions and advice of others.

### The Local Bill Deluge

One obstruction within the legislative mill is the stampede to enact local bills. These bills pertain to such matters as local game and fish laws, and to the regulation of the affairs of counties, cities, towns, and school districts. There are literally hundreds of such measures and many of them are drafted back home and given to the member to introduce. The member who offers the measure may be familiar with its contents but no one else is, nor do members want to know the contents unless it affects their own district.

Strangely enough, the constitution specifically prohibits local legislation except that dealing with local game and fish laws. Years ago, however, the legislature conceived a clever way to thwart the constitution. This is done by enacting a general law, but making it applicable to a local situation by inserting a clause somewhat as follows:

> All counties in Texas having a population between *this* and *that* number according to the last Federal Census.

Then figures are inserted so as to include only the one county. At the same time, the magic words "all counties" make the measure a general bill as required by the constitution.

Under this device all sorts of local bills are offered and passed. Frequently such bills are promoted quietly with no hearings, and consequently no complaints are heard. Such measures are usually placed upon the "local and uncontested" calendar. Under the rules, the house rushes through these bills. Objections, however, from at least three members can block consideration.

The local bill problems represent a growing inclination of the legislature to govern local affairs by remote control. Many of these bills are aimed clearly at avoiding the necessity of securing local consent of the people. Such bills, frequently born of legislative whim of scheming

and in which certain local officials, or self-seeking cabals are personally interested, are passed by the membership of the legislature through courtesy to those proposing them. In fact, the practice has come to be referred to as the "local bill racket."

The practice runs counter to the home rule principle based upon popular mandate. The obvious remedy is home rule in local matters. At the same time removal of local bills from the legislative calendar would leave the state legislature more time to attend to important matters affecting all the people of the state.

**Faulty Functioning of the Texas Political Party System**

The electoral process in Texas imposes another legislative handicap. It is here that the character of the personnel as well as the issues for the legislative program are determined.

First let us note how the party program or platform in Texas is made. It is framed at a state convention, the delegates to which are selected in precinct and county conventions, ordinarily attended by fewer than ten per cent of the voters, and with little or no reference to platform principles whatsoever.

The state convention, made up in this manner and meeting in September is supposed to state the aims of the party, in a platform which as a rule attracts so little interest that it is never printed. Yet the primaries have already been held in May and June, and in Texas are synonymous to election. The upshot of the whole thing is that the prospective lawmakers have been selected in each district on their own personal platforms and without reference to a party program of any kind. Under such conditions they feel no obligation to support a party program since it does not represent the will of the people, as the outcome of the local campaigns were decided before it was written.

Like most one-party states the typical pattern of politics seems to be one of shifting factions with little, or at best only temporary leadership. In such a system there can be little responsibility. It is best described as a no-party state. (See chapter 4.)

In the two-party states legislative procedure dovetails into party rivalry as between Republicans and Democrats. There is also the party caucus where party members meet to discuss and plan the party's program on the legislative front. Party discipline is important for the members and the party unifies the programs for both the legislative and executive branches. Where party lines are absent, pressure blocks move in and usually play a major role in influencing the legislative program.

## THE GOVERNOR AND THE LEGISLATURE

By virtue of his position the governor can exercise considerable influence in legislation. The constitution gives the governor at least three important legislative weapons: the message, the veto, and the power to call special sessions. His message is delivered in the early days of the session, in which he presents his program for legislation. It usually includes the major features of his platform upon which he was nominated and elected. For this reason it usually is considered the nearest thing to a popular mandate on a statewide basis.

The governor is required by law to submit to the legislature a statement called the executive budget, showing the financial condition of the state and the spending needs for the ensuing biennium. This is usually done in a separate message. If new revenues are needed, it is his political responsibility to recommend a program of taxation that will care for the state's fiscal needs. Special messages conveying his recommendations may be presented from time to time during the session.

Perhaps the most effective control of legislation in the hands of the governor is the veto power. The veto power extends to all bills but not to constitutional amendments. The threat of the veto is even more effective as a deterrent to legislation than is the veto itself. When members know that the governor is opposed to certain types of legislation they may refrain from introducing such bills or modify their contents in such a way so as not to incur the opposition of the governor. In this respect the veto power is not as negative as it may first appear. Often the threat of veto helps him to defend his own program by keeping the legislature off an opposing course of action. A two-thirds vote of each house is necessary to enact a bill over the governor's veto. This is rarely accomplished. Since the appropriation bills, and often many other measures, are passed in the closing days of the session, the governor's disapproval after adjournment amounts to an absolute veto.

Unlike the president of the United States, the governor of Texas has the power to veto individual items in appropriation bills while permitting the other parts to become a law. This power was originally given the governor to enable him to eliminate riders in the form of unnecessary or irrelevant legislation attached to the general bills. In practice the veto may be used to eliminate specific items or entire provisions from the appropriation budget. Sometimes it is used to wipe out individual jobs as Governor O'Daniel did during his term of office. In recent years the item, or "line" veto has been curbed somewhat by

the practice of making lump sum appropriations to the agencies for salaries, and a veto has to be all or nothing. Special appropriations for new projects are more likely to fall under the veto axe.

The chief political influence of the governor stems from the fact that he speaks for the state as a whole. The prestige of the office is behind him. He stands high in the councils of his party. He enjoys the white light of publicity and for this reason has an advantage of crystallizing public opinion and support. Much, however, depends upon his methods and personal popularity. Some of the program is sure to encounter opposition, and out of this conflict may emerge a prolonged row between the governor and certain factions of the legislature, followed by an exchange of epithets which charge the political atmosphere of the state.

The governor feels obligated to push his program and becomes exasperated with delays and maneuvers to sidetrack or defeat it. Tom Campbell, in such a mood, once told the legislature, "I intend to hold you in session until the ants carry your carcasses out under the doors unless you enact this legislation in the interests of the people."

Executive leadership in legislation in Texas has not always been a strong and potent influence. At times the executive program has been weak and negative, and, occasionally, some features outright bad. That the legislators feel no obligation to follow such leadership, especially when elected on different and individual programs of their own, is not surprising.

In general, the influence of the governor is increasing on the legislative scene. To be chief executive in a modern state implies conditions of leadership that no other official possesses. In recent years the people have come to expect the governor to present the "program"—which he does. In fact his program usually is the only one presented for legislative consideration. Despite the doctrine of separation of powers, an able governor with a positive program for legislative action can easily become the state's chief legislator.

## WHY THE BICAMERAL PLAN?

The bicameral system is used in every state of the Union except Nebraska. In the early days of the republic, three states experimented with the unicameral system for short periods of time.[1] In Canada several of the provinces have shifted to one-house systems in more recent years.

[1] Georgia from 1777 to 1789, Vermont from 1777 to 1836, and Pennsylvania from 1776 to 1790.

Bicameralism originated in England, where the House of Lords represented the noblemen and clergy and the House of Commons arose to give representation to the common people.

The pattern was followed widely during the colonial period in America, where in some states the second chamber served as a sort of advisory council to the king's colonial governor. In line with the idea of limited government, with checks and balances, the plan appealed to the makers of the early state constitutions, and with the few exceptions noted above, has been followed consistently in state constitutions. The two most recent states, Alaska and Hawaii, chose the bicameral system. The state of Nebraska adopted the unicameral plan in 1934 which set up a single house of forty-three members. The legislature is one of the most economically operated in the Union and unicameralism apparently has gained general acceptance with the Nebraska people.

Critics of the bicameral system point out that the two houses merely duplicate the same principle of representation. In several instances the districts include identical areas. The divided legislature means divided and obscured responsibility. It confuses the voters and makes it impossible for them to follow what happens, or does not happen, between the two houses. In the absence of party responsibility, the situation becomes even more obscure and confusing.

The two sets of committee hearings, two sets of rules, two calendars, and other complexities impose unnecessary hardships upon interested citizens who wish to appear in the hearings and exercise their prerogatives pro or con on the legislation. As a result they feel compelled to merge their interest and form organizations or associations which can hire full time observers to stay constantly on the scene and keep them informed on what is happening. Such a setup tends to multiply the ranks of the lobbyists and lends itself to their manipulations and influence.

Buck passing is a common political game in the two-house system. The cat-and-mouse play between the senate and the house, especially in the closing days of a session, resembles somewhat a squeeze play in a card game, with the senate usually holding the trump card.

The all-powerful free conference committee, working behind closed doors, lends undue opportunities for political manipulation in the hands of the presiding officers who appoint the conferees. The conference report may severely modify the legislative intent, especially on important bills such as tax measures or the appropriation budget. Such a report may emerge as a sort of "take it or leave it" proposition distasteful to

most of the members of the houses, but who under the pressure of circumstances are compelled to accept it.

If the unicameral plan is to be considered in this state, it should be accompanied by all necessary safeguards, otherwise such a body would meet in the same atmosphere and operate under the same general handicaps that beset the present system. Some fundamental changes in the rules of procedure so as to insure careful consideration and deliberation would be essential. Adequate restrictions on the retainer fee practice, which is probably the greatest single evil in the present system, would be necessary. A body of adequate size to insure proper representation for our large and growing state, together with adequate fact finding facilities and other aids to insure better-planned legislation, would be other prerequisites to the success of such a plan.

***Better Pay and Annual Sessions.*** Many changes have been suggested for improving the legislative product. Annual sessions, together with adequate annual salaries would enable the law makers to give more concentrated attention to the state's business.[2] Business interests, however, have opposed annual sessions on the basis that more frequent sessions would only increase their problems in combating unfavorable legislation. They know too that the per diem pay is an effective curb on prolonged sessions, since the pay stops at the end of 120 days. Thirty-three states now pay their legislators an annual salary.

Students of government generally agree that legislators should be well paid, not only in fairness to those who serve the public, but as a means of diminishing the influence of the lobbyists and the temptation of lawmakers to accept favors from those interested in legislation. Viewed in this light, it is extremely doubtful that the $4,800 annual salary provided in the pending amendment will be high enough to materially alter the unfavorable aspects of the present situation.

## THE LOBBY

"All government," said the eminent jurist Charles Evans Hughes, "is a conflict between the general interests and the special interests." At best, it is an attempt to mitigate the conflicts of human interests. As citizens, we ordinarily think of our legislature as a place to which vot-

[2] The Texas legislative council in a report said the experience in the fourteen states which have annual sessions is not sufficient to prove conclusively that this is the better plan.

ers send representatives selected to represent all alike, to sit in two houses and enact laws in the common interest.

As a matter of fact, the state capitol during the legislative session is a sort of concentric point, or focal center, of many forces and clashing group interests. The chief medium through which these groups are represented and look after their interests is commonly referred to as the lobby, or nicknamed the "third house."

The "third house" is self-constituted and is an interesting and often misunderstood body. Its legal right is based upon the constitutional guarantees of petition and freedom of speech. There are all sorts of lobbies; between forty and fifty different groups are represented in Austin in this way. Some stay in Austin regularly, others come and go as the occasion or the status of legislation demands.

## Why the Lobby

The casual observer may wish to know why these various groups are not content to let bills be decided on the basis of merit, and the work of the lobbyists be limited at most to a mere presentation of facts before the committees. The lobbyists will answer by saying the committee hearings are often perfunctory, with constant interruptions and wasted time. Frequently the personnel of the committee is "stacked" in advance. Nor are the other members of each house obliged to follow the committee reports. Lastly, the important fact of which all lobbyists are well aware is that few measures are ever settled strictly on a basis a merit. Legislation is largely a matter of a drawn-out series of maneuverings, political jockeying, skirmishes, and the pressure of group interests. It is here we find the real function of the lobby.

The influence of the lobby upon our legislation is far-reaching. It is well expressed in the following words of a closer observer:

> In the modern American state there are three houses of legislation; two ordained by the organic law and the third contrived by the dexterity of the American go-getter system. The first two houses are simple institutions wherein men harangue each other under requisites of law and parliamentary observance. The third is an awesome and mysterious institution conducive to the evolution of master minds—and master minds go lame sometimes when the channels of legerdemain falter. Let no reader anticipate in this sermon a tirade against the altogether human institution that is commonly called the lobby. Lobbying is as enduring and incurable as poverty. It is as necessary to man's parliamentary practices as religion is to his social usages.[3]

[3] Harry Binge Crozier, in *Dispatch Journal*, Dallas, Texas, May 12, 1939.

The lobby works by supplying information to each legislator, appearing before committees, making deals with other groups, stirring up the folks back home, entertaining, and occasionally offering favors and inducements.

Much lobbying is crude, and consists largely in making business executives and others believe that their interests are being cared for in this way. Many leading industrialists and businessmen who have paid little attention to politics are quite gullible in being induced to pay for such services.

The real lobbyists, however, do accomplish results. The master lobbyist is well acquainted with legislative procedure, and probably has a background of both legislative and lobbying experience. His face around the capitol is as familiar as the pictures on the walls. He has learned, however, that he must keep in the background and must never advertise himself. He must be likeable and be able to make and keep friends. He wants the members to know him personally and whom he represents. He must be on the job day and night, watch proceedings, analyze bills that affect his industry, and manipulate substitutes, agreements, and compromises. He is tactful and highly intelligent. He makes no attempt to impose his wishes upon members but is always making contacts, exchanging ideas and information, and conferring with his key men on the floor on matters of policy and procedure. He works out of season as well as in season. He offers advice and aid to candidates and may arrange for financial assistance in certain campaigns.

Some lobby groups have been known to make and keep rather complete personal record sheets on each legislator with full information on his economic and social background, his connections and affiliations, his likes and dislikes, his activities while in Austin, his friends, and the names of other persons who might be able to influence him.

### Other Forms of Lobby

Another form of lobbying maneuver is to inspire letters, petitions, and telegrams to be sent the legislators. Names signed to petitions may run into thousands. Legislators frequently receive hundreds of messages in a day from groups of citizens interested in a pending measure. Frequently such wires or letters are so similar as to reveal the promotion activity behind them, which fact considerably discounts their influence. A letter written in pencil and in an almost illiterate scrawl, but in blunt and terse language, may have more influence because the legislators know this voter is personally interested and means business.

**Reproduced Copy of a Questionnaire by Which Personal Information on Legislators Was Secured to Aid in Lobbying Activities on Matters Concerning the Company's Interests**

To All Division Managers:

Will you please have the following questionnaire, covering each Legislator in your Division, filled out and returned to me at the very earliest possible date.

This information should be obtained in a quiet manner and it is essential that it be quite complete and accurate, as partial or inaccurate data will be of no value and might be harmful to us.

I shall depend on your judgment in handling this matter so that it will be strictly confidential and not arouse any publicity whatsoever.

Name of Representative or Senator .....
Residence .....
District No. ..... Counties Included .....
.....
Married or Single ..... Occupation or Profession .....
Number of Children ..... Sex and Ages .....
.....
How long has he resided in home county ..... How long lived in Texas .....

| Intimate Friends and Supporters | | |
|---|---|---|
| Name | Residence | Occupation or Profession |
| | | |
| | | |
| | | |

Church, Lodge, and Club Affiliations .....
.....
Banking Connections ..... Is he a Director? .....
Who is Closest Banker Friend? .....
Extent of popularity in home community or town .....
.....
Manner of spending idle time .....
Pleasures enjoyed .....
..... Does he indulge in intoxicants? .....
Is your acquaintance with Representative or Senator intimate enough to secure impartial consideration of matters affecting Company? .....
If not, what other company representative or friend, if any, is sufficiently close to secure impartial consideration? .....
.....
If above questions are answered "No" or "None" can intimate relation in your opinion be developed through family connections, business connections, friends, etc.? ..... State best manner of procedure .....

Please return all surplus banks.

**Figure 7.**

Some members of the legislature understand and resent most forms of the lobby. Others consciously or unconsciously have much of their political record mapped out for them by lobby maneuverings. Still others simply accept it as it is, for better or for worse. As one young

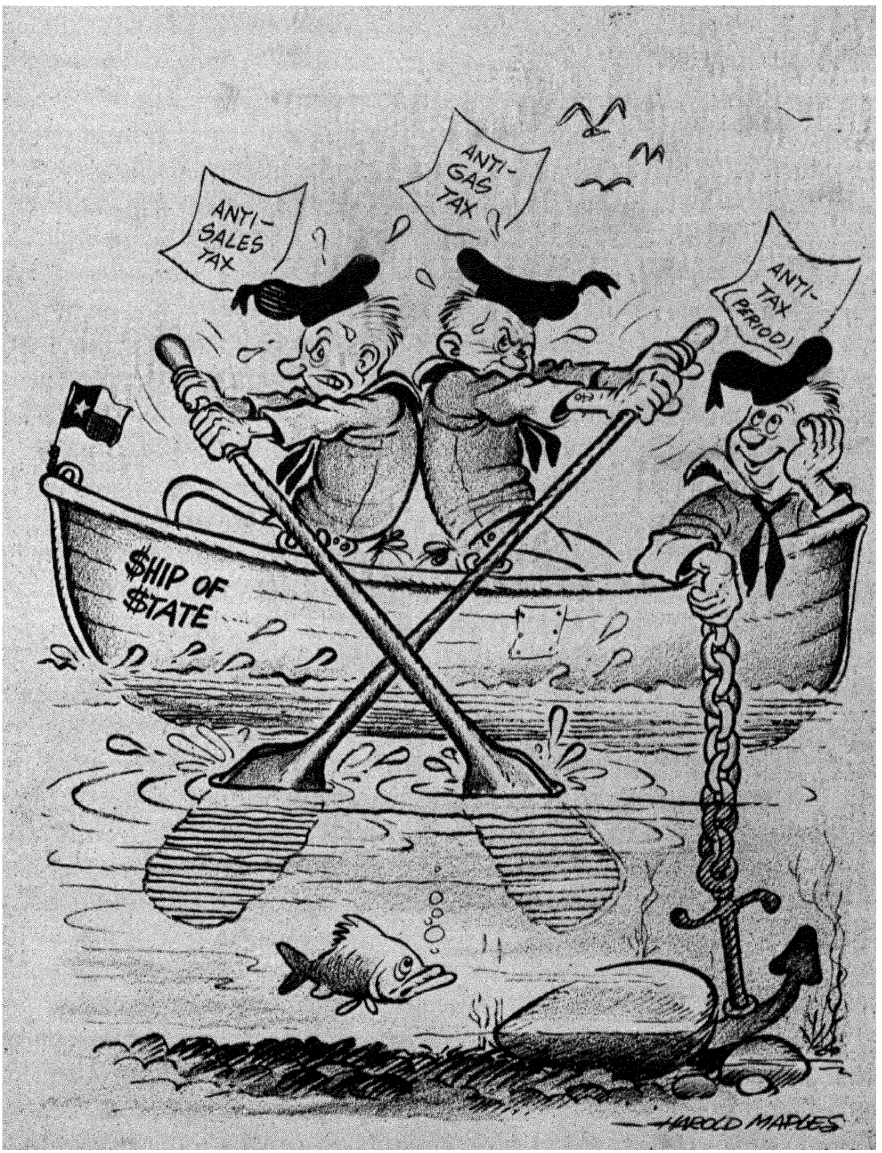


**Figure 8.** *"Not Getting Anywhere Fast."* Blocs of conflicting interests often paralyze legislative procedure. (Courtesy, *Fort Worth Star-Telegram*)

legislator remarked, "I attend their parties, go on their junkets, drink their cocktails and eat their sizzling steaks; then I vote as I please." On the whole, however, it is probable that the "free and untrammeled spirit" amenable only to the "general interests" determines only a minor part of the real legislative program.

### The "Third House" Divided

Since there are numerous lobbyists, representing a medley of interests of many types, it is natural that the "third house" itself is an arena of conflict. The struggle for power among the more formidable groups is sometimes waged below the surface of state affairs, in the attorney's offices, the politicians' headquarters, in group meetings, in the political conventions, in hotel caucuses, in the public policy committees, and through the columns of the daily press.

Labor, dozens of business organizations, utilities, natural resources, professions, manufacturers, public school teachers, local officials, liquor interests, transportation companies, farm groups, and many others imply wide differences that exist among them both in ideology and economics. Just as men organize into groups to pursue their mutual ends, the organizations themselves join in different combinations to assist one another on the legislative front. "The lobby groups were lobbying one another to try to secure house acceptance of conference committee's report," runs a press account from Austin.

For strength and influence, certain groups may arrange tentative alliances or agreements, especially when they are on the defensive. Key professionals in the lobby game usually arrange such alliances. As a rule these are little more than "marriages of convenience" and the unity dissolves as soon as the emergency has passed. Like the performers in a square dance, the groups merge, break off, veer away, and meet again in new combinations. The great difference is that lobbies play by no fixed rules and the formation may vary according to the issues of the hour.

### Lobby Regulation

Texas lawmakers agree that lobbyists provide valuable information and perform the essential task of economic representation. The first attempt to regulate lobby activities was found in the Lobby Control Act of 1907.[4] This act forbade attempts to influence legislation "by means other than appeal to reason." Obviously the law was unrealistic and was generally ignored.

[4] *Vernon's Texas Statutes*, 1948, Penal Code Articles 179–183.

Several well publicized scandals in the state government during the 1950's shocked the people of Texas and brought demands for tighter reins on lobby activities as well as a code of ethics for public officials.

In a call for a special session of the legislature in October, 1957, Governor Daniel recommended new lobby control legislation. The debates that followed revealed the wide range of clashing viewpoints regarding the nature and uses of the lobby in the legislative process. Many felt that existing laws which prohibited bribery would accomplish the purpose. They argued against trying "to legislate honesty." Some people felt that such a proposal implied that the legislature was dishonest and corruptible. A majority agreed, however, that some form of a lobby law should be passed in order to bolster public confidence in the integrity of the legislature, and a new law was enacted.

The law, entitled "The Representation Before the Legislature Act," carried the following provisions: (1) *Registration:* Three classes of persons are required to register. In the first class are those who by direct communication are paid to promote or oppose legislation during a session of the legislature. A second class are those persons who without compensation attempt to influence legislation for the benefit of others. A third class embraces persons who in their own behalf spend more than $50 during a legislature session for direct communication with members. (2) *Compensation:* The law prohibits the giving or receiving of compensation contingent upon the passage or defeat of legislation.

This law also provides that monthly reports must be filed showing expenditures during a session, which were for the purpose of "arguing for or against" legislation. Ordinary living expenses while in Austin, including travel, rent, office help, and the like need not be reported.

The act safeguards the constitutional right of petition under which the ordinary citizen can contact his senator or representative as long as he is not specifically covered by the registration provisions. Newspapers, periodicals, radio and TV stations, or other mass media seeking or publishing information, are exempt from registration. Other exemptions include persons invited to appear before committees, national and state officials in pursuit of official duties, and church organizations when seeking to protect the right to practice their religious beliefs.

Critics of lobby legislation see few benefits that have resulted from the law. The reporting of expenditures "for direct communication" or for "arguing for or against legislation," does not give a true picture of such expenditures. Under such requirements, a lobbyist may spend any amount for entertainment as long as he did not "argue" or present his case.

While the law does not affect legitimate methods of lobbying, it offers loopholes for the so-called "amateur lobbyists" who make quick trips to Austin or use other means of buying votes. The fact, too that the reporting provisions apply only during the legislative sessions and not on a year-round basis seriously impairs effective lobby regulation in the opinion of some members. Others point out that the lack of adequate enforcement provisions constitute another weakness in the act. On the whole, however, the act, especially the publicity features, represents a forward step in the State's attempt to better regulate this important activity.[5]

## THE POLITICS OF LAWMAKING

As the policy forming body in an economy of pressure politics, the legislature is the exposed flank in modern government. As a result the legislator must live in the midst of human conflicts. He feels constantly the tug of conflicting forces and he must analyze and appraise each situation as it affects him politically. The master politician must be an expert in appraising the political behavior of his constituents; he is adept in charting his political course with an acute awareness of the temper and emotions of the popular mind.

### Some Basic Guides to the Daily Vote

There are many personal and political considerations that enter into the voting record of each legislator. These vary with each individual member. There is no "average" legislator. The legislature is a body of men and women of many types and viewpoints, reflecting the wide diversity of a very large state. There are several important lessons in politics that the legislator must learn if he expects to survive. He soon learns that he cannot ignore or trample upon public opinion. But public opinion is never fixed and rigid; it is subject to rapid changes; often it is non-existent. As a matter of fact, a vast majority of the questions upon which the law maker votes attract little or no public attention. In such cases he has no clear-cut mandate and can vote freely, but always with a weather eye cast toward the next campaign, knowing that some seemingly inconsequential matter today may be dug out by his opponent and made an issue against him in the election year.

[5] A most excellent analysis of the lobby control act is contained in *Public Affairs Comment*, by James R. Soukup, Institute of Public Affairs, University of Texas, Vol. IV, No. 3, May 1958.

It is a political axiom that the incumbent in office usually has the uphill job in the legislature election. He has a voting record that is on the books and cannot be changed. Naturally he is record-conscious in reaching his decisions. His promises to the people for the future are bound by the realities with which he has been dealing. The issues with which he must deal point both backward and forward.

His opponent is bound with no such handicaps. He can make promises without inhibitions. He also can tackle the incumbent on obscure and inconsequential matters, such as wasting the taxpayers' money by voting for adjournment over Jeff Davis' birthday.

The legislator's first rule for staying in the legislature is to vote for the homefolk, especially those who are well organized. Vote getting is his trade. He is inclined to think and act politically the way his friends and their neighbors think and act. His district is a cluster of organized interests and groups. How many votes does each control? He wishes he knew the answer to this question. With a sharp eye for political margins he must look behind the façade of propaganda and gauge realistically the voting power that each group really possesses. He may not need to worry about the opinion of his constituents in mass, as there is rarely such a thing. What he must heed is the opinion of specific organizations and key individuals within his district. It is especially important that he consider the sources of his financial support. The sponsoring of local bills to raise the salaries of home county officials, such as the judges or more especially the county officials, and thus gain their good will, is always clever political strategy.

There are conflicting factions, and the legislator knows he cannot please all. Many stubborn issues are statewide in their political implications and cut across all districts. In such cases he must choose sides, or possibly speak for a coalition of groups. In compromising situations there are some who assume the protective stance of straddlers, or who retire to the defensive zone of subterfuge and evasion.

There are many tricks in the arguments that take place on the floor. Shadow boxing is quite common. Virtuous words are sometimes used to label one's own position. The introduction of a villain, often far removed from the legislative scene, is always a good trick to divert public attention from some sore spot immediately at hand.

Ability in debate and alertness in parliamentary procedures are valuable assets in the legislature contests. "I think I have some worth while things that ought to be said on this question," remarked a sober-minded veteran of the legislature, "but every time I try to speak some whip-

persnapper jumps to the snortin' pole [the floor mike] and starts bellowing irrelevant questions at me." Because of the tumult and lack of decorum that frequently dominate the legislative sessions, many able men disdain to enter the debates, preferring to exert their influence by other means.

A majority of the members consider themselves as moderates or near the middle of the road in political philosophy, although there is a sizable bloc of conservatives on the right and liberals on the left. By and large, the legislator accepts governmental policies and activities today that he would have denounced before the great depression. He is inclined to distrust bureaucrats. In like manner he is fearful of technicians and experts. He believes that those who run the government should be practical men, like himself, who have been elected by the people and by popular mandate have earned that right.

## THE WORK OF THE LEGISLATOR AND THE CONGRESSMAN COMPARED

Comparisons are frequently made between the task of the legislator in Austin and that of the Congressman in Washington. Both are engaged in the same general work of law making. The chief difference in the Congress stems largely from the practice of the two-party system which, of course, is entirely absent in Austin.

Perhaps the most marked differences can be found in the structure and use of the committee system. In the legislature the presiding officers appoint committee members and award the chairmanships. The committees in Congress are made up by party machinery especially devised for that purpose; chairmanships are awarded largely by seniority rule. There is more of a continuity of personnel from session to session in the Congressional committees.

The committee system in Congress plays a far more important role than in the state legislature. The mornings are left open for the work of the committees. Few are the Congressmen who even read most of the bills. They rely upon the judgement of the committees which report the bills. In the state legislature, the committee report gives no particular sanctity to a measure. In fact, tearing up or mutilating a committee report is often a favorite pastime, especially in the lower house.

In Washington very little time is given for debate in the House of

Representatives. The same confusion and lack of decorum exists during a debate in Washington as in the lower house in Austin. In fact, few Congressmen make any attempt to speak on a measure. Most of the speeches made are for home consumption. Some are even merely inserted in the record and are never delivered on the floor. In Austin there is no publication such as the Congressional Record where the speeches and discussions are reproduced. The house and senate journals carry only the official proceedings.

The Congressman as a rule works hard. He spends two or three hours each day answering mail. A flood of as many as 100,000 letters may reach Capitol Hill in a single day. Senators from the larger states may receive from 300 to 500 letters per day throughout the session. Many of these letters bring requests for errands which the Congressman must run for his constituents. Such matters as veterans' affairs, along with many others, stalk the path of each Congressman. Errand running is not a burdensome task for the legislator in Austin. Many Congressmen seldom go to the chamber unless there is a roll call. They prefer to spend most of their time in their offices attending to routine duties. In Austin, attendance at the sessions is expected. Roll call leaves an official record of all absences which can become part of the political record for the next election.

While the formal legislative rules and procedures are similar in the two bodies, the actual process of law making shows marked differences. Most bills in Congress are buried in the committees, frequently without a hearing. The committees in Austin attempt to give a hearing to every sponsor of a measure who wishes to be heard. Some action usually follows. In Washington, the powerful House Rules Committee gives a second screening to legislation and gives priority to the important matters.

The most obvious difference is the lack of leadership in the state legislative body. There is no concentration of power or authority, no party discipline, no powerful party caucus or steering committee to direct the legislator's course of action, and no floor leader to harmonize differences and line up the contending factions.

Back of the Congressman is the power and prestige of the party. He shapes his course of action in accordance with its mandates. His chief responsibility is that of following his party leadership. The program is largely framed in the law making councils of the party leaders with all the aid and technical advice of the departments and the great research agencies at their command.

Seniority and party regularity are the chief requirements for promotion in Congress. A member must subordinate personal convictions to the dictates of the party leaders if he expects promotions. This may require a lot of political ducking and wire walking, and sometimes even reversals of position. In the lexicon of party politics, however, a man at times is supposed to be able to "rise above principle" in the higher interest of party responsibility.

A member in the Texas legislature labors under no such partisan intolerance. He is freer to shape his course of action as personal convictions or political expediency may dictate.

The Congressman is not bothered so much with the troublesome local issues and whims on which many legislative races turn. A local game bill or a fox hunting law for a rural county may be the determining issue in a state legislator's race. The local constituency follows the legislator closely. His votes may even be published in the papers. He must go on record in every vote.

The Congressman's chief task is to keep the home newspapers talking and carrying accounts of his work, an activity for which sundry and very effective techniques have been improvised. He operates behind the obscurity of great distances and party politics. He is in a position to direct, censor, and manipulate much of the publicity about himself that trickles into his faraway home district. This is especially true for the small town newspapers in his district.

The legislator has no such advantage. His constituents not only watch him but come in groups to Austin. Washington is a remote world to them. The local papers say little about the day-to-day performances of Congress but give columns with varying degrees of color and bias about the "tragic situation in Austin." The "pork" which the Congressman brings home, although he is merely distributing the people's own money, is real to them and tangible evidence, at least if they are permitted to be faithful believers, that he is a "go-getter" in Congressional circles.

The Congressman's problems, of course are national and even international in scope, and require a far wider comprehension and outlook for their proper appraisal in legislation.

## Conclusions

A European dictator once described democracy as a "ludicrous chicken farm where everybody cackles." Recognizing the inherent weaknesses in our governmental system, the approach of the student

to these difficult problems should be that of sympathetic understanding rather than criticism and ridicule.

If there has been a decline of the legislature in popular esteem, there is no adequate proof that the personnel is not as good as, if not better, than those of old. History is prone to be kind to those of the past and to draw a veil of obscurity over their virtues. Men of today, as well as governmental institutions of today, cannot be judged fairly by the standards and work of those who lived and labored under entirely different circumstances long ago.

Then, too, there are other considerations to this problem. Corruption is a disease which all phases of society have to fight. It is found in business, in the professions, in labor, and in the practices of pressure groups. Just as in government, it is the few wrongdoers who discredit the many.

The problem, however, lies far deeper than that of mere surface structure and organization. It is easy to decry democracy and the imperfect instrumentalities through which it operates. Its superiority to other forms lies in the fact that it leaves in the hands of those to be governed the right to direct, improve, and perfect it. Herein lies the crux of the whole problem in its most fundamental aspect. When thousands of people cast their votes by the fickle whims of emotion or prejudice, and when the campaign is little more than a biennial circus, we can never escape the present predicament. It is for this reason, too, that frequently the best men, fearing the trickery of politicians and the fickleness of the electorate, prefer to stay out of politics. The sovereign electorate must play its part.

Beyond the legislative scenes in Texas, the whole problem has much wider implications. The dwindling prestige of legislative bodies throughout the Western world is a most unwholesome sign of the times. The trend hangs like a pall over the free institutions of democratic government. The great contrast between democracy and totalitarianism is the vigorous give-and-take of a free legislature. The rise of various forms of dictatorship that have engulfed so many free countries in recent decades usually was foreshadowed by the gradual discredit and decline of their legislatures.

A vigorous legislative branch, commanding the confidence of the people, is the very essence of the democratic process and the lasting citadel of free government. The public confidence in legislative bodies must be maintained and strengthened in this country.

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# 9....

# *Financing the State Government*

Taxation is one of the oldest and most perennial problems of government. Its origins reach back to the beginning of organized society. No other single subject runs with such an unbroken continuity throughout the political affairs of every people.

Probably the greatest test of statesmanship for those in authority is the manner by which they get and spend public money. If used wisely and properly the power to tax can provide ideally for common welfare and social progress. If improperly or wantonly misused, however, untold human misery, political revolutions, and social upheavals can and have occurred. The clash of group interests is most apparent in this realm, and the patronage and spoils systems are closely associated with the subject. In short, a wise use of the power of taxation is one of the best measures of good government, and the key to a proper understanding and evaluation of modern politics is largely that of public finance.

## Why Pay Taxes

Next to the weather there is probably no more common source of complaint than taxes. Like death, however, according to the old saying, taxes are inevitable. Businesses, by selling products or charging fees for services, can reap profits out of which they can finance their operating expenses. But governments, having no such source of profits, must obtain operating funds through compulsory contributions, demanded and collected by law, called taxes.

As one scans the newspapers he is impressed with the swirl of affairs in public finance—the ceaseless round of spending, taxing, and borrowing. Everywhere the governments are belaboring their citizens to pay more taxes, to erase deficits, and to pay for this or that undertaking. As a result, the average citizen is prone to look at government from

two opposing points of view. On the one hand, he may think of it as a great organization which the people created for social control and public service. At another time, he may see it through the eyes of a hard-pressed taxpayer upon whom it is ever heaping additional financial burdens.

It is exactly these two points of view that should be harmonized. The citizen should realize that government is going to continue, and that its functions have increased enormously and probably will continue to do so. He should therefore consider government as a great cooperative enterprise with himself as a stockholder in it, and as such assist in bringing about a state of affairs whereby, through improved organization and methods, these services can best be rendered with the greatest degree of efficiency and economy. All necessary costs then would be paid by an equitable and justly distributed tax system.

## Everybody's Business

All persons living under normal conditions are compelled to help pay the costs of government. People often deceive themselves into thinking that because they own no property and pay a small income tax they are largely escaping the tax burden, and for that reason the problem is no concern of theirs. This is a most childish conception of the tax problem, and fails to show any comprehension of the manner in which tax principles and tax policies operate.

The person who makes out the check in favor of the government is not always the one who actually bears the tax. Many levies have a tendency to migrate and seek their ultimate effects in increased prices of goods and services. This tax migration operates on a broad national basis. Tariffs are shifted almost entirely into the price structure. Texas cigarette makers bear their share of the many federal taxes on this article which North Carolina and other tobacco states get credit for paying. In like manner they pay both the federal and state excise taxes which are levied on the manufacturers in other states. The purchaser of an automobile in Texas would probably be surprised if he knew that all the various taxes that are wrapped up in the price of his new car approximate eighteen per cent of the retail price of the car.[1] In a similar way the people of other states bear the ultimate burden of many taxes levied on commodities and articles which are produced in Texas and consumed elsewhere.

[1] From studies of The Tax Foundation, New York.

**Many Taxes Are Hidden**

As can be seen, many taxes are hidden in the purchase prices of articles and services and are paid by the purchasers. All utilities, such as telephone, gas, and electric companies, pay heavy taxes including the property taxes, levies on gross receipts, franchise taxes, and the like. These, as a rule, are allowed as expenses and go into the rate base and paid ultimately by the consumer. In Texas it is estimated that twenty per cent or more of the average utility bill is for the taxes that are levied upon the utility. The consumer pays such taxes every time he turns on his electric light or his gas stove, uses a telephone, sends a telegram, or pays an insurance premium.

In fact the story of hidden taxes is an endless one. They are paid in the dark and add materially to the cost of living. Such levies, which are paid by one person or business but largely passed on in the price structure to others, are referred to as indirect taxation. The place where the ultimate burden falls is known as the "incidence" of taxation; in this case the incidence is the consumer's purse.

In contrast to indirect taxes are the direct taxes that are paid largely by those against whom they are levied. Income taxes which are upon the profits or net income, after all normal expenses and exemptions are allowed, are types of direct taxes. The property taxes paid by the home owner, the poll taxes, and inheritance taxes are other examples.

**Few Fixed Rules in Taxation**

Students of taxation will readily recognize that there are no hard and fast rules governing the manner in which taxes operate. As a matter of fact, taxes operate under a maze of circumstances which are as varied and complex as the economic order under which we live. Exceptions to any rule are numerous. A tax that can be easily passed on by one business may have to be wholly or partially absorbed by another, depending on the nature of the business, competitive factors, and other circumstances. In times of prosperity or rising prices, taxes are shifted more easily than in times of depression and falling prices. Each businessman also knows that some of the tax load on his business cannot be shifted, but must be borne by it and reflected in lower profits, fewer dividends, and even deficits. Since every business must make a profit in order to exist, if sufficient profits do not accrue, then the tax load which must be borne by that business may become a dead weight which discourages enterprise and may even hasten bankruptcy or insolvency.

## HOW THE AMERICAN TAX STRUCTURE IS BUILT

In earlier chapters we have seen that we live under a dual constitutional system, the nation and the state. When discussing taxes we must add a third governmental level—local. This third main level can be further broken down into counties, municipalities, school districts, and even smaller sub-districts, each with the power to levy taxes of some kind or other. In the nation as a whole there are approximately 175,000 such local tax autonomies. The people of Texas pay taxes not only to the federal and state governments, but also to 254 counties, 630 towns and cities, over 2,000 school districts, and numerous miscellaneous sub-districts.

Such a multiplicity of stratified taxing jurisdictions inevitably gives rise to frequent overlapping and duplication. Some typical items and commodities often carrying both federal and state excise taxes are gasoline, cigarettes, liquor, cosmetics, and many other luxury and semi-luxury articles. Net income taxes are paid not only to the federal government but also to three-fourths of the states. And there are sales taxes imposed both by states and by cities and towns.

However complex and confusing the American tax structure, the student must understand it if he is to have a true and balanced perspective of the problem and the position which his state and local governments occupy in it.

## THE STATE'S TAXING POWER

The Legislature has the power to lay and collect taxes and otherwise formulate the tax policies for the state. This power, however, is subject to certain limitations set forth in the state constitution and to still others in the Constitution and laws of the national government. Every tax measure must be enacted in accordance with these requirements, otherwise the law would be declared unconstitutional.

### Limitations Under the State Constitution

***For a Public Purpose Only.*** The Constitution directs that "taxes shall be levied and collected by general laws and for public purposes only." [2] While the meaning of the "public purpose" clause is subject to

[2] *Texas Constitution,* Article VIII, section 3.

broad legislative interpretation, it implies the power to tax in order to maintain and conduct all normal governmental functions, such as protection, security, care of unfortunates, health, education, payments of debts, public buildings and roads, the administration and enforcement of its laws, and the promotion of the general welfare.

The chief test is that the general public must have a direct interest in the purposes for which tax money is to be spent and the community at large is to be benefited. This, of course, is a hazy realm about which no definite lines can be drawn. Formerly it prohibited the granting of public aid or emoluments to persons except for public service or for eleemosynary purposes. Subsequent amendments and laws, however, grant tax moneys for old age assistance with virtually the only requirements being that of age, or assistance to others in need of charity.

It is apparent that such policies might be expanded indefinitely, depending largely upon what public opinion and political expediency construe to be the community good at each stage of our political experience.

***Taxes Must Be Equal and Uniform.*** Since all taxes are compulsory contributions for the support of government, it is incumbent upon the government to apportion the costs justly and equitably among industries, groups, individuals, and classes.[3]

Equality of taxation, however, is largely an ethical question and such standards are relative to changing conditions and even to personal opinions. The maxims laid down by Adam Smith probably come nearer to meeting the tests, although these must be supplemented in the light of modern needs and conditions.[4] Then, too, the equity of any given tax must be measured largely with reference to its place in the context of the whole tax structure.

The more tangible elements of "equal and uniform" taxation mean that rates must apply equally and uniformly among the subjects of each class. The legislature can apply different rates to each classifica-

[3] *Texas Constitution,* Article VIII, section 21.

[4] "The subjects of every state ought to contribute toward the support of government, as nearly as possible in proportion to their respective abilities: that is, in proportion to the revenue which they respectively enjoy under the protection of the state."

"The tax which each individual is bound to pay ought to be certain and not arbitrary."

"Every tax ought to be levied at the time, or in the manner, in which it is most likely to be convenient for the contributor to pay it."

"Every tax ought to be so contrived as both to take out and keep out of the pockets of the people as little as possible over and above what it brings into the public treasury." See Adam Smith, *Wealth of Nations,* Book V, Chapter III.

tion just so long as such rates apply uniformly among the subject in each class. Chain store taxes, for instance, may be graduated according to the number of stores in the state.

Other types of businesses may be classified for tax purposes. The electric utilities pay a different rate from that of the telephone utilities. Different rates are applied among electric utilities so long as those falling in the same class are taxed alike, and the bases upon which the subjects are classified are reasonable, have some economic or social justification, are not arbitrary and capricious.

### General Limitations

Any citizen, of course, has the right to contest any tax law in the courts, if in his opinion such a tax involves a misinterpretation or misapplication of the law, or contravenes some fundamental civil right guaranteed under the Constitution. The Constitution may also set certain definite limits on the rates to be applied.

***Federal Limitations on the State Taxing Power.*** States cannot tax federal agencies. State tax laws must not interfere with any national functions as set forth in the Constitution, treaties, or laws of the United States. All agencies and properties of the federal government are exempt from state taxes. This also includes federal securities, federal royalties and income, and federal funds in its treasuries. The federal government in turn exempts state agencies from federal taxes, but salaries of state and local officials may be subject to the federal income tax, and, in like manner, the state may tax the salaries and incomes of the federal officials.

***States Cannot Tax Interstate Commerce.*** The power to control interstate and foreign commerce is delegated to the national Congress. Goods in interstate commerce cannot be taxed by the state. The state's power to tax such articles does not begin until the articles have come to rest or have been removed from the original package and mixed with the goods of the state. The oil and gas flowing through pipelines to other states cannot be taxed by Texas. Minor exceptions to this rule may be found where the state may lexy such a tax, in lieu of some other tax, to pay for the inspection service or regulation of concerns handling certain interstate goods, but only where such taxes are not interpreted as a burden on interstate commerce.

The state cannot levy import or export duties, nor tax the tonnage of vessels without the consent of Congress. Many exceptions, however,

can be found wherein the spirit of the Constitution is being evaded in this respect, in such cases as the so-called "use" taxes and taxes collected by the state ports of entry.

***Limitations in the Fourteenth Amendment.*** This amendment provides that no state may deprive any person of life, liberty, or property without due process of law, and also that no person shall be deprived of equal protection of the law.

The term "person" means a "legal" person, such as a corporation, as well as a natural person.

Due process applies to both legislative and judicial procedure.

While the amendment applies to all legislative and police powers of the state, specific tax laws are frequently contested under its provisions. The court may nullify a tax measure under these provisions if, in the opinion of the court, such a law is unreasonable and destructive of property rights, or when it is arbitrary or unduly discriminatory among classes or persons.

***Miscellaneous Limitations.*** There are a few other general limitations upon the state's taxing power imposed by both legal and natural circumstances. A state may not discriminate in its tax laws against citizens of other states, although corporations are not considered citizens in this respect; the state may apply different tax rates to foreign corporations.

As a rule, the state's taxing power applies only to persons or property within the borders of the state. There are some exceptions to this rule. An income taxpayer, for example, can be taxed in the state of his residence and again by the state where he earns that part of his income. All real property, as well as tangible personal property, is taxed only by the state where it is located more or less permanently. This taxable location is known as the "tax situs." [5]

Intangible personal property, such as stocks, bonds, mortgages, money, and securities are taxed by the state of the owner's domicile. A trust fund, however, held in one state for a resident of another state, may be subject to transfer or death taxes by both the state of the owner's domicile and the state where the fund is held in trust.

In the case of mortgages and bonds, the state may assess a small registration tax as a legal condition before using the state's courts to secure

[5] When the state and national government have claims against the source property of taxable assets, national claims have priority. For a thorough analysis of this subject see William T. Plumb, Jr., "The Priority of Federal Taxes over State and Local Taxes," *National Tax Journal,* Vol. XII, No. 3, Sept. 1959.

the legal process upon such securities. This tax is levied irrespective of the domicile of the owner or the situs of the security.

## THE STATE TAX SYSTEM

The charts on page 176 should be studied closely in regard to the Texas revenue system. It will be seen that there are three sources from which the state secures its public money: (1) the state's own tax laws from which most of its annual revenues are derived, (2) federal grants which normally constitutes from one-fifth to one-fourth of the state's budget, and (3) miscellaneous non-tax sources, such as land sales, income from investments in trust funds, interests, and other income that is not derived from taxation.

While our state probably has no less than half a hundred specific tax levies, for convenience they may be grouped roughly into the following general types or classifications:

### The Ad Valorem Tax

This is a tax according to value and is levied on property ownership. It ordinarily is referred to as the state property tax. This tax, the oldest and formerly the main source of both state and local revenues, has ceased to be of very much importance as a revenue bearer for the state, accounting for only about four cents of each tax dollar collected by the state.[6]

Local governments, however, still rely primarily upon the property tax.

The state constitution designates the use of a property tax levy for three state purposes: (1) at a rate not to exceed thirty-five cents per $100 of valuation for the available school fund; (2) at a rate of two cents per $100 of valuation for the state building fund; (3) at a rate of five cents per $100 of valuation for the college building program.

***How Assessed.*** The valuation of property for taxation by the state is determined by the county tax assessor-collector. The law specifies that all property not specifically exempted be rendered for assessment at its full or true value as of January each year. The taxes are to be paid by January 31 of the next year. The commissioner's court determines final values for state and county tax purposes.

Homesteads up to $3,000 assessed valuation are exempt from the

[6] This amounts to about $36 million for the fiscal year 1960.

state property tax. Household furniture up to $250 is likewise exempt from all property tax. The assessed valuation for county and state taxes usually is only a minor portion of the actual value of homesteads. As a result, homesteads several times that value are usually exempt from state taxes under the amendments.

### Taxes on Motorists

***The Gasoline Tax.*** The greatest single revenue source for the state is the motor fuel gasoline tax which is five cents per gallon. Gasoline bought for farm uses, highway construction work, municipalities, and other purposes not involving the use of the highways is exempt from this tax.

The state constitution designates the purposes for which the gasoline taxes can be spent. Under the original constitution, one-fourth of the proceeds is earmarked for the available school fund.[7] Fearing further diversion of the tax for purposes other than highways, a constitutional amendment adopted in 1946 allocated the remainder of all taxes on motor fuel and lubricants exclusively to highway uses. This practice is justified upon the theory that the users should pay for the highways.

***Auto License Fees.*** In addition to the gasoline tax, autoists in Texas pay annual auto license or registration fees. Like the gasoline tax, the license fee is a user's tax and the fees are graduated so that heavy commercial vehicles pay a higher fee. Auto license fees are collected by the county tax assessor-collector and the county shares in the receipts. Each county retains all of the first $50,000 for use on the county roads, and one-half of the next $250,000. All receipts in excess of those amounts go to the state highway fund. This division of the receipts especially favors the smaller counties as the amounts retained represent a much larger share of total collections than in the case of the larger urban counties.[8]

### Gross Receipts Taxes

These are taxes that are levied at specified rates upon the gross receipts of commodities and services that are sold. All the utilities, producers of natural resources, insurance companies, express companies, motor carriers, publishers, and several other minor groups pay such taxes at varying rates. These are legally classified as occupation taxes

[7] Article VII, Section 3, requires that one-fourth of all occupation taxes be used for the public free schools. All sales taxes and ordinary business levies are legally defined as occupation taxes.

[8] For a fuller explanation of highway financing see Chapter 13.

and a minimum of one-fourth of the receipts must go to the available school fund.

***Severance Taxes.*** Gross receipts taxes on the production of natural resources constitute large sources of state tax income. While falling in the category of gross receipts taxes, these levies may be more appropriately classified as severance taxes. A severance tax is levied upon the privilege of extracting a natural resource from the soil.[9] Although there are many kinds of natural resources, the severance taxes in Texas apply almost entirely to the production of crude oil, natural and casing head gas, and sulphur.[10] Such resources are non-reproduceable and are irreplaceable when once taken from the soil.

## The Corporate Franchise Tax

In the absence of a state net income tax on corporate profits, Texas relies heavily upon a corporate franchise tax. For the privilege of doing business in Texas, the franchise tax is imposed upon the invested capital, surplus, and long term debt of each corporation to the extent that the corporation does business in Texas.[11] Insurance companies, transportation, sleeping and dining car companies, building and loan associations, certain mutual investment associations, and most non-profit corporations are exempt from this tax. In addition, the major utility, electric, water, gas, and telephone companies exclude the debt from the tax base. This privilege is granted because utilities normally depend more heavily on debt financing than do other corporations.

## Miscellaneous Sales and Excise Taxes

Texas levies more than a dozen retail sales taxes at varying rates upon specified articles at the point of retail sale. These are termed "selective" sales taxes, because the articles to be taxed are specified. The general sales tax, in contrast, which is used in many other states, is applied

[9] For the significance of these resources in the Texas economy see the discussion in Chapter 17.

[10] The rates (1960) on these resources are as follows: crude oil four and six-tenths per cent of the market value, natural gas seven per cent, and sulphur $1.40 per long ton.

[11] By an act of the Fifty-sixth Legislature (1959), the franchise tax rate varies up to $2.75 per $1,000 of capitalization. To understand the meaning of this tax the student should bear in mind the general nature of corporate capitalization. Stocks and similar securities represent ownership in the corporation upon which dividends are paid. Bonds and notes represent indebtedness or borrowed money upon which interest is paid. Surplus represents the excess of the assets over the sum of liabilities and the par value or stated value of the capital stock. It is a net worth account and is merely an account on the company's books.

generally to articles sold at retail specifying a few exemptions if any.

By far the largest revenue producer among the selective sales taxes is the cigarette levy which is eight cents per pack. Normally each one cent of this tax produces some $10,000,000 annually in revenue.[12] Sales taxes on a number of other items, such as automobiles, cosmetics, hotel rooms, cigars, smoking tobaccos, jewelry, furs, record players, air conditioners, radios, television sets, motor boats, and a few other items make up a sizable source of income for the state. Texas also imposes heavy taxes upon the manufacture and sale of alcoholic beverages and liquors.

### The Inheritance Tax

Although the Texas inheritance tax is only a minor source of state revenue, it can become a matter of extreme importance to people with sizable or even ordinary estates. This especially is true when considered jointly with the operating features of the federal estate tax and the Texas community property law. Between 10,000 and 11,000 Texas estates normally are reviewed annually under the Texas inheritance tax law.[13] With continued inflation of values, the number is likely to increase constantly.

***Death and Taxes.*** Death brings a sudden and vital change in the affairs of an estate. Where a few days previous the estate was a "going" concern, death virtually places the estate in a temporary receivership with the court as receiver.

Before legal title to an estate owner's property can be transferred to his heirs, and before they can enjoy and benefit from the estate, it is liable for payment of all debts, including accrued income taxes, property taxes, and other personal obligations, expense of last illness and funeral, executor fees, miscellaneous administration costs, and federal estate and Texas inheritance taxes.

***Legal Basis of the Tax.*** Much of our law concerning property is based on the ancient conception that the primary right of all property rests in the king, the sovereign, the government, as under the old feudal system all property was the property of the sovereign. It is this ancient conception which permits the government to take over an individual's property on his death in the absence of heirs; and it is this same con-

[12] The Fifty-sixth Legislature (1959) increased the cigarette tax from five cents to eight cents per pack.

[13] A total of 10,996 estates came under the review of the comptroller of public accounts in 1959, of which 3,562 were taxable.

ception which is back of the government's right of "eminent domain," under which private property can be condemned for public use.

***Two Types of Death Taxes.*** There are two kinds of death taxes, the inheritance tax and the estate tax. Both are based upon the transmission of property at death.

The inheritance tax, strictly speaking, is a tax upon the right to receive the property. It is measured by the share of the estate passing to each particular beneficiary. Texas levies this type of tax.

The estate tax, on the other hand, is a tax upon the right to transmit the property in the hands of the executors to the living donees. This tax is levied upon the entire net estate of the decedent, and the relationship of the heirs does not affect the degree of the tax liability. The federal government levies this type of death tax.

*Texas Inheritance Tax.* Texas imposes an inheritance tax which is levied at progressive rates upon direct, as well as upon relatives and strangers. The tax is levied upon both tangible and intangible property within the state's jurisdiction at the following rates:

**Texas Inheritance Tax** [14]

Exemptions and Rates

| *Class* | *Beneficiaries* | *Exemption* | *Range of Rates* |
|---|---|---|---|
| A | Husband, Wife, Children and other lineal descendants. | $25,000 | 1–6% |
| B | State of Texas, a local government in Texas, or U.S. if used in Texas. | 25,000 | 1–6% |
| C | Brothers, sisters, or their descendants. | 10,000 | 3–10% |
| D | Uncles, aunts, or their descendants. | 1,000 | 4–15% |
| E | All others. | 500 | 5–20% |

The Texas tax is levied upon insurance, if paid directly to an estate, but exempts $40,000 payable to a named beneficiary. Insurance payable to an irrevocable beneficiary is wholly exempt.[15]

Bequests left for educational, religious, and charitable purposes are exempt if used in Texas, but bequests going to similar purposes outside the state are not exempt. Texas has no "gift tax" law. State inheritance taxes are given credit against a portion of the federal estate tax.[16] The

[14] *Other Sources of Revenue Report,* No. 8, Texas State Tax Study Commission.

[15] To take advantage of this provision, all incidents of ownership must have been assigned irrevocably to another person two years prior to the owner's death.

[16] This credit is allowed up to 80 per cent of the federal tax as it existed in 1926. Since the heavier rates were imposed since then, a major part of the present federal tax is not encompassed by this credit device.

federal estate tax is levied at graduated rates from three to 77 per cent of the net estate with a basic exemption of $60,000.[17]

*Administration of Estate.* The Texas law requires that the heirs subject to this tax shall file a preliminary report within one month after coming into possession, and within six months after possession shall file an inventory of such property with the state comptroller. The estate is then appraised by appraisers appointed by the county judge, and the valuations are made by them and checked by the comptroller's office. By agreement, the comptroller may appraise the estate.

***Meaning of the Texas Community Property Law.*** Texas is also a "community property" state, which means that property acquired after marriage belongs equally to husband and wife.

While the community property law is basically a code defining a marital relationships, it has become involved in both the federal and state tax structures in recent years. In defining this term the courts have said:

> Community property is all property and pecuniary rights obtained by, or in the name of, either spouse after marriage, by toil, talent, thrift, energy, industry, or other productive faculty, and all rents, issues, profits, fruits, and revenues of separate property.

In general, community property is property and income acquired after marriage through the productive energies, labor, and talents of the spouses. Excluded from consideration as community property, and therefore from joint ownership, is property acquired by either husband or wife before marriage, and property acquired during marriage by one alone, through gift, inheritance, or bequest. The law was an old Spanish custom and was transplanted to the Spanish possessions in America nearly two centuries ago. The code considered the wife as a partner in the marital relationship, in contrast to the Norman concept as grafted into the English common law which made the wife a sort of chattel under the husband's ownership.[18]

Since community property belongs equally to husband and wife, upon the death of one spouse no inheritance tax is imposed upon the one-half interest already owned by the surviving spouse. This part is

[17] The federal law also exempts insurance if payable to an irrevocable beneficiary.

[18] There are eight community property states, chiefly those in the Southwest which were formerly possessions of Spain or Mexico. Several other states and the Federal Government have applied "community property" concepts by permitting an exemption of one-half of the estate passing to a surviving spouse.

taxed when the surviving spouse dies. If the surviving spouse lives more than five years, the entire estate is subject to the tax.[19]

### The Poll Tax

The poll tax is legally a "capitation" or head tax. The maximum rate is $1.75, of which $1.00 is levied by the constitution for the available school fund and $.50 is levied by statute for the state's general fund. Each county may levy $.25, but not all of them exercise the privilege. The poll tax originally was levied as a revenue measure only. Since 1902 payment of the tax has been a prerequisite for voting in Texas. Adults between 21 and 60 are legally liable for payment of the tax whether or not they vote.[20]

Since there is no feasible way to collect the poll tax unless the tax payer also pays property taxes, payment of the tax is widely evaded especially on non-election years. The tax is only a minor source of revenue for the state.[21]

### The Chain Store Tax

This tax is graded according to the number of retail and wholesale outlets in multi-store businesses. The rate ranges from $5 for a first store up to $826 for each store in excess of fifty. The tax was enacted in 1935 and had as its underlying motive the discouragement of further spread of national chain stores in Texas. The tax, of course, bears no relation to volume of business or net profits. The principal businesses affected are dairies and filling stations.[22]

### The Severance Beneficiary Tax

After a prolonged political struggle in 1959, the legislature enacted a new type of tax on natural gas. The act is defined as the severance beneficiary tax on gas pipelines. The nature and purpose of this tax may be best explained by noting the conditions under which the tax operates. When a pipeline is built, the owners must have a long and steady supply of gas assured. The gas then is purchased under a long-term contract that gives the pipeline operators the exclusive right to buy all the gas produced by a specific field, lease, or well at an agreed

[19] It is customary in cases of sizable estates for one-half of the entire estate to be disposed by will so as to get it out of the estate before the death of either spouse. This avoids the second tax should the surviving spouse live more than five years.

[20] Outright exemptions include the blind, deaf and dumb persons, amputees, the permanently disabled, and veterans of foreign wars with 40 per cent disability.

[21] The amount going to the state averages about $2.3 million annually.

[22] This tax normally produces less than $3 million annually on state revenue.

price for a long term of years. In legal terms, the pipeline becomes the "severance beneficiary" of the contract. This exclusive right is a property right the same as ownership of land or a franchise. The tax then is payable by the taker and not the producer. The tax rate is applied to the value and quantity of the gas that is produced each month.[23] The constitutionality of this tax is being contested in the courts.

There are several other minor taxes of a miscellaneous nature in the Texas revenue system.[24]

## FEDERAL GRANTS-IN-AID

All American states today rely heavily on federal grants-in-aid in financing important state activities. A federal grant-in-aid is money which the federal government makes available to the states and local governments for specified purposes and according to certain standards and requirements. All federal grants are conditioned on some measure of federal supervision. The supervision varies according to the activities. In nearly all cases the states are required to participate in financing the services, on either a dollar-for-dollar basis or some other prescribed ratio.

In Texas about one-fourth of the entire spending budget normally is derived from federal grants.[25] This exceeds the amount collected from any single state tax.

About ninety per cent of federal funds are earmarked for highways and for welfare programs, chiefly old age assistance. Less significant amounts go to unemployment compensation administration, education, health, and a few programs of a minor nature.[26]

While grants-in-aid are not a part of the state tax system, nevertheless such funds are derived from taxation under the federal revenue system to which the taxpayers of Texas contribute their share. If federal aid did not exist, the support of such services, if maintained, would have to come solely from state tax revenues.

[23] The rate was set by the act of 1959 at one and one-half per cent of the purchase price.

[24] These are of a selective nature such as the cement tax, gross receipts taxes on boxing and wrestling, tax on textbook publishers, and collections from several kinds of fees and permits.

[25] In 1959.

[26] These include a variety of programs such as agriculture, vocational rehabilitation, civil defense, and disaster relief. For further explanation of federal aid for specific services see Chapters 10 and 11.

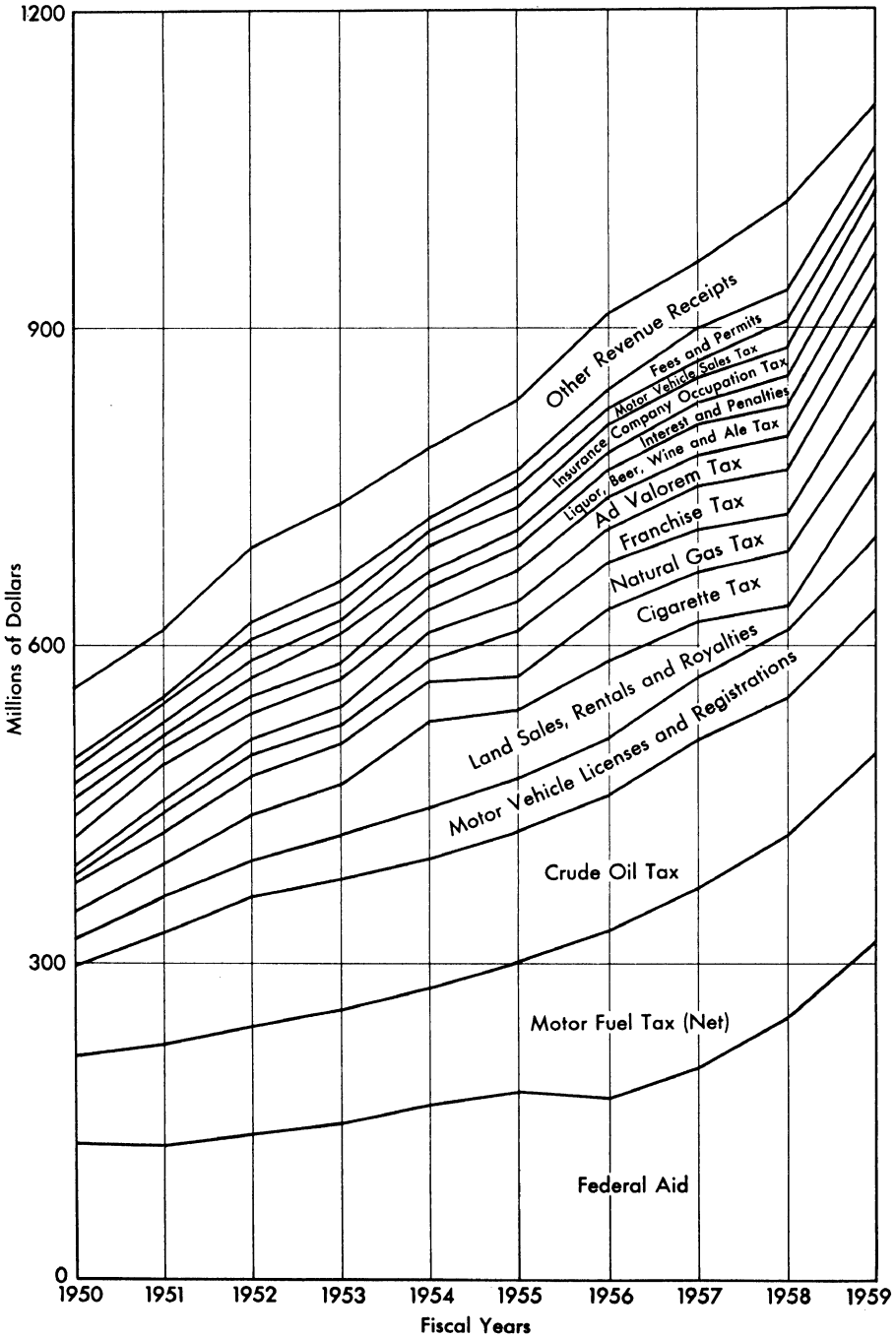


**Figure 9.** *State Revenue Receipts.* (Courtesy, Comptroller of Public Accounts)

## NON-TAX REVENUES

In addition to taxes, the state derives revenue from miscellaneous other sources.

***Land Sales, Royalties, Lease Rentals, and Lease Bonuses.*** All income from these sources are placed in the state's permanent funds. The two large trust funds are the permanent school fund and the university fund.[27]

The permanent school fund was created in 1852. Subsequently some 42 million acres of public lands were set aside for this fund. Receipts from the sales of mineral-rights-reserved and lands are deposited in the fund in perpetuity.

In recent years the fund's chief income has been derived from oil and gas development on school owned offshore lands in the Gulf of Mexico.[28] The fund's assets now exceed $400 million. The interest earnings from the capital are placed into the available school fund and help make up the per capita apportionment for operating the public schools.

The university fund has accumulated through the payment of royalties, lease rentals, and lease bonuses on the 2,339,168 acres of public lands set aside for the University of Texas. The fund's assets are now nearly $300 million. Most of the fund's earnings are dedicated to the building program of the University of Texas and the Texas A and M College. The legislature, however, may use these earnings for either capital or current expenditures of these institutions.[29]

***College Tuition and Fees.*** Tuition fees paid by students attending the state-supported senior colleges provide an important source of non-tax revenue. The amount now exceeds $10 million annually and rises each year with increased attendance. Miscellaneous student charges, such as laboratory fees, fines, building use fees, and the like also fall in this category. Allocation of receipts from these sources is to the respective institutions.[30]

***Other Non-tax Revenues.*** These include such income sources as rentals and royalties not deposited to the permanent funds, testing and in-

[27] In addition there are four minor funds for eleemosynary institutions but their total assets aggregate less than $600,000 and are of no consequence in the state's fiscal picture.

[28] For explanation of the public domain and the schools see Chapter 10.

[29] Two-thirds of the earnings go to the University and one-third to the A and M College.

[30] Junior college fees are not deposited in the state treasury.

spection fees, licenses, fines and suit settlements, and contributions of the counties as a share of the state highway projects.[31]

The unemployment compensation tax on payrolls formerly set up as a part of the state's tax structure is not included in the state's fiscal operations at present because its uses are rigidly stipulated by federal

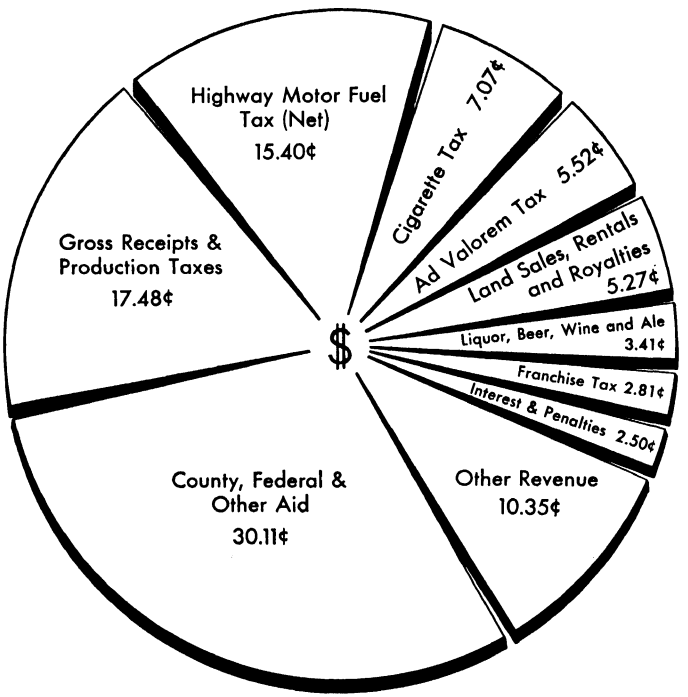


**Figure 10.** *Where the State Dollar Comes From.* (Courtesy, Comptroller of Public Accounts)

law. Nevertheless some 75,000 business firms pay this tax under rates defined by state law to support the unemployment security program which is operated by the state.[32]

## THE STATE EXPENDITURE SYSTEM

Each legislature has as one of its principal tasks the enactment of budget appropriations for the following two years.

[31] These revenues now exceed $25 million annually (1960).
[32] See Chapter 11 for explanation of this program.

***The State's Two-Budget System.*** In preparing for enactment of appropriations the Texas legislature operates under a unique dual system. Proposed budgets are submitted both by the governor, as provided by law, and by the legislature itself, through its own budget board which it established in 1949.[33]

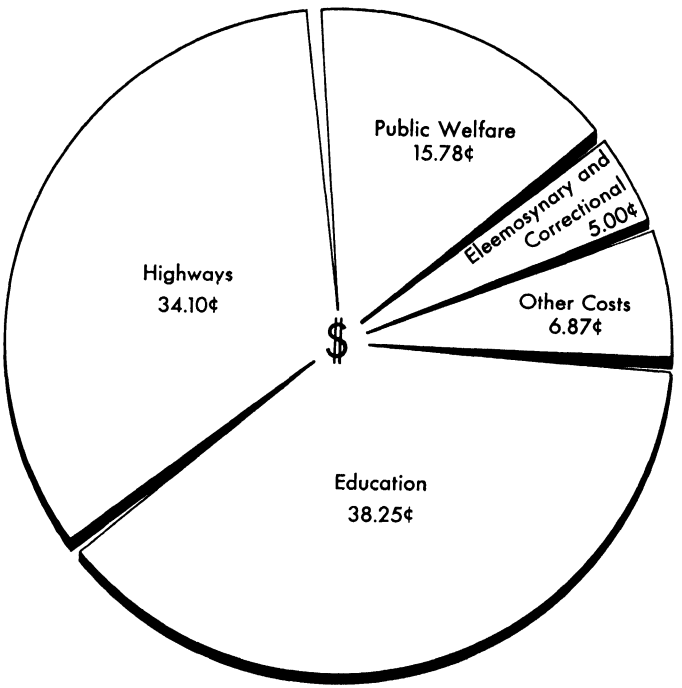


**Figure 11.** *Where the State Dollar Goes.* (Courtesy, Comptroller of Public Accounts)

Although the governor's, or "executive" budget reflects the governor's viewpoint, and the board's, or "legislative" budget expresses the wishes of the legislature, both are prepared similarly and in certain preliminary stages jointly. Budgetary requests are presented to each authority on identical forms. Joint hearings are held. Then, individually, the two staffs go to work. What they produce is a pair of long, involved documents. There is always considerable difference between the final recommendations of the governor's and of the board's budgets.

[33] The legislative budget board is composed of the lieutenant-governor, the speaker of the house, the chairman of the house committee on revenue and taxation, and four additional members, two from either house.

### The Budget Before the Legislature

The two voluminous proposed budgets are presented to the legislature and are considered at length by the committee on appropriations in the house and the finance committee in the senate. Legislators do not trust the documents and like to have a hand in controlling the state's purse strings. Weeks are spent in listening to department heads and administrative officers who are called in to justify their requests for money. Then subcommittees are appointed to work on the appropriation bills. Often the same witnesses again are called back to go over their financial requests. The subcommittees report back to the whole committee which adopts the budget and sends it to the floor as the committee report. Here debates take place and attempts are made to cut or increase various items or categories. The house and senate bills never agree, so a conference committee of both houses is appointed to harmonize the differences. The conference report combines both measures into a single budget which represents a compromise between the two houses. Both houses must accept the conference report, after which it must be certified by the comptroller as being within the anticipated revenues for the biennium.

***A Financial Hodgepodge.*** It is a strange financial world in which the Texas government operates. Any private business conducting its financial affairs like the state government would soon be in bankruptcy. There is really no such thing as a general budget. The whole thing is a miscellany of uncoordinated funds and fund accounts totaling nearly 400.[34] Each fund is designated for a specific purpose. Many cooks stir the financial brew. The mandatory allocations to these special funds constitute nearly three-fourths of all state revenues.

Some of the funds are created by the constitution, others by law, and still others just arose spontaneously. The available school fund, the highway fund, the welfare funds, and teacher's retirement fund are examples of provisions of the constitution. Statutory law creates the large fund for the foundation school program and scores of others, most of which are of minor importance. All federal grants are designated for specific purposes and must operate through special funds.

### Position of the General Fund

Most of the discussions about the state's financial condition has to do with the general fund. In most states, as the name implies, the gen-

[34] *Report of the State Treasurer.*

eral fund is the core of the operating budget. The federal government also operates principally through its general fund. In Texas, however, the general fund stands near the end of a long list of other funds having prior claims on the taxpayer's money. Yet the general fund supports several of the state's most important services.

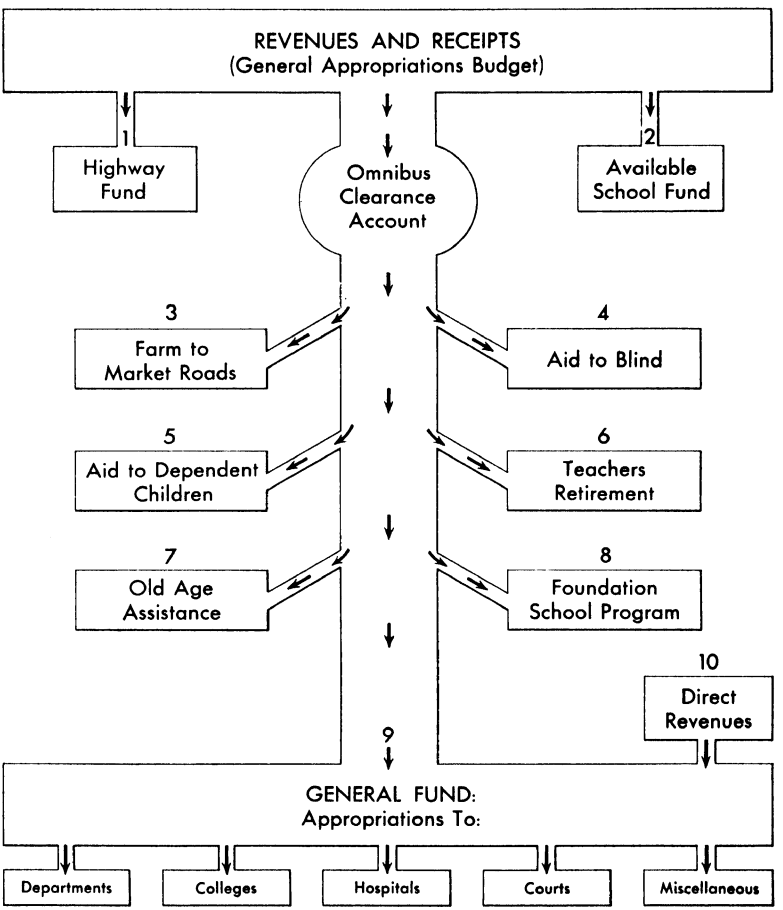


**Figure 12.** *The State Expenditure System, Showing Fund Priorities.*

It is the state's chief "checking account." Appropriations for the departments and state agencies, the colleges and universities, the state's hospitals and institutions, the courts, and miscellaneous special purposes are all made from the general fund.

Texas is in need of a sweeping revision in the administration of its fiscal affairs. The collection of the state's revenues is scattered through

several different departments. In addition there are scores of agencies that collect fees. There are funds deposited "in" the treasury, "with" the treasury, and "outside" the treasury. The multiplicity of fund ac-

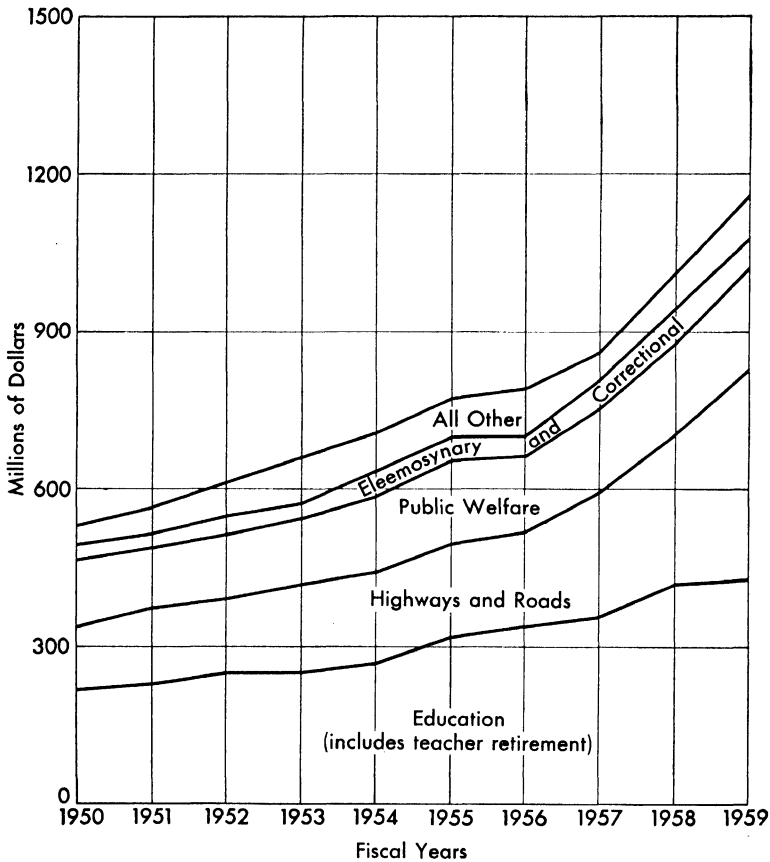


**Figure 13.** *State Expenditures.* Over the past decade state expenditures have risen at an average rate of about $100 million annually. This appears to indicate the normal trend line. (Courtesy, Comptroller of Public Accounts)

counts and the numerous uncoordinated administrative agencies create a diffusion of responsibility and a maze of obscurity behind which the state's affairs are conducted.[35] The state's whole fiscal system is becoming so complex that no one, including the legislature, fully un-

[35] Reference should be made to the discussions in Chapter 6 on needed changes in the state's administrative system.

derstands it. Most of the special funds should be put into the general fund, subject to appropriation through a unified budget by the legislature. Funds set up in the constitution, trust funds, federal grants, and the like must remain in separate accounts.

## PRINCIPAL FISCAL AGENCIES

### Comptroller of Public Accounts

The comptroller of public accounts is the most important office in the administration of the state's fiscal operations. The functions of this office fall in three general categories.

In the first place the comptroller is the chief tax collector for the state. In this broad field of duty he is responsible for assessing each tax and devising forms and procedures for payment of the levy according to the provisions of the law. Most of the state's major tax levies, such as the motor fuel tax, the gross receipts and severance taxes, the franchise tax and the miscellaneous sales taxes are collected on a statewide basis by this office. In this work the comptroller deals directly with the persons and firms paying the taxes. The collections are deposited in the state treasury to the credit of the particular fund account for which the revenues are specified.

Under the present system of property tax collections, the comptroller must supervise the assessment work of the tax assessors-collectors in the 254 counties. Several other state taxes also are collected by the county officials under the comptroller's supervision. Among these are the auto sales taxes, the poll tax, the inheritance tax, and certain occupation taxes.

In the second place the comptroller is the chief accounting officer of the state. In this work he must follow the detailed provisions of the statutes and the allocations made by the constitution. The incoming revenue receipts must be segregated into the many fund accounts and used to finance the specified activities in each case. The comptroller's office writes the warrants or checks for paying the salaries of state employees and other obligations.

A third duty of the comptroller of public accounts falls under the constitutional amendment which requires him to certify that there will be sufficient funds to cover each appropriation made by the legislature. The purpose of this amendment was to force the state to operate on

a cash basis by preventing any appropriation from exceeding the anticipated revenue. No appropriation bill, unless passed by a four-fifths vote of both houses, can go to the governor unless it has been given clearance by the comptroller as not exceeding the prospective income of the fund from which the appropriation is made. This places upon the comptroller a difficult task, since any estimates of revenue receipts for a period from one to two years in advance must involve considerable guesswork due to fluctuating economic conditions that cannot be foreseen. If the comptroller's estimates are incorrect, the general fund is likely to incur operating surpluses or deficits.

The comptroller has a number of miscellaneous duties assigned to his office. He certifies the state rate of property taxation to the county tax officials as set by the board which calculates this rate.[36] He is required to register all bonds issued by the state and local units of government and acts as custodian for important legal papers owned by the state. Under the direction of the state board of education he invests the income accruing to the permanent school fund and performs other minor duties of a miscellaneous nature.

### The Board of Control

The board of control serves as the centralized purchasing agency for the state departments and institutions. The board performs its functions through several divisions that are set up to facilitate the work. Purchases for the state's agencies and institutions are made by the board or under its supervision. The board receives and consolidates estimates of needed supplies and advertises for bids on quantity purchases. The board may purchase by contract or on the open market as conditions dictate. Competitive bidding is secured for contract purchases. Local school boards as a rule purchase their student transportation buses because of the savings through quantity purchases. Several of the larger purchasing agencies, such as the highway department and the universities, have been delegated in part the responsibility for purchasing their supplies and materials.

The board of control also contracts for the printing done by the state and its institutions. It is responsible for the design and construction of all public buildings erected at public expense. It is charged with the maintenance, repair, and beautification of the capitol building and grounds, the governor's mansion, and other state buildings in Austin.

[36] The agency is called the board to evaluate the ad valorem tax rate and is composed of the governor, the comptroller, and the state treasurer.

### The State Auditor

It is the duty of the state auditor to post-audit the accounts and financial records of all the state departments, agencies, and institutions. In performing this function the auditor assists state agencies in installing uniform and adequate accounting systems and can require such changes as are necessary. The auditor works under the authority of the legislative audit committee and submits to the committee a biennial report with an estimate of revenue available for appropriations.[37] The auditor is appointed by the legislative audit committee for the term of two years.

### The State Treasurer

The state treasurer, as the term implies, occupies a central position in the state's fiscal setup. The treasurer receives all the tax collections and keeps records on the various fund accounts. He is custodian for the securities belonging to the various investment funds, such as the permanent school fund, the retirement funds, the university fund, and others. The treasurer also services the cigarette and liquor dealers with stamps used in collecting the excise taxes of these items.

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[37] The legislative audit committee is composed of the lieutenant-governor, the chairman of the senate financial committee, the chairman of the senate state affairs committee, the speaker of the house, the chairman of the house appropriations committee, and the chairman of the house committee of revenue and taxation.

# 10....

# *Public Education*

The destiny of our society in state, in nation, and in the world rests in our younger generation and future generations beyond. In order to prepare them to assume this fateful role, we Americans have long recognized the importance of establishing a sound educational system, which would combine the best theory and skill of professional educators with the best thinking of the general public whose children the system must serve. The Federal Ordinance of 1787 declared, "Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged." Indeed one of the principal causes of the Texas Revolution was the refusal of the Mexican government to provide schools for Texas.

The early days of Texas statehood and the Civil War period which followed were not conducive to the development of a good educational system. The people who lived in Texas during these periods recognized the importance of education, however, and lost no time starting their public school system when the Civil War was over.

## EDUCATION AND THE CONSTITUTION

Article VII of the Texas Constitution, written in 1875, serves as the constitutional foundation upon which the legal structure of the state educational system is built. In this article, the voters of Texas told all future legislatures and other state agents of government that they wanted a system of education of which the people could be proud. Section 1 of the article reads as follows:

A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature

of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.

This quotation indicates that it was believed in 1875 that an ignorant people would have more difficulty in preserving their liberties and rights than would a properly educated people. This belief is still held by the people of the state, as is evidenced by the fact that they now spend more public money for educational services than for any other public function.

## GOVERNMENTAL MACHINERY THROUGH WHICH EDUCATIONAL SERVICES ARE RENDERED TO THE PEOPLE

The function of providing educational services for the more than two million pupils in Texas requires the time and attention of a vast army of governmental officers and employees. Some of these governmental agents perform school functions incidentally, in connection with their other work. The state legislature for example, passes school laws along with laws on other subjects. The governor sees that these laws are enforced. The state tax collectors collect state taxes for schools, and the courts give the interpretation of school laws as they do other laws.

### The State School Agencies and Officials

Certain governmental agencies are set up at the state level for the specific purpose of helping to operate the public school system. One of these agencies is the state board of education, another is the Texas education agency which consists of the various divisions of the state department of education, headed by the commissioner of education. The state board of education also acts as the state board of vocational education to receive and distribute federal funds for vocational educational services. There is also a state board of examiners for teacher education, appointed by the commissioner of education to help in the matter of certifying only properly qualified persons to teach in the public schools of the state.

***The State Board of Education.*** At the head of the Texas public school system is the state board of education, composed of one representative from each of the congressional districts of the state, and elected by the voters of the respective districts. This agency is the overall policy

forming and planning body for the public school systems of Texas. Among the chief duties of the board are the following:

1. Select, with the consent of the senate, the state commissioner of education
2. Adopt an annual budget for the Texas educational agency, present this budget to the state budget officials, and provide procedures for its control
3. Adopt standards for accreditation of elementary and secondary schools, and for programs of teacher education in the teacher training institutions
4. Purchase textbooks
5. Apportion the available fund
6. Direct the investment of the permanent school fund
7. Pass on appeals from decisions made by the commissioner of education
8. Serve as the school board for the Texas School for the Blind and the Texas School for the Deaf
9. Supervise the operation of the public junior colleges
10. Consider the educational needs and problems of Texas, and make such policies as might be needed to meet these.

***The State Commissioner of Education.*** In keeping with the trend found throughout the United States during recent years, Texas professionalized her highest state school office in 1949 by providing for a commissioner of education to be appointed by an elective board, rather than election by the voters. This completed the pyramid of school boards from the district to the state level with the elective boards at the district and state levels selecting professional school men to head the school systems at these two levels. Under special laws a few county boards of trustees select county superintendents.

The commissioner of education has a wide range of duties imposed on him by laws. Among his duties are the following:

1. Execute the school policies declared by the legislature and state board of education
2. Appoint all staff members of the state department of education
3. Supervise the expenditures of all moneys budgeted by the state board
4. Recommend persons for the state textbook committee and supervise textbook contracts
5. Hear disputes from the decisions of lower school officials
6. Collect and organize information needed by the state legislature and state board in the making of their school policies
7. In general, supervise the operation of the state's public school system.

***The Texas Education Agency.*** To enable the commissioner to perform his widespread duties, there has been created an organization known as the Texas education agency. This agency is headed by the commissioner and a deputy commissioner. Under these officials are the assistant commissioners and under these assistants are the directors of the seventeen divisions into which the agency is divided. The names of these divisions indicate in general the broad functions of the agency: textbooks, vocational rehabilitation, research, administrative services, finance, school audits, curriculum development, special education, school accreditation, teacher education and certification, agricultural education, distributive education, home and family life education, industrial education, veterans education, civil defense education, adult education, and guidance and supervision. Besides these seventeen divisions, there are three other major administrative areas of the Texas education agency: vocational education, junior colleges, and the Texas School for the Blind and the Texas School for the Deaf.

Throughout the United States in recent years there has been a notable move toward the use of citizen, professional, and citizen-professional committees and commissions in the study of school problems and in the formulation of policies to solve these. It is estimated that more than 15,000 citizen-school advisory committees are now operating in the United States. Texas has several of these organizations. The reorganization of the state school system at the state level in 1949 was largely the result of the work of the Gilmer-Aikin Committee. The state legislature would hardly consider a major change in the public school system without a report from a statewide study group. It would take several pages to list the names of the various auxiliary organizations that are continuously studying and reporting on the various phases of the state's school system.

## Geographic Divisions of Texas for School Administration Purposes

The largest geographical unit for school administration in Texas is, of course, the state, over which the state board of education and the state commissioner of education exercise jurisdiction. These officials must have a network of administrative machinery to work with that will reach all the way down to every school child in the state. This machinery functions through state, county, and school district organizations.

***The County as a Geographical Unit.*** Each of the 254 counties in the state constitutes a separate unit for school administrative purposes. The county is under the immediate supervision of the county board of trustees and the county superintendent. Since the boundaries of counties are usually artificial lines, the school needs of the people of a county frequently fail to coincide with the territorial unit. For this reason many county lines are crossed by district lines, and people in separate counties find themselves in the same school district. Since the county is a unit for such school purposes as receiving the state per capita apportionment, making transfers, establishing school bus routes, holding elections, collecting taxes, and depositing school funds, the need for, along with the existence of, county line districts often complicates school administration.

***The School District.*** As is the case throughout the United States, the foundation unit of the free school system of Texas is the school district. As counties in Texas were organized for governmental purposes, they were subdivided into school districts before they were organized into counties. A school district is a public corporation, a creature of the statute; consequently the trustees are limited in the exercise of their powers to those powers expressly granted or necessarily implied from or incident to powers that are granted. Since a school district partakes of the nature of a municipal corporation, it is particularly subject to the legislative will.

Because shifting population made necessary the frequent shifting of school district lines, the legislature was given authority under Article VII, section 3 of the state constitution to exercise the same control over the forming of school districts through special law without notice, as through a general law. But even with this freedom in changing school district boundaries the legislature was unable to make all necessary changes in the territory of school districts. For this reason it delegated to the county boards the authority to change the school district lines of those districts subject to the county board. The voters of the state adopted a constitutional amendment in 1926 depriving the legislature of its authority to create school districts by special law.

*Kinds of School Districts.* The legislature of Texas has provided for creation of several different kinds of school districts. The different types recognized by law are: common school districts, independent school districts, consolidated common school districts, consolidated independent school districts, county line school districts, consolidated county line school districts, rural high school districts, and countywide school

districts. There are two types of common school districts: the elementary within a rural high school district, and the common district that forms a unit within itself. Likewise, there are two types of independent school districts: those that lie wholly within the limits of an incorporated city or town, and those that lie partly within and partly without an incorporated city or town. Each type of district is subject to different rules and regulations. The variation in school districts adds much to the complexity of school law in Texas.

*The Consolidation of School Districts.* Throughout the United States the concentration of population and the improved means of transportation in recent years have produced a revolution in the number and size of school districts. It is estimated that a school plant, in order to have all the requirements for a full and efficient operation, should have an enrollment of 800 or more pupils. States with large areas of thinly populated territories find it difficult to meet these requirements. Texas has moved a long way in the direction toward proper sized school districts in the past two decades. As late as 1947, Texas had 4,155 common school districts. There exist now approximately one-tenth this number. The number of independent school districts has remained fairly constant at approximately 1,000 during the same period.

***The Board of County School Trustees.*** Adoption of the principle of state aid to rural schools in 1915, together with the general expanding activities of the public schools, led the legislature to create in that year a new school administrative agency for each county known as the board of county school trustees. This board is composed of five members, one of whom is elected from the county at large by the voters of the common and consolidated independent school districts, and one from each commissioner's precinct by the qualified voters of the precinct. The election is held on the first Saturday in April. The board elects its own presiding officer; the county superintendent serves as secretary. Meetings are held at least four times each year, and each trustee is paid six dollars per day for expenses. The total compensation for the year, however, must not exceed seventy-two dollars.

***Duties of the County Superintendent.*** The county superintendent's office was created primarily to furnish supervision for the common schools of the county. The office does, however, render a few services to independent school districts; examples: check and approve census rolls, transfer students, record teachers' certificates, and hear appeals from the decisions of local school authorities. In addition to these duties, the county superintendent approves all vouchers legally drawn against

the school fund of the county, approves business contracts made by schools in his jurisdiction, assists the county board in the conduct of its business, and makes such reports to the commissioner of education as may be required. With the elimination of so many common school districts by consolidations, the office of the county superintendent is becoming ever less important.

***Local Trustees.*** The local management and control of the public schools in Texas are placed in the hands of the local board of school trustees. The local trustees are selected by the qualified voters of the district for terms of three years, one-third being newly elected each year. As a rule, each common school district has three trustees, and each independent district has seven. There are some exceptions to the general rule relating to terms and numbers of trustees. Elections are usually held on the first Saturday in April under the supervision of officials appointed by the trustees. The courts use the principle of loose construction in the matter of school trustee elections. Mere irregularities will not invalidate a trustee election; actual fraud must exist before the courts will declare such an election void. Trustees in common school districts must be able to read and write the English language intelligibly, but any qualified voter can qualify for trustee in an independent district.

*The Trustees and Racial Segregation.* When the United States Supreme Court, in the case Brown v. Board of Education, declared in May, 1954, that the Fourteenth Amendment to the United States Constitution prohibited racial segregation in the public schools, it placed on many school trustees a problem they were unable to solve. Then, when the court went one step further and attempted to lay down a plan for integrating the schools by its decision in the same case one year later, it added more confusion to the already perplexed trustees. The plan for integration which the court visualized removed the administrative supervision in this area from the county and state school officials and placed it in the hands of the federal district court judges. Since these judges are usually not trained in the field of public school administration, and since operating a school system is something more than the mere application of court judgment or a law, the local trustees now had little or no administrative supervision and guidance in dealing with a problem that has been most perplexing to them. This general problem has been discussed at greater length in Chapter One.

***Teachers.*** Actual administration of school policies is through local superintendents, principals, teachers, and certain special personnel.

Upon their shoulders rests the immediate responsibility for making effective the objectives for which the public school system exists. Since these people must have knowledge and understanding of the problems of education over and beyond that of the general layman, they are required to have certain training and to meet certain requirements before the state will admit them to the teaching profession.

*Teachers' Certificates.* The state legislature lays down the general requirements for the granting and securing of teachers' certificates. The Texas education agency, the state board of examiners for teacher education, teacher education institutions, and the public schools all cooperate in working out the standards to be met for teacher certification. Among the legislative requirements for a certificate are these: the applicant must be at least eighteen years old, of good moral character, and must be a citizen or an alien who has declared intention to become a citizen of the United States. In addition, he must have credit from a college or university in Texas in a course or courses which emphasize the constitutions of the United States and of Texas, and also be willing to support and defend these constitutions. He must also have credit in courses of American and Texas history.

The law imposes on the state board of education and the commissioner of education the responsibility for seeing that recipients of teachers' certificates are properly trained. This is done by working out a series of programs designed to train the prospective teachers for the various fields in which they might teach. Colleges and universities that will give courses required for these programs are then selected. When a selected institution certifies that a student has met the requirements for teaching in a field for which the program qualifies him, the commissioner grants the certificate. Two types of permanent teaching certificates are issued: a provisional certificate based on a baccalaureate degree, and a professional certificate based on thirty semester hours of college work above the baccalaureate degree. Emergency or temporary certificates and special certificates for out-of-state applicants are authorized under certain conditions.

## The Scholastic Population

Article VII, section 5 of the state constitution provides that ". . . the available school fund herein provided shall be distributed to the several counties according to their scholastic population and applied in such a manner as may be provided by law." No rule is given for determining the composition of the scholastic population. This matter is one for

legislative action. The legislature has provided that children between the ages of six and seventeen inclusive shall constitute the scholastic population of Texas.

***The School Census.*** The scholastic census is taken each year during the month of January by a locally appointed census taker. After the census roll is completed, it is delivered to the county superintendent who makes a careful check to determine the accuracy of the names on the roll. The original roll is sent to the state commissioner, and a duplicate is filed with the county clerk as a permanent record. The state commissioner has the authority to investigate the census of any county and correct any errors which he may find. Since each district receives the per capita apportionment less county administrative expenses for each name on the final census roll, there is a tendency in many places to make the list as long as possible. There has been considerable agitation in the state for a change in the method of distributing the state available school fund from a basis of scholastic population to a basis of average daily attendance, as is used in the distribution of the minimum foundation fund.

***Compulsory Attendance.*** The compulsory attendance requirements apply to every child who is seven years and not more than sixteen years of age. The beginning of the compulsory attendance period is determined by the local trustees and must cover a period of not less than 120 days. Five groups of children are exempt from the operation of the law:

1. Children attending a private or parochial school
2. Children whose bodily or mental condition render attendance inadvisable; such conditions must be vouched for by a reputable physician
3. Children who are blind, deaf, dumb, or feeble-minded
4. Children living more than two and one-half miles from school where no free transportation is provided
5. Children over twelve years old who have completed the seventh grade and whose services are needed to support the parent or guardian.

The county school trustees or the trustees of an independent district having more than 2,000 scholastic population may employ an attendance officer to enforce the compulsory attendance law. If no attendance officer is selected, the enforcement devolves upon the local superintendent and peace officers. Because of lack of proper enforcement machinery, the compulsory attendance law has met with only moderate success.

### Education for Exceptional Children

Throughout the United States an ever-increasing amount of research is being done in seeking to find better ways to improve educational opportunities for exceptional children. For many years Texas cared for her mentally retarded children in institutions that were more custodial than educational. In 1957 the legislature provided for a program whereby educable, though mentally retarded, children would be included in the regular public school program where they would be taught by teachers especially trained for this work. Children who were non-educable would be cared for in state schools for the mentally retarded, located in Austin, Abilene, Mexia, and Denton. This new approach to the education of the mentally handicapped is resulting in the training of thousands of students to make their own way in life, where previously they would have been partially or totally dependent on others.

## TEXTBOOKS

To assure uniform and proper textbooks for teaching purposes, the state furnishes free to its pupils all textbooks. These are financed from the available school fund. Selection of these books is done partly by state and partly by local officials. The state textbook committee, composed of fifteen members appointed by the commissioner of education, each year examines all books submitted by publishers for the course and grades to be supplied. After an opportunity is given for any interested citizen to given his opinion on any book offered for adoption, the state textbook committee makes a list of not fewer than two nor more than five titles for each course and grade. This list is submitted to each local school system where a local textbook committee makes the final selection for all books. The commissioner of education and the state board of education can each eliminate titles submitted by the state textbook committee, but they cannot add to the list. The state board of education makes the contracts with the publishers. The Texas education agency distributes books and keeps records on all state-owned textbooks.

## THE CURRICULUM

The courses and subject matter taught in the public schools of Texas are determined in part by the state legislature, in part by the Texas education agency, and in part by local school officials. Many differences of opinion exist as to what areas of study ought to be taught, and the amount of time that should be given to each area. Continuous study by joint lay and professional committees is under way in an effort to improve the teaching curriculum. Curriculum areas include business education, educational guidance, English, speech, journalism, other language arts, fine arts, foreign languages, health and physical education, history, government, geography, other social studies, mathematics, natural sciences, safety and driver education, vocational education, and industrial arts.

## PUBLIC SCHOOL FINANCES

The financing of public education in the United States varies considerably from state to state, yet there are several features common to all states. For example, most states have minimum foundation programs, a flat grant of funds based on the number of pupils, equalization grants, local school support almost exclusively from a property tax, and an increasing amount of support from the state level. State support varies widely from state to state, ranging from about five to about eighty-five per cent of the total public school costs. The state provides approximately one-half the public school costs in Texas. Only five states derive as much as ten per cent of their public school revenue from nonproperty tax sources.

### The Constitution and Revenue Sources

The state constitution provides the following sources of income for the support of the public school system of Texas:

1. One-fourth of the revenue derived from state occupation taxes
2. One dollar from each poll tax payment
3. An ad valorem state tax not to exceed thirty-five cents per $100 valuation
4. The income arising from the investment of the permanent school fund

5. Special legislative appropriations
6. An ad valorem tax levied by local school districts.

The property tax must be authorized by a majority of the qualified property taxpaying voters. The one-fourth occupational tax clause is considered a minimum; the legislature may set a higher rate.

**Public School Financing by Levels of Government**

All four levels of government share in financing the public schools of Texas. Although the percentage of support varies somewhat from year to year, the overall averages are approximately as follows: local school districts and county, forty-seven per cent; state, forty-nine per cent; federal, four per cent.

**Local School Districts Financing**

Local school districts in Texas derive about ninety-four per cent of their local income from the property tax, and the remaining six per cent from other sources. Independent school districts have their own assessing, equalizing, and collecting agencies. Property may be assessed in independent school districts for school tax purposes at a different value from that used for state and county purposes. If a majority of the board of trustees of an independent school district so desire, they may have the school taxes assessed and collected by the county tax assessor-collector. Practically all school districts in Texas levy both a local maintenance and a bond tax. The voters of a school district are permitted to vote a maximum rate of $1.50 on each $100 of assessed valuation. Not more than fifty cents of the aggregate tax of $1.50 may be used to service bonded indebtedness. If the districts find that this limitation keeps them from providing sufficient school building facilities for their pupils, they may vote school construction bonds up to ten per cent of the assessed value of taxable property. If a district used this percentage valuation plan for bonds, its rate for maintenance is restricted to from $1.20 to $1.50 per $100 of assessed valuation, the rate depending on the amount of bonded indebtedness. In actual practice, rate restrictions do not limit the total tax collections very much because if a district wants more money than the maximum rate will produce at a certain valuation, the local authorities can usually raise the valuation enough to produce the desired income.

Money raised locally is spent by the school district for the following purposes: buildings and equipment, retirement of debt for capital out-

lay, meeting minimum foundation program costs, and providing for maintenance and other costs not met by other state allocations.

***The County as a Financial Unit.*** Some counties in Texas maintain a county permanent fund made up of funds derived from lands given to these counties when the counties were organized. The income available for distribution comes from lease fees and income on investments of money received from the sale of these lands.

### State Level Financing

Three state funds serve as the sources from which state money is distributed to the various school districts of the state. These three funds are the available school fund, the minimum foundation program fund, and the general revenue fund.

***The Available School Fund.*** This fund is made up from income derived from several sources, such as the interest on the permanent school fund, a state ad valorem tax of thirty-five cents per $100 assessed valuation, one dollar from each poll tax, and one-fourth of all occupation taxes including one-fourth of the gasoline tax. This money is distributed to the counties and school districts on a per capita or pupil headcount basis. Since the sources from which the income of this fund come are good revenue producers, a substantial portion of the cost of operating the public schools comes from the available school fund.

***The Minimum Foundation Program Fund.*** The ability of school districts to support a good school system varies greatly from district to district. In order to guarantee each child in Texas an opportunity for a respectable education, the state established a fund from which money would be distributed to those districts which needed it in order to have a school system that would meet desirable standards. In effect, the state promises each school district that if it will operate its schools nine months in each year, employ a teacher for about each twenty-six pupils in average daily attendance and will pay these teachers in accordance with a state schedule, and will meet a few other conditions, including the voting of a small local tax, the state will furnish any extra money the district needs over and above the amount it has available from its normal sources.

Minimum foundation program money is provided for three areas of school expenses:

1. Operational expenses such as custodial care and materials and supplies.
2. Salaries for teachers and all other professional personnel. The amount

allowed for each position is based on the experience and professional training of the person receiving the salary.

3. Transportation; the amount of this aid is based on the number of pupils transported, bus capacity, length of route, and road conditions.

The minimum foundation program fund works automatically in that it is not necessary for the legislature to appropriate the money each year. Income from certain designated sources is placed in a big overall fund known as the omnibus tax clearance fund. Money automatically flows from this fund to the minimum foundation fund as needed. Thus, when a school district establishes its need for a certain amount of money to maintain its school program in accordance with state requirements, the money automatically becomes available.

*The Economic Index.* In order for local districts to share in the minimum foundation program fund, they must show a willingness to help finance their own schools. To assure this district action the state requires the districts to raise an amount equal to approximately twenty per cent of the total distributed by the state through the minimum foundation program found. Each district's part of this twenty per cent total is calculated by means of an economic index. This index considers three factors: scholastic population of the county weighted by eight, assessed property valuation of the county weighted by twenty, and total gross income of the county weighted by seventy-two. By means of this index the total amount for the state is broken down by counties; then each county's portion is assigned to school districts in the ratio that the district's state and county tax assessments bear to that of the county's total assessed valuation.

***The General Revenue Fund.*** The legislature appropriates from the general revenue fund regular amounts to match those funds from the federal government used in carrying on vocational education in the state. In addition to these regular appropriations, the legislature sometimes makes special appropriations to individual school districts to meet emergencies not provided for in the school budgets. These emergencies may be created by natural disasters such as floods or storms, or by other unpredictable catastrophes.

***Federal Level Financing.*** About four per cent of the total costs of financing the public schools in Texas is provided by the federal government. Part of these funds is channeled through the state department of education and used for the school lunch and vocational education programs. Other funds are sent directly to those districts enrolling students whose parents are working in federal defense projects. When

timber from United States forest preserves is sold, the receipts are given to the counties in which the preserves are located. One-half the money received by the county may be allocated to the school districts of the county.

***The Permanent School Fund.*** Early day friends of education visualized a near-tax free system of public schools of the state. To make this vision a reality, they set aside more than 42 million acres of land, the income and earnings from which would form a permanent source of revenue for the schools. The permanent school fund is now composed of land amounting to approximately 14 million acres, and an investment trust fund derived from revenues from land sold and from bonuses, rentals, leases, and royalties of the land remaining in the state's possession. With the investment trust fund rapidly approaching a total of one-half billion dollars, the legislature in 1957 authorized the transfer of one per cent of this fund to the available school fund for distribution to the school districts.

## STATE INSTITUTIONS OF HIGHER LEARNING

The makers of the Constitution of 1876 felt that the public school system would not offer enough educational opportunities to the people of the state, hence provisions were made for three institutions of higher learning, namely, the University of Texas, the Agricultural and Mechanical College, and a college for the instruction of the colored youths of Texas. The Agricultural and Mechanical College which had been established by legislative act in 1871 was constituted a branch of the University of Texas. The constitution also provided that the school for colored youth should be a branch college or university. In 1879, the legislature created the Prairie View State Normal and Industrial College, located at Prairie View, and made it a branch of the Agricultural and Mechanical College.

### Governing Boards

Ten separate boards of regents or directors govern the nineteen institutions of higher learning in Texas. One board governs the University of Texas and its branches; another governs the Agricultural and Mechanical College and its branches; another governs six of the former teachers' colleges, namely, Sam Houston State Teachers College, Southwest Texas State College, West Texas State College, East Texas

State College, Sul Ross State College, and Stephen F. Austin State College, and a separate board governs each of the other institutions. Each board is composed of nine members appointed by the governor with senatorial consent. The term of office is six years.

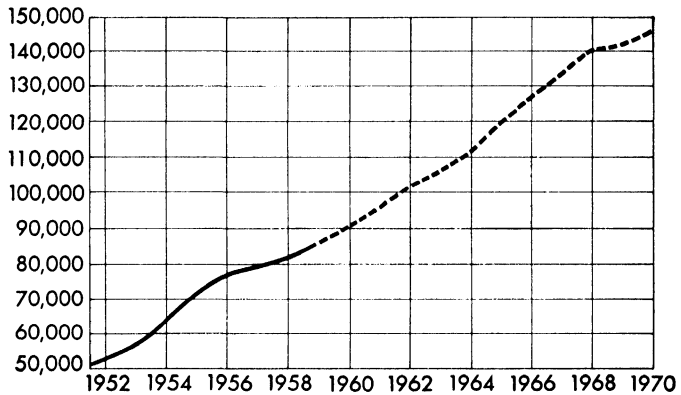


**Figure 14.** *Projected Enrollment in Nineteen Fully State-Supported Colleges.* (Courtesy, Texas Commission on Higher Education)

## State Commission on Higher Education

The legislature in 1955 created a superior governing board for all the state supported senior colleges and universities. This board is known as the state commission on higher education. It is composed of fifteen members, appointed by the governor with senatorial approval. The board was set up to meet the charge that had been frequently made that institutional competition and the natural tendency to expand have produced needless overlapping of functions resulting in inefficiency in the operation of the state colleges and universities. The demand by a rapidly increasing student body for more and better educational services has made the financing of higher education a multimillion dollar project.

The scope of the commission's work can be visualized by considering the two major divisions of the commission's organization. One of these is program, the other is finance. It is the commission's responsibility to determine what programs are needed in Texas' higher educational institutions, and in what institutions these programs can best be administered. Likewise, it is the duty of the commission to determine the financial needs of the various educational institutions. Rec-

ommendations dealing with programs and finances of each institution are made to the legislature where final policies and the amount of financial support are determined.

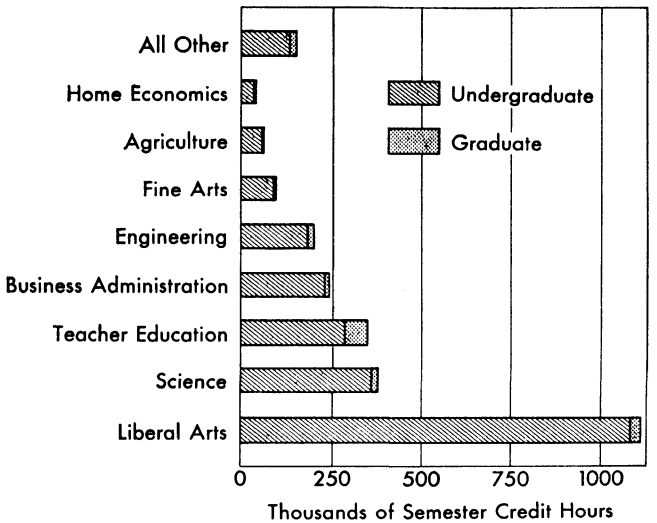


**Figure 15.** *Academic Programs 1959–60.* (Courtesy, Texas Commission on Higher Education)

## Financial Support of Institutions of Higher Learning

The University of Texas and the Agricultural and Mechanical College are supported in part by income derived from the university permanent fund. This fund is similar to the permanent school fund established for the public schools. The income has been derived from land leases, royalties, and investments made with the proceeds from land sales. Since the constitution forbids legislative appropriations for the university buildings, most of the income from the university permanent fund has gone into the construction of buildings, while current operating expenses are met largely by legislative appropriations.

The state supports its institutions of higher learning chiefly by appropriations made from the general revenue fund. This means that the expenditures of these institutions come under the budgetary supervision of the legislative budget board, the executive budget agency, and the commission on higher education. Appropriations are made for two-year periods. Each institution is permitted to use its local tuition fees, but all fees must be used under general rules made by the legislature. Under the provisions of constitutional amendments adopted in

$100 assessed valuation is set aside for buildings and equipment at all institutions named above, except the University of Texas and its branches, the Agricultural and Mechanical College and its branches, and the Texas State University for Negroes. The tax rate is authorized for thirty years.

## PUBLIC JUNIOR COLLEGES

More than thirty years ago many forward-looking educators saw the need for offering extra educational opportunities to high school graduates in their own home communities. As early as 1929 seventeen public junior colleges had been established in as many independent school districts in Texas. The state legislature in that year gave legal status to these existing institutions, and made provisions for the creation of other two-year colleges. Under the 1929 act and subsequent legislation, four types of junior colleges have been created: (1) those as units of independent school districts; (2) independent junior college districts; (3) union junior college districts; (4) county and joint county-junior college districts. Of the thirty-two junior colleges in Texas, twelve are countywide districts, three are union districts, four are administrative units of independent school districts, and thirteen are independent junior college districts. Only California outranks Texas in the number of junior colleges.

### The Creation of Junior College Districts

The state legislature designates certain requirements to be met in the establishing of a junior college district. The proposed district must have at least a $12 million assessed valuation, and must have an average daily attendance of at least 400 high school students during the preceding four years. A district with an enrollment of 300 high school students would be eligible if it had a minimum assessed valuation of $20 million. Any proposed district must be approved by the voters and by the state board of education.

### Governing Boards

The public junior colleges in Texas are locally owned, but partially state supported. Each junior college district, by a majority vote of its qualified property owning voters, may vote taxes for both bond and maintenance purposes. The state legislature appropriates from the general revenue fund a per capita apportionment which is tending to equal

the amount it appropriates per student for the first two years' work in the senior colleges. About three-fourths of the junior college districts operate under separate and independent boards. The remainder are under boards which control the independent public school districts. All boards are controlled by the local voters.

The trend has been to separate the junior colleges from the public high schools. Practically all now operate in separate buildings on separate campuses. These colleges are designed to provide service in four areas as follows: two years of regular academic courses leading to a bachelor's degree, courses in general education for terminal areas for those who will not continue their formal education; courses in adult education for those who need training for their vocational work; and services which make the colleges cultural and civic forces in the community. The state board of education, working through the junior college division of the state department of education, exerts its authority toward assuring the same high grade of educational services in the junior colleges as is found in the first two-year offerings of the senior colleges. These colleges are serving an ever-increasing student enrollment with an ever better prepared faculty.

## BILIOGRAPHY

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The best historical account of education in Texas is that found in *The Development of Education in Texas,* and *Education in Texas, Source Material,* Bulletin No. 1824, published by the University of Texas Press. The complete files of educational laws from 1822 to the present can be found in H. P. N. Gammel's *The Laws of Texas* and in the biennial publication of the *General and Special Laws,* office of secretary of state. A compilation of school laws is printed in bulletin form each biennium by the state department of education. *The Biennial Report of the State Board of Education* summarizes currently the status and progress of the educational system of the state. A detailed account of the operation of the various divisions of the state department of education can be found in the various bulletins prepared by the department.

# 11....

# *Health and Public Welfare*

All governments exist and operate for the benefit and welfare of the people who live under them. Until recent times in this country the primary assistance which the state government rendered its people was that of furnishing protection to lives and property. A few activities of the state government were directed to such matters as education and some general aids for conducting business. Only those who were on the payroll of the state as employees or who were fit subjects for institutional care seriously thought of receiving direct compensation from the state. The framers of the constitution in 1875 declared, "The Legislature shall have no power to make any grant or authorize the making of any grant of public moneys to any individual, association of individuals, municipal or other corporations whatsoever." This constitutional mandate represented a period of self-help when each individual provided for the hazards of life, be they sickness or accident, unemployment, or old age. When self-help failed, the individual relied on his relatives, his church, or his lodge. In a few instances cities and counties furnished some aid to those in need, but such matters were not a care of the state.

## THE WELFARE FUNCTION

It has never been the intent of the Texas welfare laws to lessen the emphasis on the idea of self-help. However, a succession of sociological and economic phenomena have occurred in the history of Texas and of the nation and of the world which made it necessary for government at all levels to take an increasing hand in aiding citizens who through no fault of their own became unable to help themselves. In Texas the elimination of the frontier, the advent of the machine age, and the population shift from farm to city created conditions which threatened

the security of whole groups of otherwise self-reliant citizens. The cataclysmic Great Depression of the 1930's literally decimated the economic condition of the vast bulk of the public. With so widespread a picture of economic tragedy the stage was set for elected public officials to rally to the needs of their constituencies by providing public aid.

At the onset of World War II the depression gave way to an inflated economy despite substantial efforts in Washington and elsewhere to keep prices from running away; and after the war, when controls were gradually abandoned, the economy continued to inflate. Curiously public welfare continued to expand rather than contract during this whole post-depression period, demonstrating that once people become accustomed to state responsibility for public welfare, the natural tendency is for the system to broaden rather than retrench, regardless of the direction taken by the business barometer. Today still, public welfare is the most rapidly growing function of the state. It is a worthy function so long as its original purpose, namely to help those who cannot help themselves, is followed. The danger to be avoided is too great a dependence upon the state by those who might otherwise be independent of public help.

During the past three decades the term public welfare has come to mean primarily the granting of monetary aid to individuals through such programs as old age assistance, retirement benefits, and unemployment compensation. The term, however, has had a much broader meaning in the history of our government. When reference to the term public welfare was made in the early days of our government, it meant that the public, through its government, would so act that the people would fare well or would fare better than they would if the government took no action. Within this broad meaning most legitimate governmental actions were designed for the public welfare. Certainly such functions as public education and public health were designed to help the people fare better.

## THE STATE DEPARTMENT OF HEALTH

In the days before wonder drugs, vaccines, antitoxins, and Louis Pasteur, the only known way to control the spread of communicable diseases was by quarantining the afflicted. The logical agency to impose such a quarantine was, of course, government, and this marked the beginning of the idea of governmental health service. While today

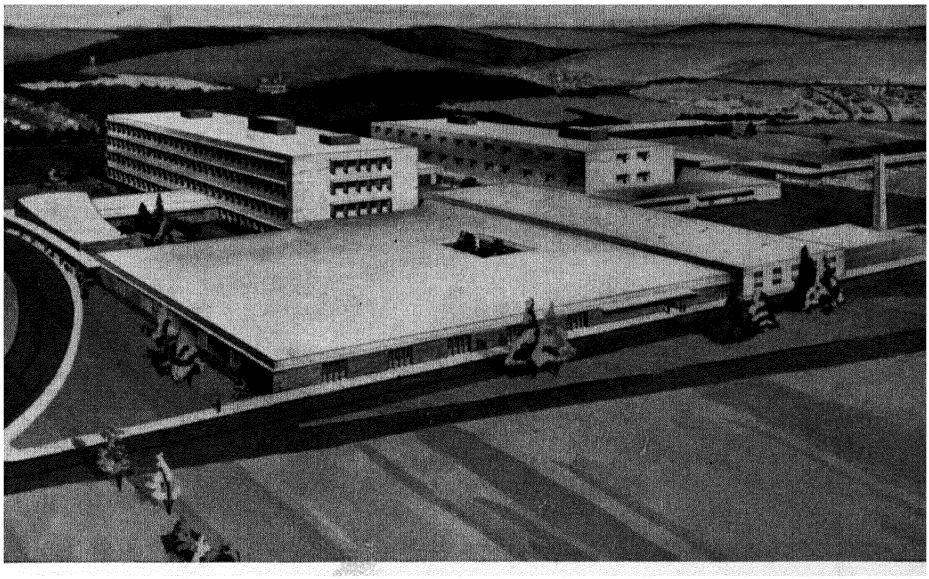

**Figure 16.** *The New Texas State Department of Health Building.* This architect's drawing shows the complete plant, which includes the already completed central administration offices and laboratory offices, and the proposed offices for vital statistics. The buildings are situated in North Austin on 31.11 acres, 15 of which are devoted to actual buildings and the balance to parking space and enclosures for laboratory animals. Combining functional architecture with beauty of design, it is one of the most efficient public health plants to be found in the United States. (Courtesy, Texas State Department of Health)

there might be some controversy as to just how far the state should go in rendering medical assistance to individuals, there is certainly no doubt about the legitimacy of the state's interest in furthering healthful conditions for its citizens in those areas not covered by conventional medical practice, such as pure water supply, sanitation, mosquito control, et cetera, which the citizen cannot deal with himself.

## Background of the State Health Service

The recognition of some sort of public assistance in matters of health long antedated the entrance of Texas into the union in 1845. With the frequent outbreaks of epidemics of smallpox, cholera, and yellow fever, along with other contagious and infectious diseases, the early-day Texas settlers gave more thought to health hazards than does the average citizen today. A health ordinance passed by the town council or ayuntamiento of San Felipe de Austin in 1828, contained nine rather extensive health articles. Health conditions were so bad during the days of the Republic, 1836–1845, and during the first half-century of state-

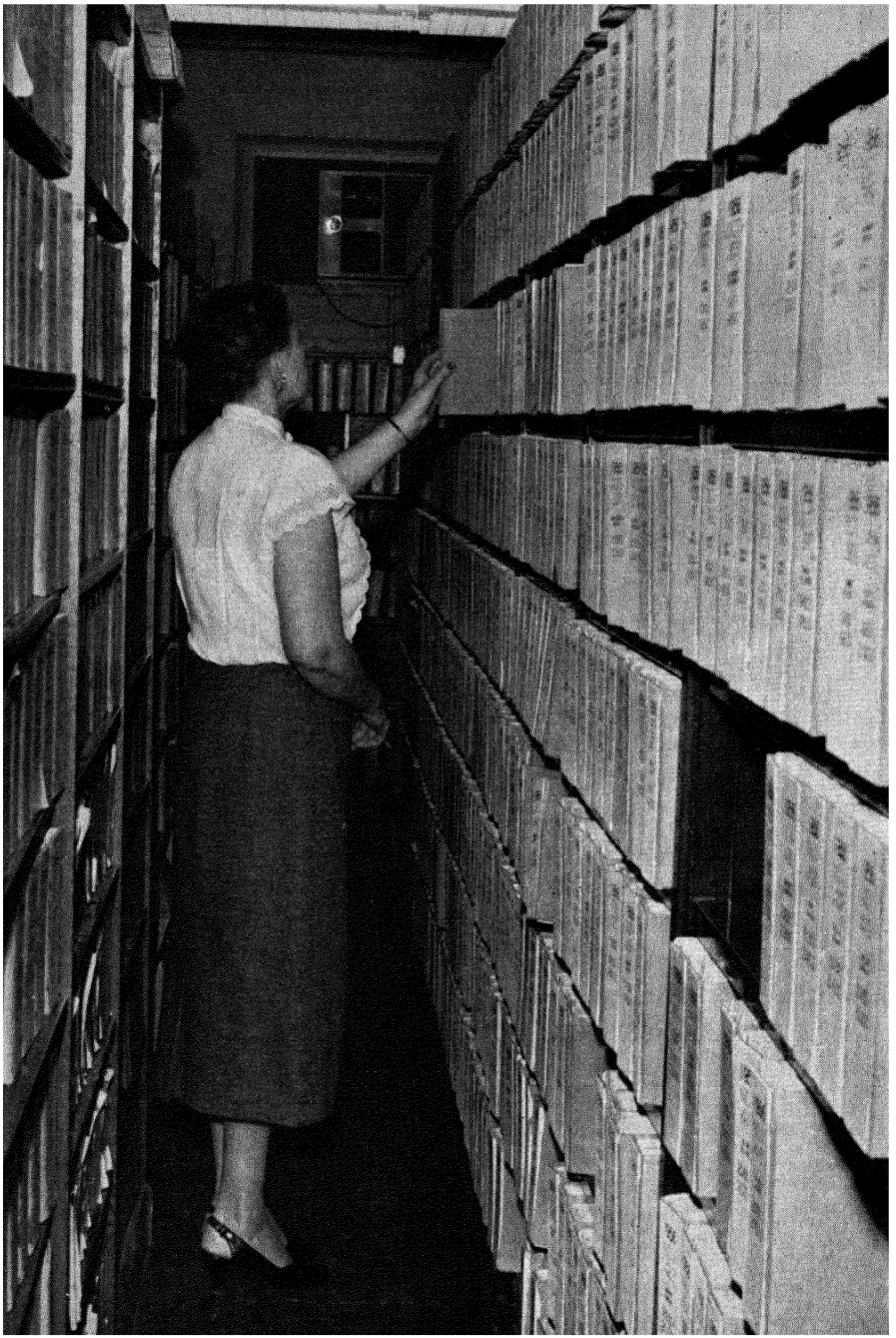

**Figure 17.** *The State Department of Health Section on Records and Statistics.* Shown here is a portion of the more than 11 million vital records on births and deaths, some dating back to 1903. (Courtesy, Texas State Department of Health)

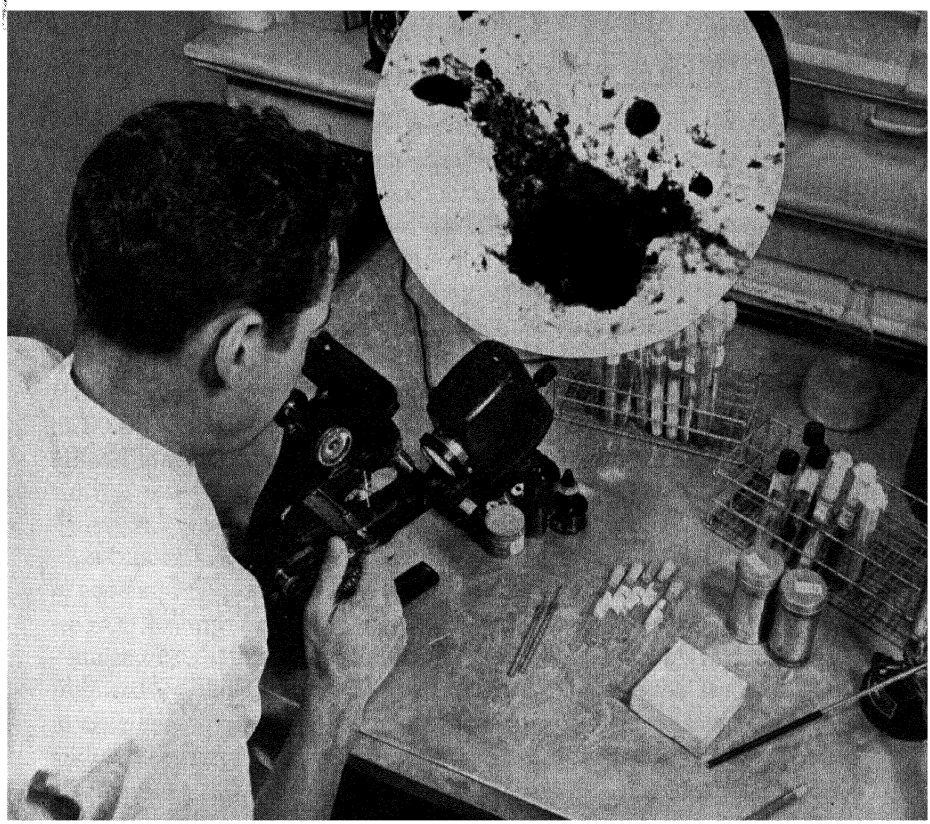

**Figure 18.** *Laboratory Analysis of Rabies.* A slide is made of brain tissue from the suspected animal. In almost all instances of positive infection, Negri bodies like those shown in the inset will be evident when the slide is studied microscopically. (Courtesy, Texas State Department of Health)

hood, that even with strong health ordinances of local governments, sickness was the rule and the life span of people was short.

The first general state health statute was passed in 1856. This statute was a quarantine act stating the authority of local government in quarantine matters. The first state health officer was provided for in 1879. It was not until 1909 that the first state board of health came into existence. It took about twenty years from that date for the public health authorities, working through the state legislature, to lay the foundation for the extensive work of the state department of health as we now know it.

### The State Board of Health

The state department of health is under the general supervision of the state board of health, an agency composed of nine members ap-

pointed by the governor with senatorial confirmation. Each member serves six years, one-third of the term expiring each two-year period. Six members must be qualified practicing physicians with at least five years' experience; one must be a doctor of dentistry, one a licensed pharmacist, and one a graduate civil engineer. The duties of the board as declared by law are to supervise and control all matters pertaining to the health of the people of the state, to make a study of the causes and prevention of infectious and contagious diseases, to direct and control all matters of quarantine, and to select the commissioner of health, who shall be the executive director of the department of health. The personnel of the department is selected by the commissioner of health.

**Major Functions of the State Department of Health**

Keeping the millions of people in Texas free from diseases and sickness requires the planning, study, and work of thousands of persons in many areas of life, both within and without the structure of government. Each level of government—the city, county, state, and nation—assumes some responsibility in keeping its people healthy. In addition, each level of government must cooperate with the other levels in order for the people at any level to have an effective system of public health. The state through the state health department has assumed the responsibility for looking after the public health in the following major areas: (1) disease prevention, (2) research and education, (3) services to local health authorities, (4) hospital and nursing services, and (5) miscellaneous.

***Disease Prevention.*** The germs that cause diseases and sickness stem from many sources and are scattered in many and various ways. For example, bedding materials, particularly when they are of a second-hand nature, might easily become a health hazard. To lessen this danger, the department maintains a continuous inspection program of bedding factories and wholesale and retail outlets. In addition, it operates a testing program of all bedding sterilizers, and serves as the licensing agent of all bedding manufacturers and sterilization plant operators.

All outbreaks of communicable diseases are kept under constant surveillance by the department. Investigations are immediately made to determine the source of any unusual sickness. Any person or object carrying disease bacteria is immediately isolated. For example, sometimes diseases are scattered through the use of meat from diseased ani-

mals. To minimize the possibility of this danger, the department investigates disease outbreaks among poultry and meat animals, inspects meat processing plants, and aids local health authorities and practicing veterinarians in reducing animal diseases affecting the health of human beings.

Hundreds of persons die each year in Texas from tuberculosis. Eternal vigilance is necessary to keep this disease under control. By holding diagnostic clinics and operating X-ray units, the department locates this disease in many people who do not even suspect they have it.

Despite improved means of treating syphilis and gonorrhea, the increasing number of victims of these diseases shows that prevention and control of these diseases have not kept pace with medical advancement. These diseases must be controlled through the control of their transmission. Since this transmission is usually highly personal, its control is most difficult. The state health department is working to find ways to locate more effectively the specific cases from which these diseases are spread. For example, a recent pilot study in a large Texas city carried on by the department in cooperation with the local health officials of the city revealed by the case-finding method that one person with syphilis contacted three others and these contacted others, so that in a short time 326 different persons were involved. Proper treatment for the one person would have protected 326 others. The proper cooperation of individuals and private physicians with the department would soon solve most of the transmission problems associated with these diseases.

Water works, sewer systems, swimming pools, and running streams often become the means of scattering disease germs. Sanitary engineers of the department inspect such places as travel terminals and other public places as well as public water supplies and disposal systems of industrial and domestic wastes. Without this service many streams would become the carriers of disease and sickness.

Individuals can no longer investigate the sources of their foods and drugs to determine if what they eat and drink is fit for human consumption. This service is now done primarily by the inspectors of the state department of health. These inspectors visit annually thousands of food establishments, restaurants, meat markets, dairies, bottling plants, drug stores, and other places where food is processed and distributed. Of course, there are not enough of these inspectors to keep a daily eye on all these establishments, but the fact that they may visit an establish-

ment at any time, and are available to receive complaints whenever they are made, serves as a constant reminder for food distributors to keep their places clean.

***Research and Education.*** Since the state department of health operates on the assumption that each individual can and will protect himself from most of the common health hazards, provided he knows how to recognize and escape these hazards, much of its attention is given to finding out more about the causes and cures of sickness, than passing this information on to the public. For example, through the tools of research and education, better means of preventing tooth decay, such as the fluoridation of public water supplies, is made known to schools and other local community organizations. More than 2,500 tests per day are made in the departmental laboratories searching for information on such subjects as public water supplies, mosquitoes and other malarial carriers, cancer, and the various diseases of the heart. Dozens of blood tests of syphilitics and persons afflicted with other diseases are made each day. Through bulletins, the findings of these tests are distributed to physicians and others.

***Services to Local Health Authorities.*** State laws require each county and city in Texas to have a health officer. In addition to these officials, approximately twenty per cent of the 254 Texas counties have full-time local health departments. The state health department works very closely with these local health departments, even to the granting of financial assistance in some instances. Without an organized local health department it is difficult for the state health department to bring its services to the people of a community. Despite this handicap, however, people in those counties having no health departments receive help through their local health officials in such matters as making local health surveys, investigating and recommending remedial action relative to health hazards, and supplying interested groups and individuals with usable health information.

Local health departments render their services to the people in such areas as communicable and tuberculosis disease control, maternity and child health service, pre-school and school hygiene, protection of food and milk, and general sanitation. Special services are offered to these local health units by the state department of health in such matters as budget making, holding of special clinics, assistance in meeting personnel needs, and making scientific evaluations of the work of these local units.

***Hospital and Nursing Services.*** The state program for hospital con-

struction under provisions of the federal Hill-Burton Act is administered through the state department of health. In order to perform this function, the department maintains a continuous study of hospital needs, rehabilitation facilities, diagnostic and treatment centers, nursing homes, and public health centers in all sections of the state. Approximately twenty-five new projects in these areas are approved each year.

The number of aged and chronically ill persons in Texas continues to increase each year. More and more of these people are being cared for in privately operated nursing and custodial care homes. Many of these homes are ill-financed and understaffed, and must be supervised as to fire safety and hygiene standards. The state department of health now licenses these places and carries on a continuing program of inspectional and consultative services with the local health officials relative to their operation. Between forty and fifty new homes are licensed each year. Approximately fifty per cent of all persons residing in these homes are recipients of old age assistance.

***Miscellaneous Services.*** One of the fastest growing functions of the department is that of providing services for crippled children. Approximately 200 new cases each month are added to the active files. Most of these children are crippled through cerebral palsy, congenital heart malfunctions, or poliomyelitis. The department aids these children by placing them in selected hospitals, providing surgical aid, furnishing orthopedic appliances, finding convalescent homes, and aiding in vocational rehabilitation.

In keeping with the general expanding interest in mental health in the United States, the state department of health is expanding its activities in this area. This work is carried on through consultative services with local health officials, schools, and interested citizen groups. Mental health and child guidance clinics are developed and aided. Most of the larger cities now operate full-time community mental health clinics. Some of these are operated with financial assistance from the state.

***Emergency Medical Services.*** One of the newer functions of the department is that of providing training for emergency medical disaster situations, and rendering services to communities stricken with disaster. The training program is carried on mainly in cooperation with the Baylor College of Medicine schools at Galveston and Dallas. Much of this emergency work is carried on in cooperation with other state and federal agencies.

### Financing the Work of the State Health Department

The total per capita cost of operating the state health department for one year is approximately $1.60. The state furnishes about one-fourth of this cost, and the federal government about three-fourths. When an individual considers the value of his health, and then considers all the health services which the state department of health renders to and for him, he can easily conclude that this portion of his tax money is paying big dividends.

## STATE DEPARTMENT OF PUBLIC WELFARE

The depression beginning in 1929 furnished the cause for the entrance of the state into the enlarged field of public welfare and benefits; and the federal government, under the leadership of President Franklin D. Roosevelt, furnished the impetus for the expansion of state welfare activities. But even if the depression had not occurred during the 1930's, Texas might soon have had some sort of a state department of public welfare. For two decades before 1930, people throughout the United States were beginning to look to the state government for additional services. Immediately after World War I, for example, North Dakota attempted to set up a complete "New Deal" economy. Texas started the practice of furnishing textbooks to public school pupils, and of furnishing aid to the neediest rural schools. In 1931, the state legislature created a division of child welfare under the supervision of the state board of control. This agency was designed to look after the interests of unfortunate children.

When the full force of the depression began to be felt in the early 1930's, Texas created a relief commission to distribute a relief fund of $20 million, authorized by the voters, for the needy. By the time Congress passed the Social Security Act in 1935, Texas was ready to move into the enlarged field of public welfare envisaged by this act. Six days after Congress adopted the Social Security Act, the voters of Texas authorized participation in this program. Two years later the state constitution was amended to permit acceptance of federal aid for the blind and for dependent needy children. When Congress amended the Social Security Act in 1950 to provide for aid to permanently and totally disabled persons, the state constitution barred acceptance to its pro-

visions. This constitutional limitation was removed in 1956, and Texas added the fourth category of aid to her welfare and benefit program.

### The Public Welfare Act of 1939

The Forty-sixth Legislature created the state department of public welfare in 1939, by grouping into one department the already existing agencies set up to administer aid to the blind, dependent children, the aged needy, and to those in need of general relief. This agency succeeded to the powers and duties that had previously been conferred upon the child welfare division of the board of control, the Texas relief commission, and the old age assistance commission. The state department of public welfare is under the general supervision of the state board of public welfare. The board is composed of three members appointed by the governor with senatorial consent for terms of six years. Each member receives actual expenses plus a per diem stipend of ten dollars limited to $600 per year.

### Functions of the Department of Public Welfare

The chief functions of the department of public welfare are as follows:

1. To administer aid to needy aged, blind, dependent children, and permanently and totally disabled
2. To administer or supervise all child welfare services and general relief
3. To cooperate with federal officials in the administration of the federal assistance acts
4. To carry on a research program that will aid in the prevention as well as treatment of conditions causing public welfare problems
5. To serve as the state agency through which federal surplus commodities are distributed
6. To inspect, license, and supervise child-caring and child-placing institutions
7. To serve as the state agency for setting up programs for federal old age and survivors' benefits for employees of state and local governments.

### Organization of the Department of Public Welfare

The overall administration of the state department of public welfare is under the supervision of a commissioner selected by the state board of public welfare with senatorial consent. The law requires this official

to be a person of demonstrated executive ability and extensive experience in public welfare administration.

***Field Officers.*** Because of the nature of the services rendered by this department, it is necessary that there be established a field organization that will enable continuous contact with every person receiving aid. Because of the basic differences in the services rendered to children and those rendered to adults, the field staff of the department is divided into two major service divisions—the public assistance division and the child welfare division. The public assistance division carries on five financial aid services: (1) old age assistance, (2) aid to the needy blind, (3) aid to dependent children, (4) aid to the permanently and totally disabled, and (5) medical aid for the needy. Services rendered by the child welfare division are largely of a non-financial nature.

For purposes of carrying on the five financial aid programs, the state is broken down into fifteen geographical regions, each region with a regional office under the supervision of a field representative. Each region is divided into areas under the supervision of an area supervisor. There are sixty-five areas in the state. Under the area supervisors are the field workers. These make contacts with all those who seek aid benefits. The field worker, selected under a merit system, is one of the key persons in the public benefit program, since he determines eligibility of aid applicants and recommends changes in the amount of grants.

## Old Age Assistance

Older people without sufficient savings feel the brunt of unemployment much more than do younger persons. The depression of the 1930's made it clear that not many older persons had saved enough to live on during a period of unemployment. It is a period of unemployment most of the time for many people over sixty-five. The number of persons in Texas over sixty-five years of age is approximately three-quarters of a million, and percentage-wise in terms of total population, is increasing rapidly.

In 1935, this country started out on a double-phased system to help care for elderly people. One phase, old age assistance, was designed to provide immediate help; the other phase, old age and survivors' insurance (O.A.S.I.), was designed to take care of these people on a long range basis. Under the old age assistance plan, the federal government

would help any state that would establish an approved plan for aiding needy persons sixty-five and over. This plan was financed out of general revenue. No contributions were required of the old age recipients. The other phase, old age and survivors insurance, was designed to provide a monthly check for every qualifying person when he reached the age of sixty-five, regardless of need. All workers in covered industries and their employers paid into the federal treasury a certain per cent of the payroll, and checks on the federal treasury became available to the worker upon his retirement at the age of sixty-five or later. The old age assistance program is a state program financed in part by the federal government and in part by the state government. The O.A.S.I. program is wholly a federal program. No person is eligible to receive aid from both programs at the same time. This means that those who are eligible to receive O.A S.I. at the age of sixty-five will not receive old age assistance. Ultimately, all should be receiving O.A.S.I. and none old age assistance. It was not until January, 1957, that the number of O.A.S.I. beneficiaries exceeded the number of old age assistance recipients, and then only by 14,000. By January, 1958, this difference had increased to more than 90,000.

***Old Age Assistance Programs by State.*** Old age assistance programs vary widely from state to state. In a recent year, for instance, the percentage of the population sixty-five years and over receiving old age assistance in Louisiana was fifty-eight, in Texas, thirty-three and six-tenths, and in New Jersey, three and nine-tenth. The average old age assistance payment varied from $106.40 in Connecticut to $29.85 in Mississippi, with Texas paying $47.08. The average case load per worker in Texas was 359, while the average in New York was only 63. More than two-thirds of all people in the United States over sixty-five are now receiving aid under either the old age assistance or the old age and survivors insurance programs.

***Eligibility Requirements for Old Age Assistance in Texas.*** In order to qualify for old age assistance, an applicant is required to meet the following conditions:

1. He must have attained the age of sixty-five years
2. He must be a citizen of the United States
3. He must have resided in the state five or more years within the last nine-year period, and must have resided in Texas the full year preceding his application
4. He must not be an inmate of a public institution

5. He must not have a spouse able to support him
6. He must not have sufficient income or other resources to provide a reasonable subsistence compatible with health and decency
7. He may own a homestead without impairing his right to aid
8. He may have children or other relatives, except spouse, able to support him, yet be eligible for aid
9. He must meet the standards of need as determined by the department of public welfare.

If after meeting all the above requirements and conditions the applicant seems to be in a needy condition, as judged by the assistance investigators, he is certified for old age assistance.

### Aid to the Needy Blind

This program recognizes the fact that most blind persons are handicapped in their efforts to make a living. They may need not only financial aid but also help in attaining self-care and self-support. This division offers help in both areas. Eligibility requirements for blind aid are much like those for old age assistance, with the additional requirement that the applicant must have insufficient vision to follow a gainful occupation where sight is essential, and he must not be publicly soliciting alms.

### Aid to Dependent Children

Every child needs a home, preferably with parents, but when this is impossible, he needs a home with a close relative. Sometimes a little outside financial aid and encouragement will enable a child to have such a home. This program furnishes both kinds of help. In order for a child to be eligible for this aid, he must meet certain requirements. He must be a citizen of the United States and must have lived in the state at least one year; he must be under fourteen years of age; he must be deprived of parental support because of death, absence, or mental or physical incapacity; he must be living with relatives; and he must be in need.

Many parents of these dependent children are mentally retarded and show a low moral status by being involved in clandestine relationships, resulting in illegitimate children, wife and child desertion, and broken homes. The program is now serving the second and in some cases the third generation of aid-to-dependent-children cases. Stronger laws to discourage child desertion, improve child support, reduce il-

legitimacy, and provide better rehabilitation services would help to lessen these dependent child problems.

### Aid to the Permanently and Totally Disabled

A person who is permanently and totally disabled regardless of age is equally as handicapped, if not more so, in the matter of making a living, than is a person sixty-five years of age or older. It was not until 1957, however, that the state set up a program to aid these unfortunate people. In order to qualify for aid under this program, a person must meet the general requirements established for old age assistance and also certain special ones. For example, he must be between eighteen and sixty-five years of age, and he must be permanently and totally disabled. This last requirement means that an applicant must be helpless or bedfast. Many unemployable persons cannot qualify under these rigid requirements.

### Medical Care for the Needy

By a constitutional amendment adopted in 1958, the legislature is authorized to set up a program providing for direct or vendors payments to those who render medical care for the following classes of persons:

1. Needy recipients of old age assistance
2. Needy recipients of aid to the blind
3. Needy recipients of aid to dependent children
4. Needy recipients of aid to the permanently and totally disabled.

State funds provided under this program shall never exceed the amounts paid out of federal funds for these purposes.

### Financing the Assistance and Aid Programs

The overall cost of financing the five public assistance programs is slightly under twenty dollars for each man, woman, and child in the United States. The federal government furnishes about fifty-two per cent of this cost and the states furnish the remainder. In Texas, the cost per capita is slightly under the national average. Whereas nationwide the states furnish about forty-eight per cent of the total cost of operating the five programs, in Texas the state furnishes only about one-third of the total cost. As might be expected, about one-half of the total spent on the five programs nationwide is spent for old age assistance, and the other half is spent for aid to the blind, dependent children, and totally and permanently disabled adults. In Texas, approxi-

mately eighty per cent is spent for old age assistance. As old age and survivors' insurance payments increase, old age assistance payments will decrease.

### Family Service and Child Welfare Program

Many children in Texas are the victims of an unsatisfactory home life due to poor health of their parents, to lack of finances necessary to keep a home together, or to other less frequent causes. Many of these children are in public assistance families and require direct service from the welfare department. The existence and needs of these dependent and neglected children are usually brought to the attention of the departmental welfare worker by courts and law enforcement officers. In those counties having child welfare units, the care of these children is a joint state-local responsibility. These services cover a wide range of activities such as placement of children in foster homes; court services in such matters as adoption, custody, and guardianship; planning for the unmarried mother and her child; and offering protective service to children in general.

Through regional offices maintained in the larger cities in Texas, the child welfare division licenses child-caring and child-placing agencies and inspects these to see that they maintain acceptable standards. More than twenty petitions are received daily by the child welfare division from people seeking to adopt children. Although perhaps the proper responsibility of local communities, adequate care and guidance for neglected children is frequently not forthcoming, out of either the inability or the irresponsibility of local authorities. It is then that the state must step in to help the child become a useful citizen rather than growing up to be a state liability, such as a delinquent, criminal, or beggar.

### Commodity Distribution and Old Age and Survivors' Insurance Services

In addition to rendering public assistance and child welfare services, the department of public welfare serves as the connecting link between the federal government and local group beneficiaries of certain types of federal assistance. Surplus food commodities are distributed annually to approximately three-quarters of a million people, mostly school children and needy citizens who seek aid through local welfare agencies.

When old age and survivors' insurance coverage was extended to

state and local government employees, the department of public welfare was designated as the state agency to administer the law. A large percentage of counties, cities, and other political subdivisions now have O.A.S.I. coverage for their employees. Practically all state employees are covered.

## AIDING THE UNEMPLOYED

Unemployment has for many years ranked as one of the nation's major unsolved problems. Both in good and bad times our labor forces need guidance and help. The combined powers of both federal and state governments were directed toward solution of this problem by passage of two federal acts, namely, the Wagner-Peyser Act of 1933, and the Social Security Act of 1935, together with passage of cooperating acts by the various states following these dates. Under these federal acts, federal funds were distributed to any state on a matched basis when the state established cooperating agencies and operated them in accordance with federal requirements.

### The Overall State Agency

The legislature of Texas in 1936 set up a plan for employment service and unemployment compensation which met with the approval of the Federal Social Security Board. Under the terms of this act with its later amendments, these services are now administered by the Texas employment commission, a body composed of three members appointed by the governor for six-year terms. One member represents labor, another represents the employer, and the third represents the public generally. The member who represents the general public serves as chairman of the commission and as executive director of all administrative divisions. For purposes of operation, the commission carries on four programs: (1) public employment exchanges, (2) farm placement services, (3) collection of unemployment compensation taxes, and (4) distributing labor market information to interested persons and groups. The commission has the authority to adopt such rules and regulations as may be necessary to administer the act. It also employs such persons, makes such expenditures, requires such reports, makes such investigations, and takes such other actions as it deems necessary to carry out the provisions of the law. Moneys are collected

Figure 19. *Texas Employment Commission Building.* This structure is typical of the new office buildings now being erected near the capitol under the current building program. (Courtesy, Texas Employment Commission)

and distributed under supervision of the commission, and appeals on disputed claims are heard by this body.

## Organization of the Texas Employment Commission

In order to be of service to the unemployed and to the employers who might want their services, it is necessary that employment offices and employment commission workers be located conveniently to those who might want to use the commission's services.

For purposes of administration, the state is divided into districts, whose officials serve largely in a supervisory capacity. Each district is divided into local areas with a local office in each area. Each local office is under a manager, who has enough office help to deal personally with each person needing service.

***Advisory Council.*** The state unemployment compensation act authorizes the Texas employment commission to establish a state advisory council. The commission has created an advisory council of fifteen members, with five of the members representing the public, five representing employees, and five representing employers. This council acts as a consultant body to the commission. The members are in no sense considered as state employees.

***Farm Placement.*** Much farm work in the United States is highly

seasonal. Large numbers of workers are employed for a short period in one section of the state or country, then move on to another section where planting or harvesting workers are needed. Approximately 100,000 farm workers move seasonally each year from south to central to north Texas and to adjoining states, then return to begin all over when the farming seasons change. The movement of these workers is made easy and efficient by the planning of the various employment offices. Mexican nationals, or braceros, are often employed to meet labor shortages.

***Other Functions of the Employment Service.*** Trained employment service technicians are made available to employers for studying and assisting in solution of such problems as absenteeism, excessive turnover, and general unstabilized labor conditions in industry. To the covered employer, labor stabilization means a reduction of his unemployment compensation tax rate, since this rate is lowered as his "experience rating" shows less labor turnover. Current information on labor supply and demand is maintained as an aid to employees and employers. Through cooperation with local, public, and private organizations, the employment commission attempts to aid communities in solution of their labor and work programs. Special economic and labor research studies are made of counties and metropolitan districts to secure information needed in planning labor needs for industrial and other developments.

***Unemployment Compensation.*** By adoption of the Social Security Act in 1935, Congress through its taxing and appropriating powers encouraged each state to set up and operate a system of compensation for its unemployed. This encouragement was given in the form of a promise to permit each state to use ninety per cent of the revenue derived from a payroll tax levied on certain designated employers. These employers in every state are required to pay the tax. If the state has an approved compensation plan, the employers are given a credit up to ninety per cent for all payments in compliance with the state law. Under these conditions, no state can well afford to be without an approved unemployment compensation plan. A description of the workings of the Texas unemployment compensation act is, therefore, a fair description of the unemployment compensation programs in all other states.

***The Unemployment Compensation Requests.*** A major function of the employment commission is that of providing aid for covered unemployed workers who are eligible for unemployment compensation un-

der the provisions of the unemployment compensation act. Whenever an employee who is subject to the terms of the unemployment compensation act loses his job, he goes to an office of the employment service and files a claim for unemployment benefits. This claim is transmitted to the central office of the unemployment compensation division at Austin, where it is acted upon; if the claimant is found to be eligible, a check is mailed to him from there. Each claimant, however, must register with the employment service at the time a claim is made for compensation. The service then turns its attention toward placing the claimant in another position he can fill. When placement is made, unemployment compensation ceases.

***Amount and Duration of Payments.*** Eligible unemployed persons may receive approximately one-half of their previous average weekly earnings up to a maximum of twenty-eight dollars a week. This average is based upon earnings of that quarter of the base period in which earnings were the highest. "Base period" means a period of four consecutive calendar quarters, within the last five calendar quarters immediately preceding the date of filing for compensation. The lowest payment anyone can receive is seven dollars per week. The maximum duration of payments is twenty-four weeks. It can thus be seen that an unemployed worker with unemployment compensation is still in a very undesirable situation. This program is designed merely to cushion the immediate detrimental effect of suddenly losing the paycheck because of unemployment over which the worker has no control.

**Financing the Unemployment Compensation Plan**

Funds for financing the unemployment compensation plan are derived from a payroll tax levied against all eligible employing units with four or more employees on twenty different days during the year, each day being in a different week. The employer pays a payroll tax at the net rate of three-tenths of one per cent on industrial wages up to $3,000 to the federal government at the end of each calendar year. He pays to the state employment commission at the end of each calendar quarter a minimum of one-tenth of one per cent, and a maximum of two and seven-tenths per cent of the payroll on individual wages up to $3,000. After an employer has been in the system from eighteen to twenty-four months and paid the standard two and seven-tenths rate, his rate is recalculated. If his own experience with labor turnover is favorable, his new rate could be as low as one-tenth of one per cent. This merit rating is, therefore, a great incentive for employers to avoid

labor disruptions. When a state has a large number of employers paying a low experience rate on unemployment tax payment, it means that that state has a low unemployment record. The unemployment tax is unique in that it is a tax that an individual taxpayer can reduce through his own policies and practices. The steady growth of the Texas economy in recent years has meant a low unemployment tax rate. In one recent year, for example, had the approximately 70,000 employers paid the full rate of two and seven-tenths per cent, the total unemployment tax collections would have been $128,723,973. Instead, these employers paid at an average rate of sixty-four hundredths of one per cent, which produced $30,477,053, thus saving $98,247,000.

When taxes are collected by the commission, they are deposited with the United States Treasury in an unemployment trust fund. The state can draw on this fund as it needs money to pay its unemployment insurance obligations. The three-tenths of one per cent, which is paid into the United States Treasury by the taxpayers, is placed in an administrative fund, and is used to pay the operating expenses of the system.

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# 12....

# *State Hospitals, Special Schools, and Correctional Institutions*

Much of the government of any state or nation must be concerned with people who are temporarily or permanently human liabilities. Under the American federal system of government, these people are the special concern of the state. Texas has within her borders many hundreds of people who for one reason or another are unable to care for themselves. Many of these people have no relatives or friends who can or will care for them. Some are absolute liabilities to the communities in which they live; others would become liabilities if nothing were done to help them. The whole mass of unfortunates in Texas who are mentally or otherwise handicapped in such a way as to make their conduct antisocial, and who are unable to care for themselves and have no one to care for them, must of necessity be controlled and aided by society. The state has found it best to withdraw certain types of her unfortunates from society and to care for them in institutions. Others are left free to live their own lives but with certain aid and help from the state.

## MANAGEMENT AND LOCATION OF ELEEMOSYNARY AND CORRECTIONAL INSTITUTIONS

The state of Texas maintains thirty-three institutions for her citizens who need institutional help. The name, governing authority, and place of location of each of these institutions are as follows:

1. Under supervision of the board for state hospitals and special schools:

| | |
|---|---|
| Abilene State School | Abilene |
| Alabama-Coushatta Indian Reservation | Livingston |
| Austin State Hospital | Austin |

**Figure 20.** *Austin State Hospital,* oldest and one of the largest state mental hospitals, is located approximately three miles north of Austin. The typical mingling of old and new construction is evident. In the foreground are modern one-story ward buildings with enclosed courtyards and the Medical and Surgical Unit, opened in 1955, which incorporates the best in modern diagnostic and treatment facilities. The columned and domed three-story structure in the center of the photograph was built in 1857 and still is in use as the administration building for this hospital which has an average patient population of almost 3,000. (Courtesy, Texas State Hospitals and Special Schools)

| | |
|---|---|
| Austin State School | Austin |
| Big Spring State Hospital | Big Spring |
| Confederate Home for Men | Austin |
| Confederate Home for Women | Austin |
| Dallas Mental Health Clinic | Dallas |
| Denton State School | Denton |
| East Texas State Tuberculosis Hospital | Tyler |
| Harlingen State Tuberculosis Hospital | Harlingen |
| Houston State Psychiatric Institute | Houston |
| Kerrville State Hospital | Kerrville |
| McKnight State Tuberculosis Hospital | San Angelo |
| Mexia State School | Mexia |
| Moody State School for Palsied Children | Galveston |
| Rusk State Hospital | Rusk |
| San Antonio State Hospital | San Antonio |

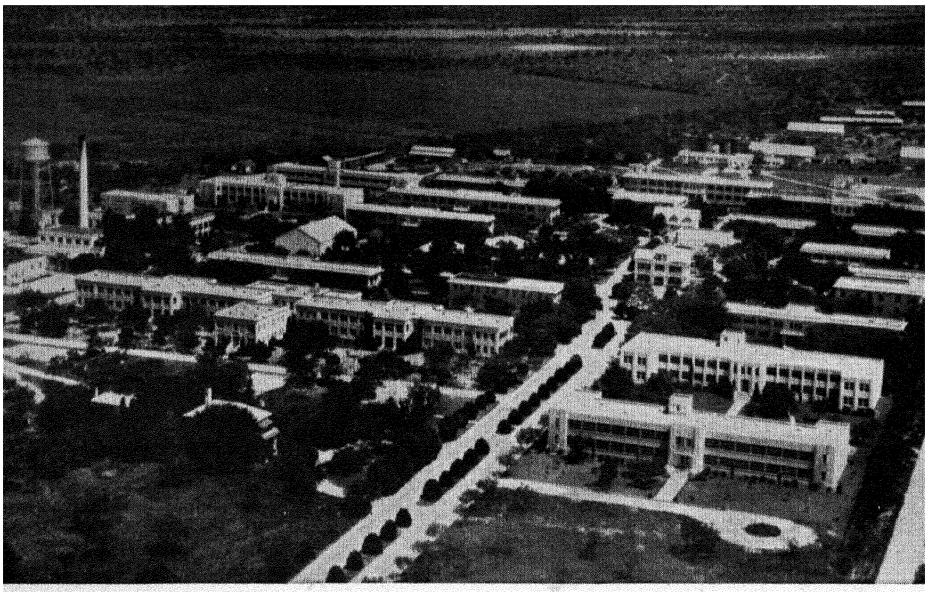

**Figure 21.** *McKnight State Tuberculosis Hospital,* located 17 miles northwest of San Angelo, has been in operation since July 1912. It is the oldest of the state tuberculosis hospitals and takes its name from the first superintendent, Dr. J. B. McKnight. (Courtesy, Texas State Hospitals and Special Schools)

| | |
|---|---|
| San Antonio State Tuberculosis Hospital | San Antonio |
| Legion Branch | Legion |
| San Antonio Mental Health Clinic | San Antonio |
| State Farm Colony | Austin |
| Terrell State Hospital | Terrell |
| Wichita Falls State Hospital | Wichita Falls |
| Vernon Branch | Vernon |

2. Under supervision of the Texas education agency:

| | |
|---|---|
| School for the Blind | Austin |
| School for the Deaf | Austin |

3. Under supervision of the Texas youth council:

| | |
|---|---|
| Corsicana State Home | Corsicana |
| Blind, Deaf, and Orphans School | Austin |
| Waco State Home | Waco |
| Gainesville School for Girls | Gainesville |
| Gatesville School for Boys | Gatesville |
| Colored Girls' Training School | Crockett |

4. Under supervision of the Board of Regents, University of Texas:

| | |
|---|---|
| M. D. Anderson Hospital and Tumor Institute | Houston |

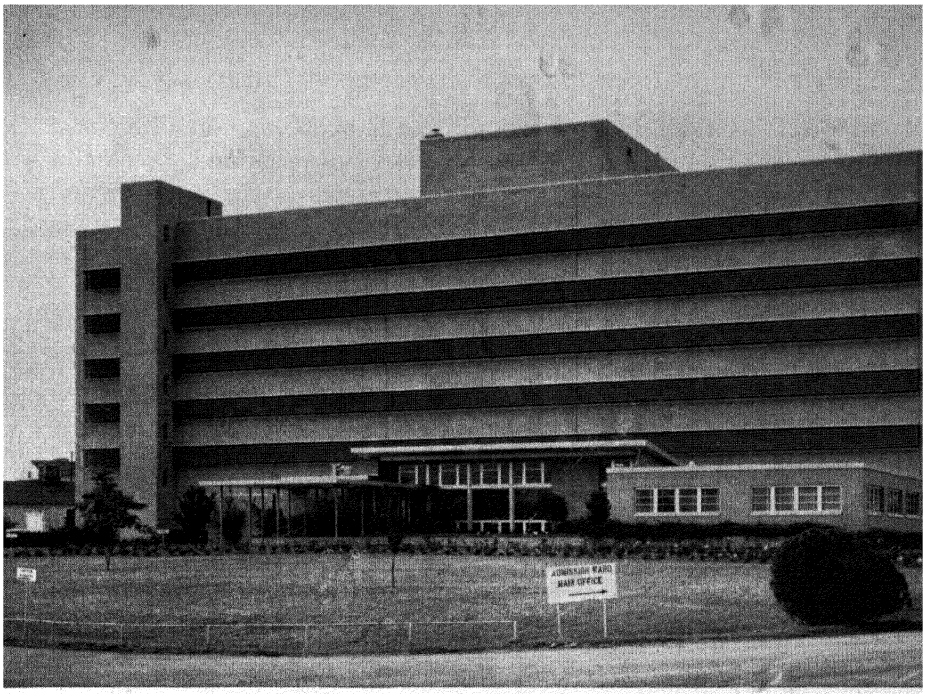

Figure 22. *East Texas Tuberculosis Hospital.* Tyler, Texas. (Courtesy, Texas State Hospitals and Special Schools)

5. Under supervision of the Texas board of corrections:

| | |
|---|---|
| Texas Prison System | Huntsville |

## BOARD FOR TEXAS STATE HOSPITALS AND SPECIAL SCHOOLS

Texas, along with several other states, followed a practice of neglect in maintaining her mental institutions until a few years ago. Campaigns and public clamor forced the legislature to take note of the unsatisfactory conditions in these institutions. People in mental hospitals do not form pressure groups for legislative appropriations; hence it was easy for the legislature to overlook their needs. In 1949, the board for Texas state hospitals and special schools was created to work out and administer a program that would provide proper care and treatment for the mentally ill. This board consists of nine members appointed by the governor for six-year staggered terms. Not more than three medical doctors may serve on the board at the same time. The chief functions of the board consist in formulating policies for the operation of the

various institutions under its control, and in appointing the director of mental health and hospitals, the executive director and director of tuberculosis hospitals, and the superintendents of the hospitals and special schools under its supervision.

## THE STATE MENTAL HOSPITALS

The six state mental hospitals located at Austin, Big Spring, Rusk, San Antonio, Terrell, and Wichita Falls, serve an average daily population of almost 2,500 patients per institution. Had Texas continued her old policy of using these institutions for purely custodial care, this daily average would soon be many times that figure. For example, whereas the population of Texas is increasing about three per cent per year, the number entering these hospitals is increasing about twelve per cent per year. Fortunately for the people of Texas and for these patients, the new policy emphasizes treatment and training, so that the mentally ill may be released sooner to return to their homes or to community outpatient clinics.

***Treatment and Training Personnel.*** It takes more room, more equipment, and more technically trained personnel to treat insane people than it does to keep them merely locked in rooms and padded cells. The Fifty-first Legislature in 1950 recognized this fact when it set aside a one cent cigarette tax producing about five million dollars per year to be used for a period of seven years to improve the physical plant of the mental hospitals and schools.

Nurses in mental hospitals need special training to care properly for their patients. Due to the shortage of such trained nurses, it has been necessary for the hospitals to develop an in-service training program for attendants in the hospital wards. Improvement in the in-service training program is aided when registered graduate nurses with special preparation in psychiatric nursing can be added to the staff. Unfortunately, the shortage of trained personnel in this area is so great that hospital administrators despair of ever having enough nurse technicians to provide one nurse for each shift for each ward in the hospitals. Volunteer services of many types are helping to offset some of the shortages of personnel and materials.

***Population Movement.*** People of all ages and with every imaginable type of mental defect find their way into our mental institutions. The

**Figure 23.** *Typing Class* at San Antonio State Hospital is one of the many activities utilized in rehabilitating patients. (Courtesy, Texas State Hospitals and Special Schools)

number under twenty-five years of age needing mental hospital treatment is small. The bulk of the patients range in age from forty to sixty-five. Psychiatric disorders account for most of the patients, but many are afflicted with chronic brain syndrome associated with such factors as prenatal conditions, syphilis, intercranial infections, intoxication, circulatory disturbances, metabolism disturbances, and trauma. Hereditary deficiencies and personality disorders account for many patients. About as many persons are separated from the institutions each year as are admitted, thus keeping the population stable. By sex, slightly more females are committed than males, and by race, about six out of every seven are white.

***Alcoholic Rehabilitation.*** One of the newer functions carried on in the mental hospitals is that of alcoholic rehabilitation. More than 2,000 patients per year receive this service. About three-fifths of these patients enter voluntarily. Approximately one out of eight of these alcoholics are women. Male counselors are maintained in each hospital, and women counselors only where the number of women patients is great enough to justify a separate counselor. The average length of stay of these alcoholics is about one and one-half months. About three-fourths of those discharged maintain sobriety.

## SCHOOLS FOR THE MENTALLY RETARDED

The term "mental retardation" is used with many meanings. It refers to all degrees of retarded mental development. Retardation usually originates before or during birth or in early childhood. It may be caused by a wide variety of diseases, accidents, toxic conditions, or perhaps certain environmental deficiencies. It is estimated that three out of each one hundred live births will be affected enough to require institutional or special care.

***Classification of Mental Retardates.*** For purposes of description, mental retardates are classified into three groups: (1) the mildly retarded—intelligence quotient fifty to seventy-five (the normal intelligence quotient is ninety to one hundred ten); (2) the moderately retarded—intelligence quotient twenty-five to fifty, and (3) the severely retarded—intelligence quotient below twenty-five. Those in the first group are educable on an elementary level; those in group two are trainable but will need life-long supervision; and those in group three will require complete care all their lives. Of the approximately 150,000 mental retardates institutionalized in the United States, slightly more than one-fourth are in group one, about two-fifths are in group two, and the remainder are in group three. The approximately 7,000 institutionalized mental retardates in Texas reflect about the same group percentages as the national average. The growing birth rate together with the reduction of infant mortality will rapidly increase the number of these unfortunates. Before 1950, little attention was given to these retarded children. Since that date various associations have been formed, nationwide as well as statewide, designed to improve the condition of these mental defectives, and all state legislatures, including the legislature of Texas, have adopted policies and appropriated money to provide care and training for these mental retardates.

### Mental Retardate Program

In studying the schools for mental retardates, it is necessary to keep in mind that persons in these institutions are quite unlike those in the states' mental hospitals. Those in mental hospitals were at one time perfectly normal persons, some with very high intelligence quotients. Those in the schools for mentally retarded have had low I.Q.'s since birth or early childhood. These low I.Q.'s are not increased with treatment. In order to keep down the retardate population of the five state

schools and to enable the subjects to be with relatives, the state has authorized a program in our regular public schools for those children who can respond to education or training under special teachers. Vocational training is emphasized in all such schools.

### The Mentally Retarded Population

The National Association for Retarded Children estimates that there are more than five million mentally retarded persons in the United States. Only about three per cent of these are institutionalized. The five Texas institutions for the mentally retarded located at Abilene, Mexia, Denton, and Austin, including the Austin State School Farm Colony, can handle only a very small percentage of the mentally retarded in Texas. The waiting list for admission applicants increases continuously. About two out of three of the retardates are furloughed for short periods during each year so that of the average daily population only about ten per cent are first admissions. Approximately forty per cent of the population of the mentally retarded schools are under twenty-five years of age, and almost one-fourth of the population is over forty-five years of age. White retardates make up about six-sevenths of the population, with the number of females slightly predominating.

## STATE TUBERCULOSIS HOSPITALS

Texas operates four tuberculosis hospitals and one branch institution. They are located as follows: East Texas, located near Tyler; Harlingen, located in Harlingen; McKnight, located seventeen miles from San Angelo; and San Antonio, located in the city of San Antonio. The Legion branch of the San Antonio State Tuberculosis Hospital is located sixty-eight miles from San Antonio, near Kerrville.

Contrary to the belief of many, the number of persons with tuberculosis in Texas continues to rise. Known as the "white plague," it is a disease as old as man. Medical science knows enough about it now to eliminate it completely as a human disease. It is not enough, however, for the medical profession to know the causes and cure for the disease. Those who might be afflicted with it must know how to detect it in its early stages, then have the willingness to seek treatment and cure. One of the biggest problems of the administrators of the tuberculosis hospitals is that of keeping the patients until the proper time for re-

lease. Since most patients enter voluntarily, they feel that they should leave the same way. Approximately twenty-five per cent of all patients leaving the institutions leave against medical advice. Since tuberculars are often health hazards to other people, county health officers may place those persons with contagious tuberculosis in protective isolation in the state tuberculosis hospitals. These patients are virtual prisoners while in custody.

***Tubercular Population Movement.*** Since most of the state tuberculosis hospitals stay filled almost to capacity, it is necessary to keep the admissions and separations near a balance. The fact that more than half of all admissions are far-advanced cases accounts for a rather large number of separations being by death. The average length of stay in a state tuberculosis hospital is slightly over one year.

Tuberculosis is no respecter of age. The San Antonio hospital has a ward of fifty beds for children under six; it operates at full capacity! A good number of patients are over eighty years of age. The number of females exceed the males under forty years of age, but the total number of males exceed the number of females by about three to two. Approximately sixty per cent of all patients are Latins, while about fifteen per cent are Negroes. Almost one-third of the total population of the state tuberculosis hospitals come from the three counties of Bexar, Hidalgo, and Cameron.

## STATE MENTAL HEALTH CLINICS AND PSYCHIATRIC INSTITUTE

The Fifty-fifth Legislature in 1957 provided for the establishment of adult mental health clinics in Dallas and San Antonio, and for a psychiatric institute in Houston. The primary function of these clinics is to provide follow-up psychiatric care and supervision for furloughed and discharged patients from mental hospitals. Others needing psychiatric help may attend clinic sessions. Psychiatrists and mental specialists meet with patients in small groups in these clinics. A small fee is charged those who use this service. Welfare recipients are aided without charge.

The Houston Psychiatric Institute was designed for the specific purpose of research into causes contributing to mental illness, methods of prevention, more effective treatment, and the training of technical personnel to help carry on the work of the state's mental institutions.

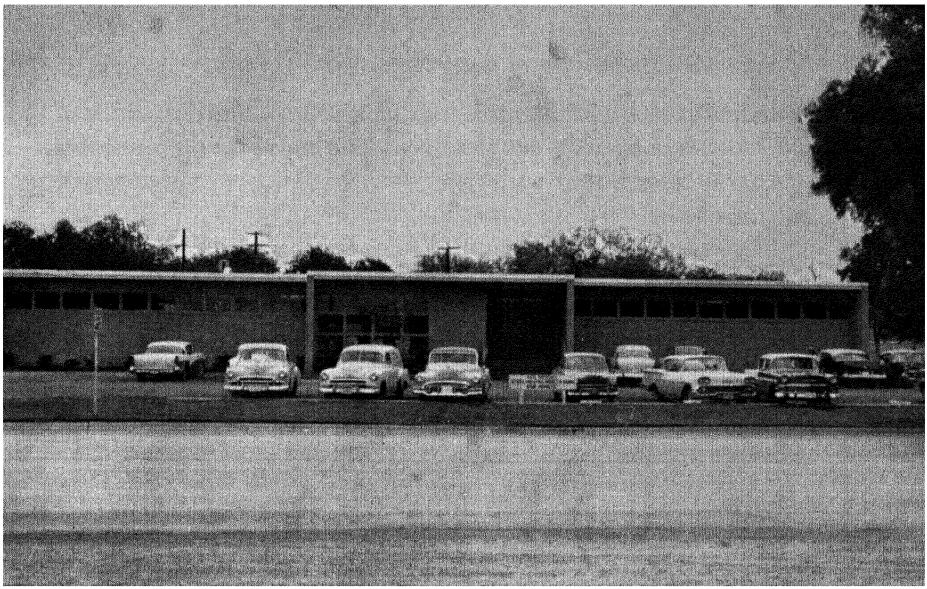

**Figure 24.** *San Antonio State Adult Mental Health Clinic* is one of the three outpatient clinics operated in facilities independent of the mental hospitals which also staff their own outpatient services. (Courtesy, Texas State Hospitals and Special Schools)

Research and training are carried on in four major areas: (1) clinical study, where students are trained in clinic and hospital procedures; (2) psychology, where complex studies are made of such forces as stresses, fatigue, intoxication, emotion, habits, and time, space, and sublimical perception; (3) pharmacology, where exploration is made of the effects of drugs on the functions of the brain and mind; (4) neurophysiology, where behavioral patterns are analyzed and electrical activity in the body and brain are studied. Through research made in these and related areas it is possible that the secrets of the mind and the detailed relations between the mind and the body will be discovered some day.

## MOODY STATE SCHOOL FOR CEREBRAL PALSIED CHILDREN

This school, located at Galveston, was opened in 1951. It is open to cerebral palsied children between the ages of five and twelve years. The maximum stay for a child is one year. The school has a threefold purpose: (1) diagnosis, intensive treatment, and training and education of palsied children; (2) training of professional personnel; and

(3) research. Doctors and research technicians from the University of Texas Medical School make up the major portion of the professional personnel of the school.

## TEXAS SCHOOLS FOR THE BLIND AND DEAF

Any child who is blind or deaf is handicapped in his efforts to fit into society or to compete in the economic world. Since our regular public schools are not organized to render educational services to these children, it is necessary that they seek education elsewhere.

The Texas schools for the blind and deaf are located in Austin. They are under the general supervision of the Texas education agency, and the immediate supervision of a superintendent for each school. The school superintendents are selected by the commissioner of education. Admission to these schools is open to boys and girls between the ages of six and seventeen on formal application of their parents or guardians made to and accepted by the superintendent. No student remains in the school after the age of twenty-one.

Both academic and vocational courses are offered so that the graduates may continue in college or go immediately into employment. When a blind student terminates his class work with the school, he is referred to the State Commission for the Blind in case he desires job placement. Deaf students on terminating their school work are referred to the vocational rehabilitation division of the state department of education for job placement. As a result of the education and training received and the follow-up placement services offered, about eight out of nine graduates of these schools are self-supporting. The enrollment in the school for the blind is slightly over 200, while the enrollment in the school for the deaf is approximately 500.

## CARING FOR DELINQUENT AND DEPENDENT CHILDREN

Practically every community of any population size in Texas has one or more children that could be classified as delinquent, neglected, dependent, or orphan. Unless the causes for the delinquency and neglect are removed or unless these children so affected are placed in another environment, they will likely grow up to become criminals or other types of public liabilities. Almost all communities have one or more

organizations designed to eliminate or discourage the existence of the causes of juvenile delinquency. Such worthwhile organizations, together with the public and private schools, do much to curb juvenile delinquency. Despite the work of these agencies, however, this social evil continues to flourish and indeed to increase. Each community usually takes care of its moderate cases, but the more difficult cases become the care of the state.

### Organization and Functions of the Texas Youth Council

In 1957, the legislature of Texas provided a unified organization under the supervision of the Texas Youth Council to administer the state's policies relative to the care of delinquent, dependent, neglected, and orphan children. This council is composed of three non-salaried members appointed by the governor for six-year terms. These members employ an executive director whose responsibility it is to administer the state's youth laws and the council's youth policies.

### Schools and Homes Under the Youth Council

Three training schools for delinquent children and three homes for dependent, neglected, and orphan children are supervised by the council. The three training schools are the Boys Training School at Gatesville, the Girls Training School at Gainesville, and the Colored Girls Training School at Crockett. The homes are the Corsicana State Home, Waco State Home, and the Texas Blind, Deaf, and Orphan School at Austin.

***The Gatesville State School for Boys.*** Commitment to the training school is made by the juvenile courts of the state. Between 1,500 and 2,000 boys are committed to the Gatesville school each year. About one out of four boys is colored. The school is equipped to handle less than 1,000 boys at any one time. The legislature in 1959 provided for an expansion of this school. The school must accept all boys legally committed to it. This means that the children must be released after an average stay of only six months. In many instances this short period of time is not enough to change the boy. As a result about one-third of those released are readmitted as recidivists within a year after release. Unfortunately, too many of those released from the Gatesville school later find their way to the state prison at Huntsville.

About two-thirds of those sent to the state's training schools are charged with stealing, about one out of eight is sent because of some form of disobedience, one out of twelve is sent for violating moral laws,

and the others for a variety of crimes. Most of the boys committed range in age from fourteen to sixteen years. Broken homes furnish the greatest numbers.

***The Gainesville School for Girls.*** Between 200 and 250 girls are admitted to the Gainesville Training School each year. The school is equipped to care for less than 200 at any one time. The average stay of the girls in the school is approximately one year. Only about one girl in five returns as a parole violator. Whereas most boys are committed to the school for stealing, only about one girl in seven is committed for this cause. About two out of five girls are committed for disobedience, and about one-third for immoral conduct. It is interesting to note that the median school grade for boys at the time of admission is the low seventh, while that for girls is the low eighth. On the average the boys are three grades retarded and the girls two grades retarded from their age groups in the public schools.

***The Crockett School for Negro Girls.*** This school is equipped to handle about 100 girls at any one time. It has approximately 100 admissions each year. About one out of seven of these admissions is a parole violator or recidivist. Colored girls are committed for about the same proportionate reasons as white girls.

The effectiveness of the work done at the state training schools could be substantially improved if the state would adopt a satisfactory follow-up program for the children when they are released. Most of those released go back into the same environment from which they came. The Youth Council depends on county probation officers, committing judges, and other interested parties for any follow-up supervision. Under this system it is easy for the children to revert to their old habits.

***The Waco and Corsicana State Homes.*** Texas has many children who are not "bad" within themselves, but those who are responsible for their care—parents, relatives, or guardians—are negligent and in many cases completely irresponsible. These children if placed in an atmosphere providing the kind of home care which is the right of every child, will likely make good, worthy citizens. The Waco and Corsicana homes are operated by the state for this type of child.

Each home is under the supervision of a superintendent selected by the Texas Youth Council. Auxiliary employees to look after the religious, educational, medical, recreational, physical, and social needs of the children are selected by the superintendent.

Children between the ages of three and sixteen are admitted to the

homes. They may stay until they are twenty-one. Any child to be admitted must be declared by a court of competent jurisdiction to be dependent and/or neglected. All children of scholastic age residing in the homes attend the public schools of Waco and Corsicana on a transfer basis. The average daily population of the two homes is approximately 500. The average time spent by each child in the home is approximately seven years.

***Texas Blind, Deaf, and Orphan School.*** The daily population for the Texas Blind, Deaf, and Orphan School is approximately 160. There are about thirty admissions each year. Some are deaf, others blind, and some are both deaf and blind. The average time of attachment to the school is about six years. All these children are Negroes.

## THE M. D. ANDERSON HOSPITAL AND TUMOR INSTITUTE

Under supervision of the Board of Regents of the University of Texas, the establishment of the M. D. Anderson Hospital and Tumor Institute in Houston was authorized by the state legislature in 1941. It opened its doors for patient care in 1944. A three-purpose program of patient care, research, and education for every phase of cancer and allied diseases is carried on at this institution. More than fourteen hundred persons are engaged in this triple phase program.

### Patient Care

The outpatient clinic is designed to handle 300 visits per day. Three hundred beds are used for the inpatients. All patients are admitted only on referral by a physician. Approximately ten new patients a day are referred to the hospital. This is a modest number when we consider that cancer kills more than twenty-five Texans each day. Residents of Texas are admitted regardless of their financial status, and are charged according to their ability to pay. About sixty-five per cent of the 300 beds are paid for by the state to accommodate indigent patients.

### Research

There are over 100 approved research projects continuously under study at the institute. These projects might be classified into five general areas of study: cancer diagnosis, cancer effects, cancer cure, cancer cause, and cancer biology. The findings of each research team are made

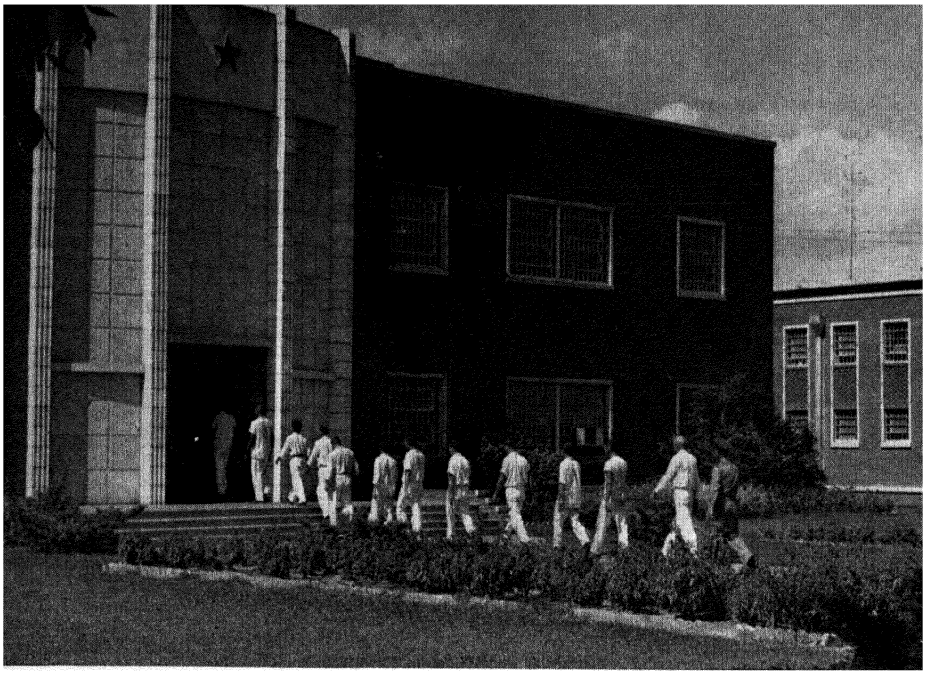

**Figure 25.** *New Buildings in the Texas Prison System.* Typical is this portion of the new Ramsey Unit near Angleton, Texas, which houses 1,800 inmates. (Courtesy, Texas Department of Corrections)

known to every other research team so that all new knowledge is coordinated and made available to all researchers. By combining the knowledge of all the researchers at the institute and adding to this what is being learned at other cancer institutions throughout the United States, it is hoped that this dread killer can be conquered.

## Education

The discovery of better ways to detect and treat cancer will be of maximum service to the people of Texas only if the physicians and people of the state find out about these discoveries. To accomplish this purpose, the institute prepares and distributes three publications: *The Cancer Bulletin,* a bimonthly journal with a circulation of approximately 50,000; *The Year Book of Cancer,* a medical digest of thousands of articles pertaining to cancer; and *The News Letter,* a quarterly mailed to all Texas physicians to keep them abreast of activities at the institute. In addition to the printed materials prepared and distributed, the hospital serves as a primary teaching facility for the University of Texas Postgraduate School of Medicine.

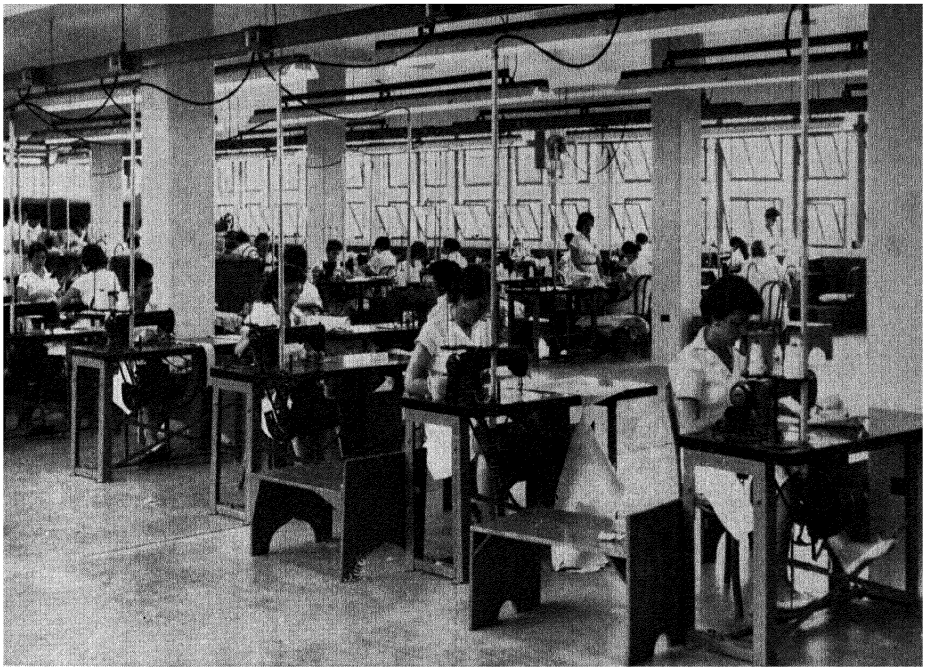

Figure 26. *The Garment Factory at Goree.* (Courtesy, Texas Department of Corrections)

### Finances

Money for operating the patient care, research, and educational work of the hospital and institute comes from several sources. The state legislature appropriates a substantial part of the yearly budget; the federal government aids in financing certain areas; and private philanthropy through gifts, memorials, and foundation funds helps materially in meeting the overall financial needs. Money provided from all these sources amounts to less than fifty cents for each man, woman, and child in Texas.

## TEXAS DEPARTMENT OF CORRECTIONS

It seems that regardless of how civilized a people might become, or how much time and money is spent on education, or how faithfully well-intentioned organizations and groups pursue their worthy objectives, there still remains among us a substantial number of persons who will steal, kill, and otherwise injure their fellow men. The forces of religion, government, and science do much to restrain the criminal

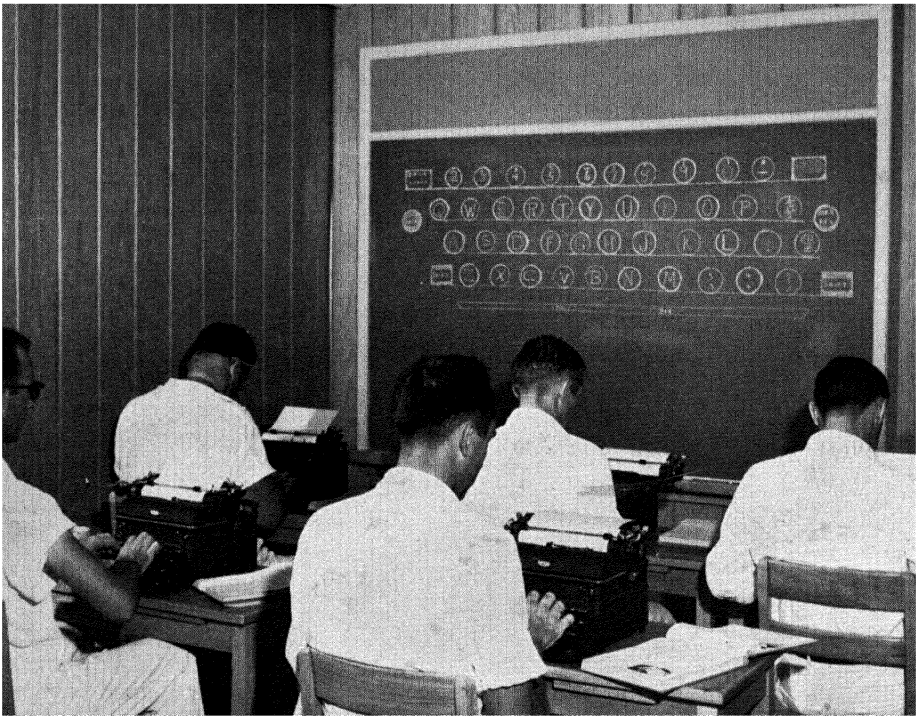

**Figure 27.** *A Typing Class in the Educational Department.* Approximately 20 per cent of the inmates are taking educational courses. (Courtesy, Texas Department of Corrections)

tendencies of people, but there remain some who must be separated from free society, placed in institutions, and be denied liberty.

## Historical Development

Although the state legislature provided for the establishment of a state prison in 1846, it was not until 1849 that the penitentiary began operation with a prison population of three. The general feeling in the early days was that a prisoner should "earn his own keep," primarily by working for others. A law in 1871 provided for the leasing of prison labor to the highest bidder. Five years later the whole penitentiary was leased to a private concern which agreed to feed, clothe, guard, and care for the prisoners, and to pay to the state an additional three dollars per man per month. This system was so unsatisfactory that in 1883 the state decided to buy farms and operate them with convict labor. The statute providing for the operation and management of the prison system now declares it to be the policy of the state "that those convicted of violating the law and sentenced to a term in the state penitentiary

**Figure 28.** *One-Legged Tables for Four,* instead of the usual long 20- to 30-man tables, are a feature of this modern dining hall. The room is one of two at the new $4.5 million Eastham Unit near Trinity, Texas. Eastham houses 1,700 men. (Courtesy, Texas Department of Corrections)

shall have humane treatment, and be given opportunity, encouragement, and training in matters of reformation . . . and in no event shall the labor of a prisoner be sold to any contractor or leasee to work on farms or elsewhere." The present system of operating under a nine-member board was established in 1927.

**The Physical Plant of the Department of Corrections.**

The prison system of Texas is composed of a central unit at Huntsville and ten prison farm units. The central unit, covering twenty-one acres and containing about one-fifth of the total prison population, is located in the heart of the city of Huntsville only two blocks from the Walker County court house. Six of the farms, namely, Central, Harlem, Darrington, Clemens, Ramsey, and Retrieve, are located in an area beginning about eighty-five miles south of Huntsville and extending for

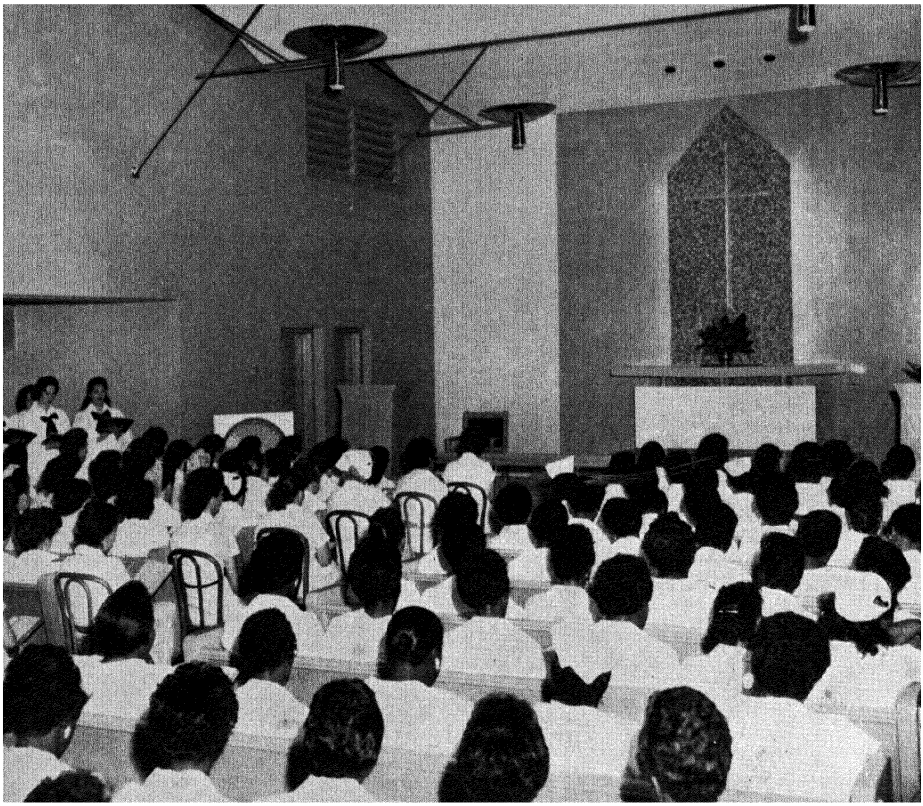

**Figure 29.** *Religious Services.* A chaplain of the Department conducts services in the chapel of the Goree Unit for women. (Courtesy, Texas Department of Corrections)

approximately sixty miles along the Brazos River. The Goree Farm for Women is located on the Huntsville-Houston highway about four miles south of Huntsville. The Wynn farm is located two miles northwest of Huntsville, and the Eastham and Ferguson farms are located about one hundred and about forty miles, respectively, north of the Huntsville unit.

### Activities and Types of Prisoners at the Various Prison Units

The Huntsville unit serves as the administrative headquarters for the whole prison system. It is also the industrial center for all the units. Here are found such activities as construction, printing, shoe shop, textile mill, license plate plant, electrical and other repair shops, and prison store. Offenders of all ages are kept here.

The main activities at Central farm are: farming, power plant, packing plant, and canning factory. First offender whites under twenty-five

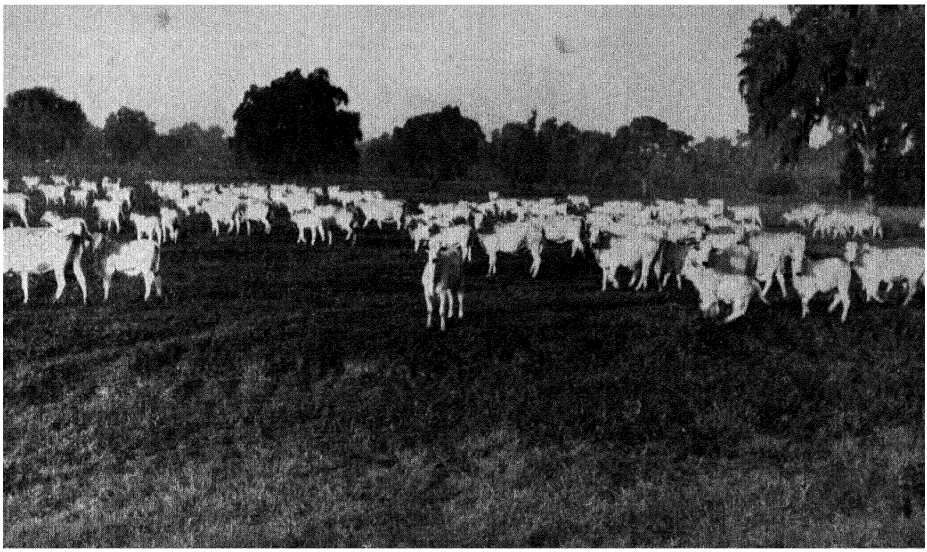

**Figure 30.** *Ramsey Farm.* One of the Brahma herds on a good pasture. The department has about 12,000 head of beef cattle and 4,000 head of dairy cattle. (Courtesy, Texas Department of Corrections)

are kept in unit number one, and second offender Negroes under twenty-five are kept in unit number two.

The brick plant is located on the Harlem farm. Here are kept Latin-American first offenders and best rehabilitative prospects in one group, and Latin-American recidivists in another group.

The Ramsey farm specializes in raising livestock, cotton, and grain. White recidivists and Negro recidivists over twenty-five are kept here.

Brooms, mattresses, and clothing are manufactured at the Wynn farm where are kept the physically disabled of all ages.

Clemens, Darrington, Retrieve, and Eastham farms are given over entirely to farm work. First offender Negroes are kept at Clemens and second offender whites are kept at Darrington. Second offender Negroes over twenty-five are kept at Retrieve and maximum security whites are kept at Eastham. The Ferguson farm specializes in livestock and edible crops. This is the honor farm for white trusties. All women are kept at Goree where clothing is made. Total farm acreage in all the farms is now 72,888 acres. Due to the mild climate and long growing seasons, more than two-thirds of all food consumed is grown on the prison farms. Despite extensive production, both farm and industrial, the prison system is not self-supporting. Legislative appropriations from the general revenue fund of the state are required every biennial session.

Figure 31. *Squads Picking Cotton.* The department this year is growing 12,000 acres of cotton. It is the number one money crop. (Courtesy, Texas Department of Corrections)

## Organization and Management

At the head of the department of corrections is the Texas board of corrections, composed of nine members, appointed by the governor with senatorial approval for six-year terms. This board selects the director of corrections, who has charge of all administrative activities. Four technical assistants help the director with overall management. Each of the eleven units is under the immediate control of a warden who in turn is assisted by various kinds and levels of personnel.

## The Prison Population

People from every walk of life, from the meanest ne'er-do-well to high state officials and community leaders, find their way to prison. Every occupation, profession, and religious interest is represented in the prison population. Young men predominate, although some inmates are over seventy. Burglary, murder, and theft lead the crimes. Despite a rather liberal parole policy, the prison population tends to double about every ten years. Four self-improvement programs are offered for the inmates, namely, religion, education, vocational training, and recreation. Segregation is extensively employed in separating

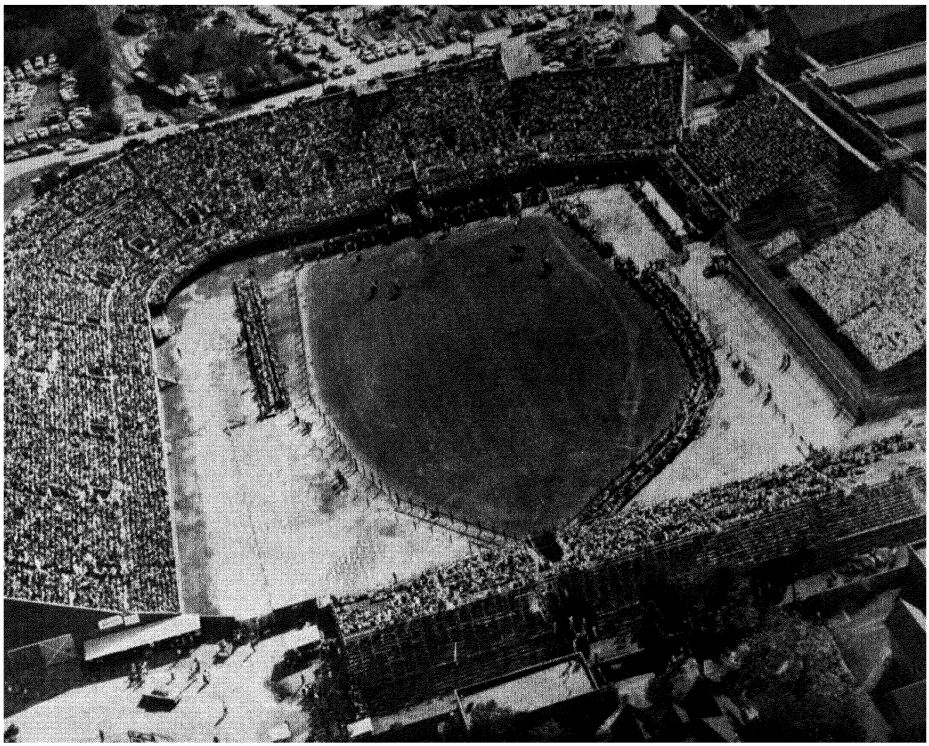

**Figure 32.** *Aerial View of the Rodeo Stadium.* The prison rodeo held annually in October attracts large crowds. (Courtesy, Texas Department of Corrections)

sexes, races, first and second offenders, and maximum risk groups. Racial segregation in the prison population has not been judicially attacked as yet.

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Much valuable information on the current operation of the state hospitals, special schools, and correctional institutions in Texas can be found in the annual reports of the State Board for State Hospitals and Special Schools, the annual reports of the Texas Youth Council, the periodic and special publications of the M. D. Anderson Hospital and Tumor Institute and the information sheets and reports released by the Texas Department of Corrections. The history of legislation affecting these institutions can be found in Gammel's *Laws of Texas.*

# 13....

# *The State Highway System and Public Safety*

The material of this chapter deals with a function the operating cost of which is more than forty dollars per year for each man, woman, and child in the state, and which provides a service affecting every person in the state. The highway system of a state can well be compared to the arterial system of the body. The lifeblood of trade and commerce by which our modern economic life is sustained flows to a large extent through the veins and arteries of the public roads of the state. This dependence is particularly obvious when one considers the widespread use of trucks and buses on present day highways. Seventy-five years ago the destruction or the development of communities and towns was largely in the hands of the railroad builders; today this great power has been shifted to the highway planners. Agricultural communities depend in no small degree upon the ease and efficiency with which their products can be transported to market. Urban chambers of commerce know the value of well-planned highways upon the growth and development of cities and towns.

## Early History of Texas Highways

The history of Texas is closely bound to the evolution of the Texas highways from the time in 1715 when Saint-Denis marked out the old San Antonio Road, from Eagle Pass to Nacogdoches, to the present day.[1] For almost fifty years after Texas won her independence from Mexico, the roads of the state were little more than trails. Each community removed such natural obstacles as rocks and trees from the trails to make them passable for ox carts, prairie schooners, buggies, and wagons. Narrow roads with sharp turns did not inconvenience the drivers of these vehicles.

[1] A brief history of the State highway department and roads in Texas is given in a historical pamphlet issued in 1959 by the Texas highway department.

**Figure 33.** *The Texas Highway Department Building* is one of the older state office structures, built about thirty years ago. The department headquarters, in this building, conducts the planning, construction and maintenance of the vast Texas Highway System that costs some $350 million annually, or about 28 per cent of the overall state budget. (Courtesy, Texas Highway Department)

**Figure 34a.** Typical road at the turn of the century. (Courtesy, Texas State Highway Department)

In 1883 provision was made for levying an ad valorem county road tax of fifteen cents per $100 valuation. Twenty years later the counties were authorized to issue bonds for road improvement. This privilege was soon conferred upon the political subdivision of the county known as the road district. With the coming of the automobile various clubs and organizations were formed to promote the construction of good roads. The first improved roads were those constructed by spreading gravel on the old existing roadbeds. The expense for this improvement was met by bonds voted either by the county or by the road district. The increasing number of automobiles, together with the increasing range of travel, made the road district and county units entirely too small for road improvement purposes. When people began to travel into far sections of the state and even into other states, it became necessary to link the highways of one road district with those of other districts, and to fit the main roads of one county to those of surrounding counties. A poor system of roads in a central Texas county could inconvenience the economic and social lives of the people in counties to the north or south. In other words, the function of road building and maintenance ceased to be wholly local; it became in part a state and in part a national function.

***Road Building Becomes a State Function.*** The shift of highway control from local to state officials, which started in Texas in 1917, represents the modern principle of centralization of governmental powers at its best. The old district and county system of road building broke

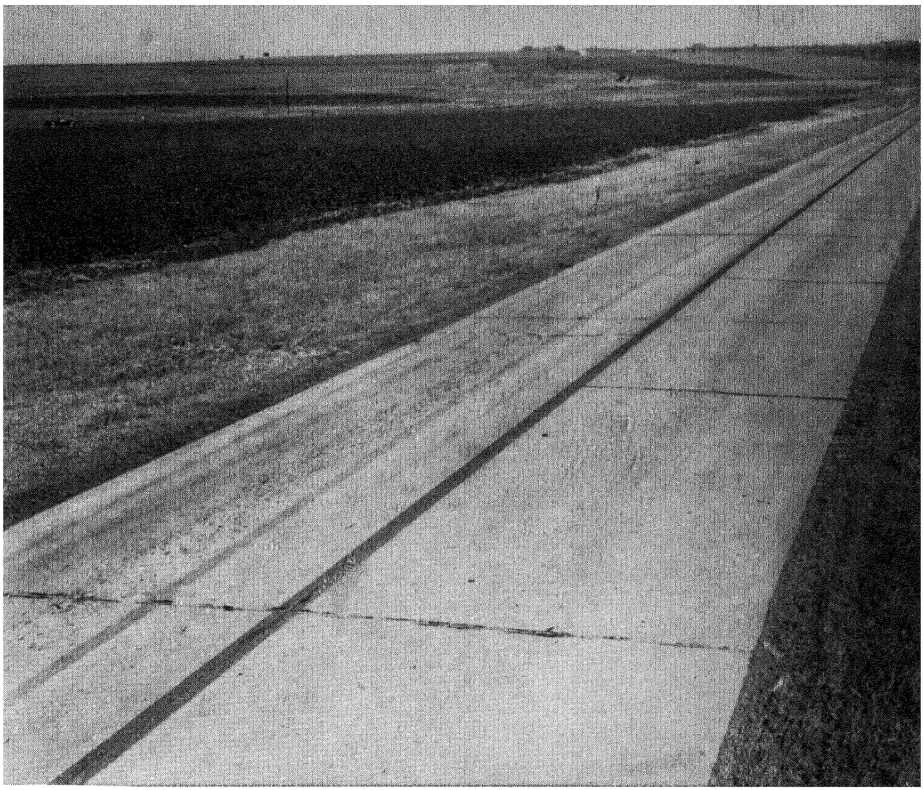

**Figure 34b.** *Improved Highways.* (Courtesy, Texas State Highway Department)

down under the demand for increased financial and engineering needs. In order for the people of Texas to carry on their economic and social lives, roads had to be built through poor counties and through sections of the state handicapped by natural hazards. These sections of their own accord would never have improved their roads sufficiently to have enabled the present day transportation of goods and people from one section of the state to another. No one county would ever have built a nine million dollar bridge across one of its waterways, and many sections of west Texas would still be existing under frontier conditions had not the state opened transportation routes through these areas. Some states like North Carolina and Virginia have centralized all road building activities in the hands of state officials. Texas has not gone that far, but there is a definite trend toward making all road building a state and national function.

***The Beginning of the Texas Highway Department.*** The people of Texas began to look toward the establishment of a state highway department as early as 1911, but enough support for the fruition of such a movement could not be mustered until the passage of the Federal

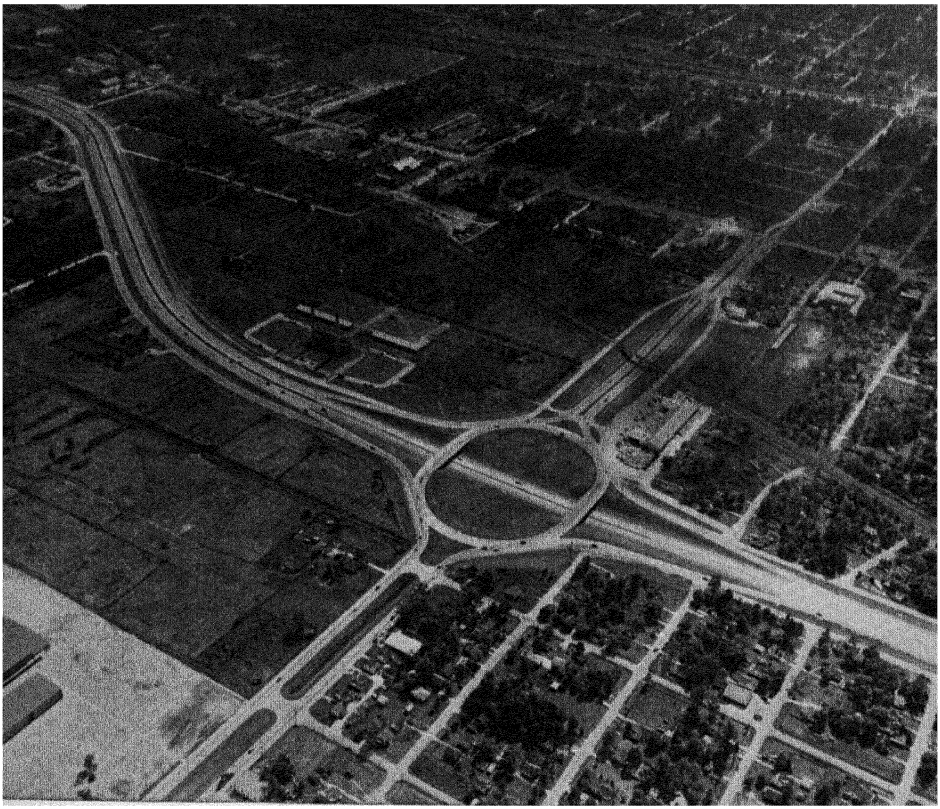

**Figure 34c.** *The Expressway—The Super Highways of Today.* (Courtesy, Texas State Highway Department)

Rural Post Road Aid Act in 1916. The following year the state legislature created a state highway department. As set up in 1917, the state highway department performed only supervisory functions. It granted aid to the counties for construction work not in excess of twenty-five per cent of the cost of the road construction, provided the total aid granted would not pay for more than five miles of average construction costs. Maintenance of state-aid roads was the responsibility of the county. The state funds for highway construction were derived from automobile registration fees [2] and from federal aid. The Thirty-eighth Legislature in 1923 levied a tax on gasoline of one cent per gallon; three-fourths of the revenue received from this tax was placed in the state highway fund, and the highway commission was authorized to allot aid to a county up to one-half the cost of its road construction.

[2] The state took over the function of registering automobiles in 1917. Before this date automobiles were registered in the county, and county numbers were given. In 1917, the state registered 194,720 motor vehicles.

If the county failed to maintain its state-aid roads, further aid was denied and the state took over maintenance of such roads. Inaction on the part of local areas was encouraging the expansion of state activities. On January 1, 1924, the Texas highway department took over maintenance of all state highways. In 1925 the gasoline tax was raised to four cents a gallon, where it remained for thirty years.

## THE STATE HIGHWAY SYSTEM

Four different groups of roads and highways in Texas, exclusive of the roads and streets found in cities of over 2,500 population, make up the state's highway system. These four groups are federal aid high-

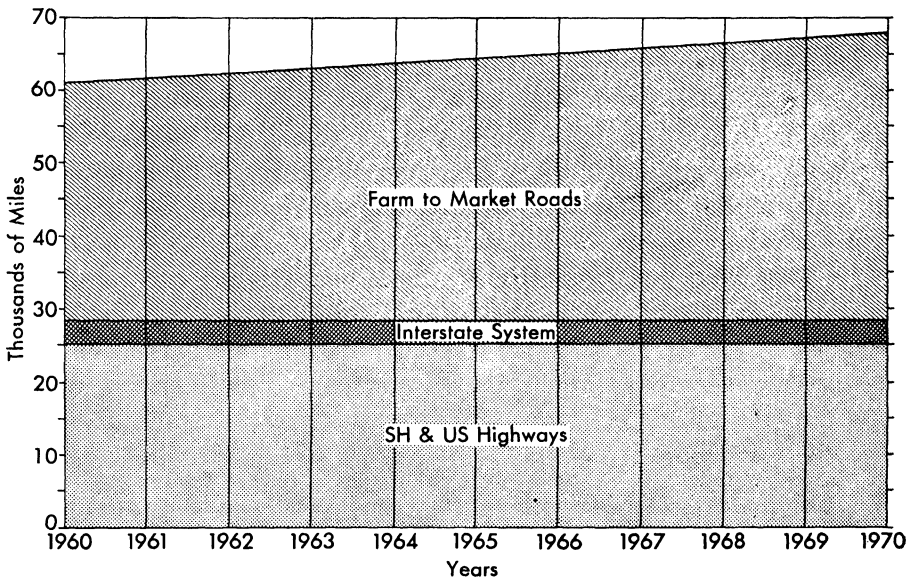


**Figure 35.** *Estimated Total Mileage of Texas Highways by Systems, Rural and Urban.* (Courtesy, Texas Highway Department)

ways, state highways, farm-to-market roads, and the system of local and county roads not supported by state or federal funds. At the beginning of 1960, the mileage of these four groups totaled 197,756. The total mileage of the federal and state systems in Texas was 55,468, of which 32,349 were farm-to-market roads. Local roads under county commissioners' jurisdictions totaled 142,288 miles.

## The State Highway Department

The state highway department is composed of the state highway commission and the state highway engineer; there are eighteen central divisional administrative units, one engineer manager for Houston's urban expressways, and twenty-five district or field units. The titles of the division heads indicate in a general way the functions of the various divisional units. The division heads are as follows: assistant state highway engineer; director of equipment and procurement, bridge engineer, construction engineer, engineer of aid projects, chief engineer of highway design, materials and tests engineer, planning survey engineer, accounting director, motor vehicles director, director of personnel, engineer of secondary roads, right-of-way engineer, engineer of information and statistics, claims director, chief engineer of maintenance operations, insurance director, and engineer-director of operations.

Each of the twenty-five district engineers is responsible for all preliminary construction and maintenance work in his district. Each district on an average includes slightly more than 2,200 miles of road. Resident engineers under the supervision of the district engineers are charged with the responsibility for carrying out the plans and specifications of the department.

***The State Highway Commission.*** The administrative control of the state highway department is vested in a state highway commission, a policy making body composed of three members appointed by the governor with senatorial approval, for six-year terms. The governor designates the chairman. The duties and powers of the state highway commission are as follows:

1. To formulate plans and policies for the location, construction, maintenance, and operation of a comprehensive system of state highways
2. To collect information and statistics relative to the mileage, character, and condition of the public roads of different counties
3. To confer with local authorities concerning general plans for road development
4. To cooperate with the United States Bureau of Public Roads in receiving and applying federal road grants
5. To let all contracts involving the construction and maintenance of the roads in the state highway system
6. To prepare quarterly statements and biennial reports showing the detailed activities of the department

7. To select a state highway engineer as administrative head of the department.

It has become customary to select the highway commissioners from different sections of the state. Meetings are usually held in Austin during the latter part of each month. The commissioners are paid annual salaries.

**The State Highway Engineer**

The position of state highway engineer is the most important in the state highway department, and one of the most important in the state government. The flow of the millions of dollars expended on the state highways of Texas is largely directed from the office of the state highway engineer. This official must be a graduate civil engineer of an accredited engineering school, and must be licensed to practice civil engineering by the state board of registration for professional engineers. He must be experienced in highway construction and maintenance prior to his appointment. One of his chief functions is to act with the highway commission in an advisory capacity, and to prepare, with the approval of the commission, the plans for the state highway system. Personnel and procedural changes in the department are subject to the supervision and control of the state highway engineer.

**Locating the Highway**

The wishes of the public for an improved highway system and the need for a particular highway facility are made known through hearings before the state highway commission. These needs are studied at regional and local levels by the district engineer and his resident engineers. During the course of these investigations, contacts are made with officials of local government agencies in order to determine the urgency of the needs, the adequacy of the existing highway facilities to satisfy future traffic requirements, and economic aspects of the highway location from the point of view of the state and the affected individuals. Initial negotiations are made for adjustment of utilities, railroads, drainage canals, irrigation canals, etc.

Highway projects are included on programs prepared by each district engineer periodically, as funds become available. The programs of this proposed future work are reviewed by the state highway engineer, and after approval are submitted to the state highway commission for study. The authorization for construction is granted by the commis-

sion on the basis of need for the facility. This approval activates the initial phases of the work—establishing the location of the highway, acquisition of right of way, and accumulation of basic engineering data for design and specifications.

***Rights of Way.*** The Texas legislature passed the fifty-fifty right of way purchases law in 1956. Under this law, counties pay half the cost of right of way, and the state pays the other half. The fifty-fifty right of way cost sharing applies only to federal-aid primary highways and "state-numbered" highways, and not to farm-to-market roads or interstate highways.

Under the Federal Aid Highway Act of 1956 providing for interstate and freeway highways, the federal government pays ninety per cent of the cost and the state pays ten per cent. Routes for these highways must be approved by the United States Bureau of Public Roads prior to acquisition of right of way.

Public hearings on proposed interstate, federal, and state routes for highways must be held, and transcripts evaluated before buying of right of way can begin.

The width of right of way depends on the type of design and class of the highway to be constructed. Right of way widths now vary from 100 feet on farm-to-market roads to 300 feet on some interstate highways. Most of our rights of way now range from 120 to 200 feet. The tendency is toward greater widths.

## Highway Design

The first step in designing the highway is to determine the control points or points between which the road is to be constructed. Investigations are then made of all possible routes. If federal aid is to be used on the highway, federal engineers must concur with the state engineers in deciding the location.

One of the most important problems in the building of a modern highway system is that of location and engineering design. Highways designed for volume and speed must also include such features as safety, comfort, convenience, and appearance—within justifiable construction and maintenance costs. Heavier legal load limits dictated periodically by the legislative branch of the government require heavier design standards for bridges and pavements. Divided highways with controlled or limited-access features are designed and constructed to provide for the transportation requirements imposed by the heavier traffic density. Advanced design for safety and convenience is reflected

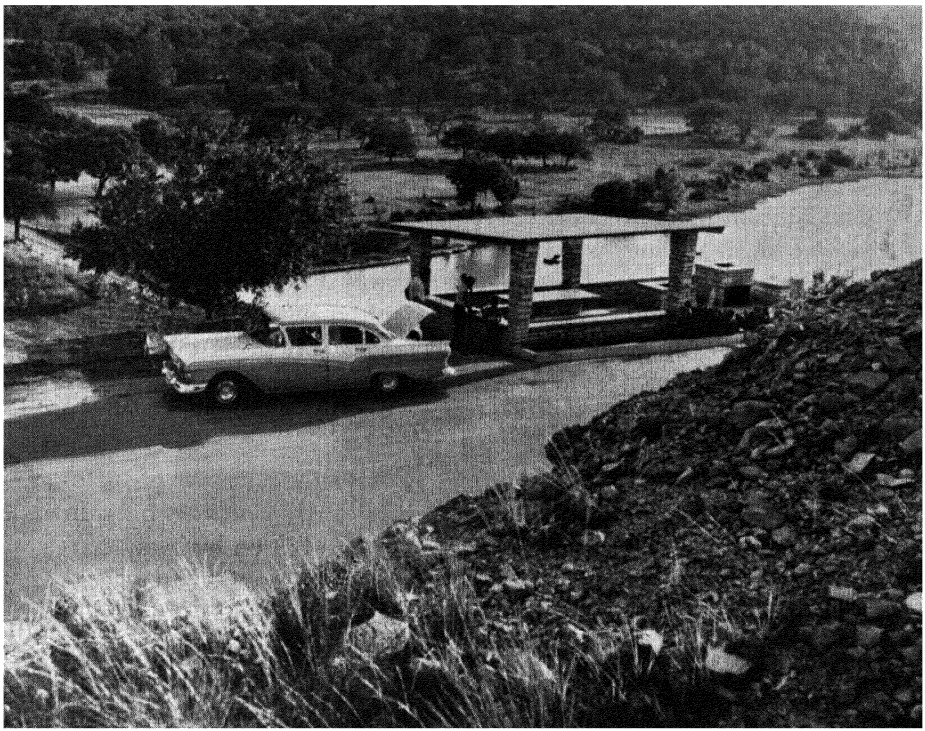

**Figure 36.** *Roadside Park* on State Highway 27, four miles south of mountain home. Roadside parks are built and maintained by the Highway Department. (Courtesy, Texas Highway Department)

in width, sight distance, and passing distance requirements. The proper locating of a road requires a thorough study of such factors as economics, routing, topography, soils, availability of construction materials, and anticipated traffic requirements.

***Bridges and Culverts.*** The design of bridges and culverts often taxes the ingenuity of our best highway engineers. Safety, load capacity, drainage requirements, stability of foundation, and appearance are some of the factors which require engineering skill and study. Bridges and culverts must be fitted to the topography of each area. Stream velocity, possibility of heavy drift, and subsoil structure influence the design for the superstructure. The factors of mental hazards as well as real hazards must be considered in designing the superstructure. Safety approaches as well as curbs and railings are used to lessen both types of hazards.

Four types of drainage structures are used in the construction of highways—span bridges, multiple-box culverts, concrete-box culverts, and culvert pipes. About 450 span bridges and 550 multiple-box cul-

verts of more than twenty feet in length are constructed each year. All bridge construction work is expensive. The average two-lane bridge cost varies from about $175 to $300 per linear foot.

The largest bridge in Texas is the Corpus Christi High Bridge, built at a cost of $9 million, which provides a 140-foot vertical clearance above the ship channel. The highest highway bridge in the state is the Pecos River Bridge in Val Verde County, with a roadway 273 feet above the normal water line. The longest bridge is the Lavaca Bay Causeway, 11,900 feet long, completion date 1961.

**Highway Contracts**

All contracts for construction of highways, or for purchase of materials to be used in maintenance work, are let by competitive bids. In order to be placed on the list of those eligible to bid on highway construction contracts, a contractor must complete a required form containing financial, equipment, and experience data, along with certain accounting instruments prepared by a public accountant. Through these instruments a determination is made of the total dollar value of work on which he can bid or which he may have under contract at one time.

Highway commission policy permits, in a few isolated situations, administrative approval for the taking of local bids on proposed construction or maintenance contracts for work of $25,000 or less.

The construction of highways by the contract method anticipates that the work will be performed using labor forces and road building machinery assembled by the contractor. The contractor is also required to furnish all materials and supplies required to construct the project. All materials incorporated in the completed work must meet specification requirements of the contract, and the contractor is required to furnish documents and/or reports from commercial test laboratories on all materials proving that they satisfy all test requirements. All construction of the highway is done by the contractor; however, construction engineering forces are maintained by the state on each project to inspect the work and material, and to assure that the facility is constructed to the specifications of the plans.

The state maintains quality control of contractors' work and materials at the job level in field engineering test laboratories, and by tests of samples furnished from the separate projects to the materials and tests division in Austin.

Construction control elements are maintained at all times by the

construction division in Austin from the time that initial advertisement of proposed highway work is made until the work is completed. The control elements consist of review of field reports on work being performed, inspection of construction processes and operations on the ground, furnishing of aids for inspector training, and field engineering consultive service on construction problems and equipment.

### Highway Maintenance

The wear and tear on highways caused by traffic and the disintegrating forces of nature make necessary the use of large maintenance forces for the highways. Maintenance operations deal with such matters as patching, repairing, sealing top surfaces, building protective banks, removing drifts from bridges, repairing and widening bridge stuctures, curbing, storm sewers, stabilizing shoulders, flattening slopes and filling ditches, and keeping the highways clear of traffic hazards. All ordinary maintenance of the travelway, roadway ditches, structures, and the land within the right of way is performed by state highway personnel.

The supplies, materials, and machinery needed to maintain the state's investment in highway facilities is purchased on a low-bid basis. Requisitions are prepared at the district level, accumulated and placed in proper form for issuance, and financial approval for purchases obtained from the state highway commission by the equipment and procurement division of the Austin office. Approved requisitions are furnished the board of control for approval and the taking of bids. The board of control, as state purchasing agent, advertises, furnishes bid forms to material and equipment suppliers, and receives competitive bids on all items to be purchased for the use of the state.

A central warehouse is maintained at Camp Hubbard in Austin with regional warehouses being operated at Post, Seguin, and Athens. The logistic problems of supplying the needs of the districts for maintenance goods, and storage for future needs, is subject to constant study.

## FINANCING THE HIGHWAYS OF TEXAS

There is no better example to indicate the cooperation of the three levels of government—county, state, and nation—than is found in the financing of the Texas highways. Likewise there is no better example than the highways to indicate a shift in function from the local to the

national level. During the past few years we have seen our local highways come more and more under the supervision of the state, and we have seen the construction and maintenance of both local and state highways influenced by the grant of federal funds.

**Sources of Highway Funds**

Practically all money used in highway construction and maintenance comes from the gasoline tax, registration fees, and the federal government. Money collected from gasoline taxes is divided five ways as follows:

1. About one per cent is placed in an enforcement fund for collection expenses.
2. Approximately five per cent is credited to the county and road district indebtedness fund.
3. About nine per cent is returned to consumers on refund requests based on claims that the gasoline was not used on the highways.
4. Approximately twenty per cent is placed in the state available school fund.
5. The remainder is placed in the state highway fund.

The registration fees are received and license plates are distributed by the county tax assessor-collector in each county. The amount of the registration fee is determined by the weight of the vehicle. The fees in Texas are about the same as the national average. Each county may keep all registration fees up to $50,000 and may keep one-half of additional net fees to $175,000. All net fees above $175,000 belong to the state. Under this plan of fee allotment, the state receives about three-fourths of all registration fees collected. Since the average license fee for motor buses is almost $400, and the average license fee for commercial vehicles is slightly under $100, it is obvious that the counties in which the bulk of these vehicles is registered will contribute most heavily to the state highway fund.

***Automobile Registration.*** All motor vehicles that are used on the highways are required to be registered with the state highway department. License plates are issued showing the number of the vehicle, the year of registration, and the type of vehicle registered. Twelve different types of license plates are used: plates for passenger motor vehicles (including plates for members of Congress, state officials, and antique motor vehicles), commercial trucks, exempt motor vehicles, farm trucks, dealers, motor buses and city buses, trailers, tractors,

motorcycles, exempt motorcycles, in-transit vehicles, and parade vehicles. Approximately five million motor vehicles are registered each year.

***Federal Aid.*** The federal government since 1916 has lent an encouraging hand in the form of federal aid to the improvement of public highways. The Federal Highway Act of 1944 allotted to Texas $43.5 million for primary highways, $30 million for farm-to-market roads, and $13.5 million for urban routes through metropolitan areas. The state matched these sums on a forty-sixty basis. The Federal Highway Aid Act of 1956 changed this state-federal money ratio to ten-ninety for interstate freeways and highways. This act contemplates the construction of 41,000 miles of two-, four-, six-, and eight-lane expressways for the nation at a cost of $25 billion; the project is to be completed by 1969. Texas will have 3,033 miles of these express highways. These highways are built on the controlled access principle. Average construction costs are estimated at two million dollars per mile for six-lane divided urban expressways and one-half million dollars per mile for four-lane divided rural highways. The estimated yearly maintenance cost per mile for these expressways is about $7,000 and $2,500 respectively. Construction and maintenance costs will vary with the purchasing value of the dollar.

***County and Road District Highway Fund.*** Early improvement of roads in Texas was attempted by counties and road districts through the voting of road bonds. Payment time on these bonds was much longer than the life of the improved roads. When these local units began to falter in the payment of these bonds, the state came to their rescue by assuming part of the debts to be paid with the gasoline tax. This action on the part of the state emphasizes two important points in government. First, that a modern-day transportation system involves larger territorial units; and second, that the ad valorem tax as a source of revenue is becoming less and less important in the carrying out of government functions. To help in carrying on the farm-to-market road program, the state now provides $15 million annually from its general revenue.

## POLITICAL PROBLEMS IN HIGHWAY BUILDING

There is no Democratic or Republican way of constructing and maintaining highways in Texas, yet the function as a state problem is

fraught with many political considerations. Should the highways of a particular county or section of the state be developed this year at the expense of other counties or other sections of the state? Should the highways be constructed of cement or asphalt? The cement and asphalt industries are vitally interested. Should a main highway pass through certain cities and towns or should it pass around them? Should the roads and bridges be constructed to accommodate large trucks and buses, or should they be made primarily for lighter vehicles? Should roads be straightened out when such changes would interfere with property rights of certain individuals, or should they follow old established routes and offer no interference to property owners? These and similar questions deal with policy. Political fortunes may be made or lost on the decisions that are made concerning them. The very fact that the state highways involve the expenditure of hundreds of millions of dollars a year and furnish jobs to a small army of employees is enough to make the highway function one of the outstanding political forces of the state.

## TRAFFIC CONTROL AND ACCIDENT PREVENTION

Road construction and maintenance is inseparably bound with traffic control and accident prevention in Texas. Safety in driving depends not only upon the driver and his vehicle, but also upon the minimizing of road hazards by engineering skill and proper maintenance. The department is working in the interest of safety by widening narrow bridges, eliminating sharp curves, cutting down short-sight distances and hills, stabilizing shoulders, constructing underpasses and overpasses, and filling deep roadway ditches. Various safety devices are now used on the highways. Center stripes are placed on all main arteries of traffic, reflector button markers are placed in the headwalls of narrow bridges, reflectorized warning signs are placed at points of unusual hazard, and special markers are used to call to the attention of the drivers all points of danger. Since accidents on the highways destroy bridge railings, tear up shoulders, and deface pavements, prevention of accidents tends to lessen maintenance costs.

***Rules of the Road.*** Texas has many millions of dollars invested in her highways. This investment should be protected and used in such a way as to furnish the most efficient services to the people. In order to assure proper use of this public property, certain rules and regula-

tions are made. Some of these rules, such as those relating to load limits and tire widths, are designed to protect the highways themselves. Others, such as those relating to speed laws or the parking of vehicles upon the highways, are made to protect the property and person of those who use the highways.

## TEXAS DEPARTMENT OF PUBLIC SAFETY

Potential man-made and natural hazards, if left to their own development, would soon deprive every person of his rights, privileges, and liberties. There could be no peace of mind without the use of the authority of the state to give order and guidance for the movement of people. As more people live in less space, and as they move about faster and more often, the necessity for governmental guidance becomes greater. To meet this increasing need for safety service, the Texas department of public safety was created.

### Background of the Department

Stephen F. Austin, who brought the first colonists to Texas, planted the seeds of the present department when he organized a private body in 1823, known as the Rangers. This group was created to protect the frontier settlements from Indian raids. In 1835, the Rangers were placed under the command of the commander-in-chief of the military forces of Texas, and in 1845 were transferred to the adjutant-general's department, where they remained until the formation of the department of public safety in 1935.

As the use of automobiles and trucks began a rapid expansion in the 1920's, it became necessary for the state to create new machinery for enforcing the laws relating to vehicle registration, overweight loads, and defective equipment. This task was given to twenty license and weight inspectors set up in the state highway department in 1927. Four years later the license and weight inspectors became highway patrolmen with general powers and authority of peace officers.

### Public Safety Act of 1935

It soon became evident that Texas needed a unified state law enforcement group that could protect people not only on the highways, but in their homes and businesses. With the advent of state highways instead of purely local and county roads, robbers, kidnappers, and

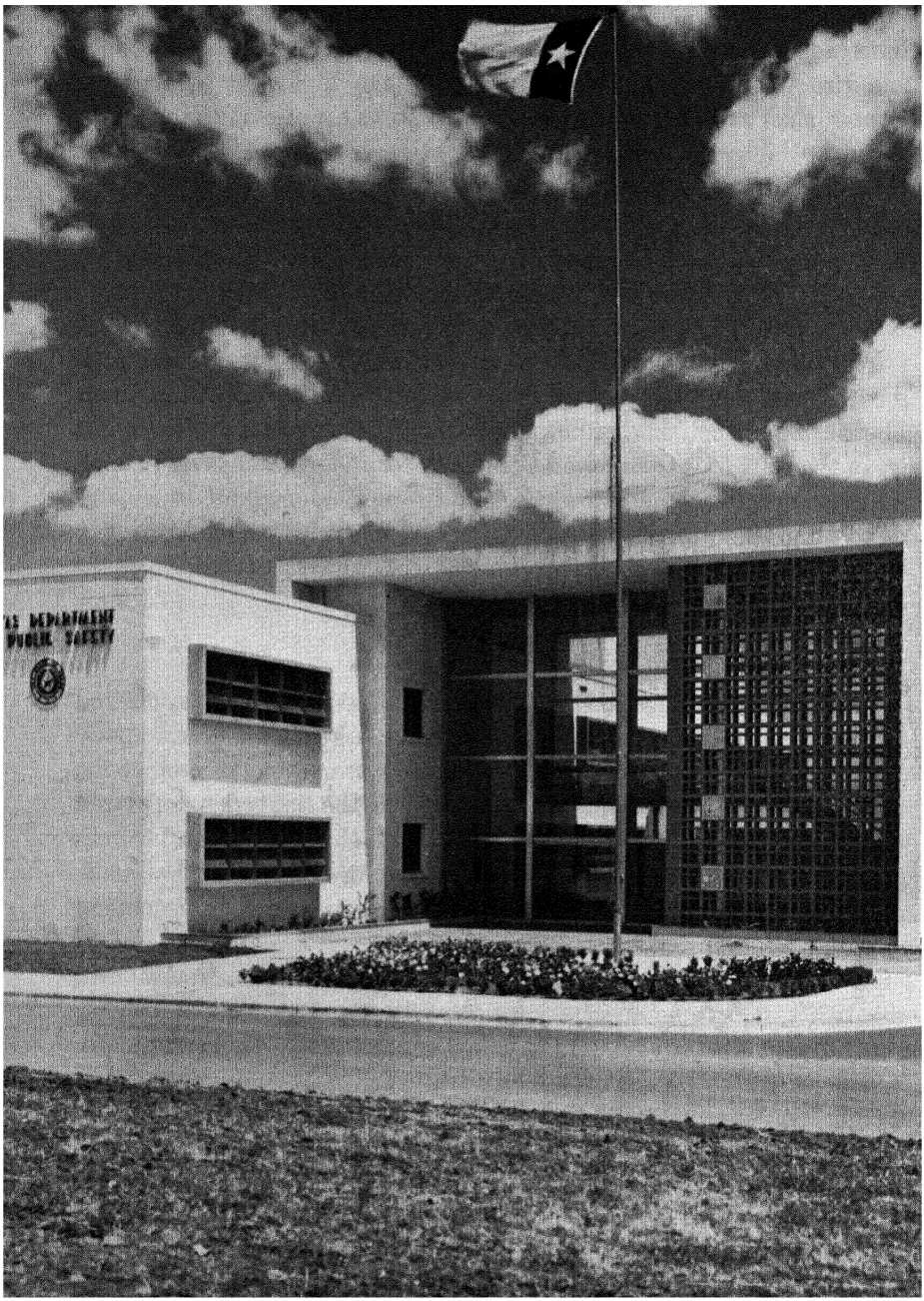

**Figure 37.** *Texas Department of Public Safety Building* in Austin, headquarters for some 2,000 employees who work in some 15 divisions of this state police organization. Texas is part of the official name of this organization, making it easy to differentiate from a number of county departments of public safety throughout the state. (Courtesy, Texas Department of Public Safety)

other criminals moved freely and speedily from county to county. The state had to have enforcement officers who could match the range and speed of the law violators. The state department of public safety was the result.

The 1935 act establishing the Texas department of public safety made provisions for three administrative divisions: (1) the Texas Rangers (2) the Texas highway patrol, and (3) the headquarters division. These divisions still serve as the base for the department, although each has been considerably expanded since 1935, and a new area has been added to meet disaster or emergency needs.

***Public Safety Commission.*** The control of the department is placed in a public safety commission, composed of three non-salaried persons appointed by the governor with senatorial consent for six-year staggered terms. The commission selects a director and assistant director for the department, and makes such policies as it thinks necessary for effecting the purpose of the department.

### Geographical Administrative Areas

The department of public safety, because of the very nature of its functions, must operate through field offices that touch every nook and corner of the state. Regardless of whether a person lives in the most thickly populated or the most isolated area of the state, certain agents of the department of public safety must be available to him to protect his safety.

In order to bring the services of the department to every section and person in the state, the whole state is marked off into six regions. Each region is divided into districts, with headquarters offices located at Dallas, Tyler, Houston, Beaumont, Corpus Christi, San Antonio, Midland, Abilene, Lubbock, Amarillo, Waco, and Austin. Twenty twenty-four hour radio stations are maintained for instant communication with every county in the state. Over each region is a regional commander, who is directly responsible for the following activities in his region: highway patrol, license and weight enforcement, driver's license, motor vehicle inspection, and the supporting services of communications, safety education, polygraph (lie detector), and chemical laboratory.

### Departmental Functions

The functions of the department of public safety may well be grouped into eleven areas as follows: Rangers, highway safety, high-

**Figure 38.** *Rangers Checking for Stolen Livestock.* (Courtesy, Texas Department of Public Safety)

way patrol, driver's license, license and weights, motor vehicle inspection, identification and criminal records, narcotics, disaster and emergency, public safety education, and selection and training of personnel. A brief analysis of each of these functions will indicate the broad and far-flung services rendered to the people of Texas by this department.

***Texas Rangers.*** As indicated above, the Texas Rangers started as a regular state police force in 1835, making this body the oldest organized state police agency in North America. Texas has had some hardened criminals, both men and women, and some bad criminal gangs since she started as a state in 1845. In the early days, bad roads and poor communication played into the hands of these criminals, provided they could find the fastest horses and could develop the quickest draw. The Rangers knew this, since they were sent after the worst criminals. No criminal was so bad or so dangerous that the Rangers would hesitate to move in on him whenever and wherever they found him. This tradition of fearlessness has lived on down to the present day. Today

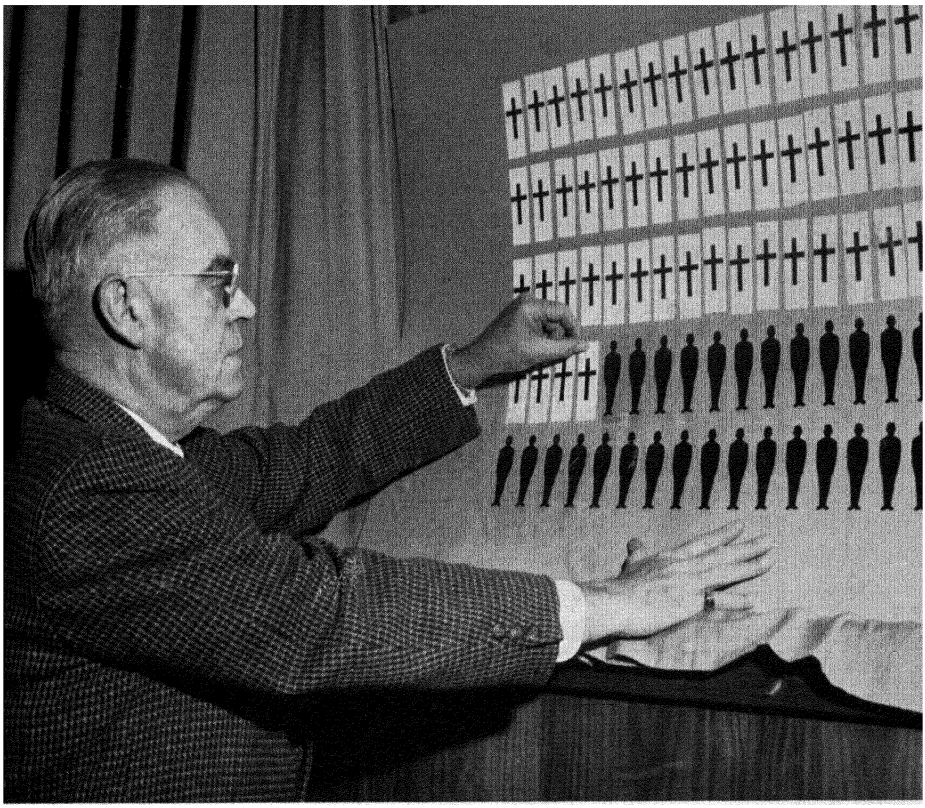

**Figure 39.** *Didn't Die*—Col. Homer Garrison, Jr., director of the Texas Department of Public Safety, places the last "cross" over the Operation Deathwatch chart which shows that sixty-one persons died in Texas traffic crashes in nine days ending midnight January 1. The chart, which was used as a "countdown" method of keeping track of the deaths, shows thirty-four persons still alive who were expected to die. (Courtesy, Texas Department of Public Safety)

there are six companies of Rangers made up of about eight or nine men each. A captain is in command of each company. Rangers have three duties: protect life and property, suppress riots and insurrections, and apprehend fugitives from justice. Generally they act in cooperation with local officers, but may act independently. The jurisdiction of each Ranger covers the whole state, and he may continue an investigation to any part of the United States.

***Highway Safety.*** Many of the dangers which constantly threaten the safety of the people of Texas are those involved in using the highways of Texas. There is an old saying that only two things are certain in this life, death and taxes. A third might well be added, namely, millions of dollars worth of property will be destroyed, thousands of persons will

be crippled and injured, and hundreds of others will be killed on the streets and highways in the state during any given year. The state department of public safety is so certain that these things will happen that it can and does predict with a high degree of accuracy the number who will be killed in traffic accidents on any given weekend or any given holiday period.

**The Highway Code of 1947**

The legislature in 1947 adopted a new highway code for the state of Texas. The scope of this code is indicated in the titles of the eighteen articles which comprise it: words and phrases defined; obedience to and effect of traffic laws; traffic signs, signals, and markings; accidents; driving while under the influence of drugs and reckless driving; driving on the right side of the roadway; overtaking and passing; turning and stopping; right-of-way; rights and duties of pedestrians; streetcars and safety zones; special stops and restricted speeds; stopping, standing, and parking; miscellaneous rules; equipment inspection of vehicles; penalties and fines; parties, procedure upon arrest, and reports in criminal cases; effect of act.

The highway code is made applicable and uniform throughout the state and in all political subdivisions and municipalities. Local authorities may adopt additional traffic regulations provided these do not conflict with the state's code.

***Some Specific Provisions of the Highway Code—Accidents.*** A maximum penalty of five years' imprisonment and a $5,000 fine is provided for anyone involved in an accident where personal injury occurs, if such person fails to stop and render aid. Any person so involved must present his name, address, car number, and other identifying materials. If a vehicle unattended is damaged, the person so damaging it must leave his name, address, and circumstances of the collision. An accident involving personal injury must be reported immediately to the local police or sheriff's office. A report of all accidents involving injury or loss of property to the extent of twenty-five dollars must be made to the department of public safety within twenty-four hours. All law enforcement officers must also make reports. Coroners must make monthly reports on all traffic deaths.

***Some Driving Regulations.*** Driving while under the influence of any drug is specifically prohibited. Detailed instructions for passing vehicles on either the right or left are given. Vehicles travelling in caravans

must be so spaced that other vehicles may enter and occupy spaces between them. All turns, changes in direction, or changes in speed must be indicated by proper signals. Several sections in the code provide rules for approaching and turning at intersections, and for the right-of-way rights and obligations of motorists. Pedestrians as well as motorists are obligated to follow the traffic code. Under certain conditions all vehicles must stop at railroad crossings. The highway department may designate any particular crossing as dangerous and require all vehicles to stop. Motor and school buses must stop at all railroad crossings.

***Parking and Stopping.*** The highway commission may designate certain highways as through highways and require all vehicles approaching these to stop before crossing them. No vehicle may be stopped on a main highway, and any parked vehicle must leave a clear view of 200 feet in each direction. Fourteen different places are designated as being forbidden ground upon which a person may not park a vehicle, for example: on a sidewalk, in front of a driveway, within fifteen feet of a fire hydrant, within thirty feet of any flashing beacon, and on any bridge or other elevated structure on the highway. Parked vehicles must be within eighteen inches of the curb.

***Equipment.*** The code provides in great detail the equipment which vehicles must have in order to assure safe driving. For example, head lamps must be used for one-half hour after sunset to one-half hour before sunrise, and at any other time when there is insufficient light to render discernible a person five hundred feet away. Tail lamps are required on all vehicles, and two red reflectors are required on all new motor vehicles sold after the effective date of the act. Special equipment for trucks and buses is provided. Spot lights are in general prohibited. Considerable space is given in the code to a description of the various headlight beams and their uses. Lights must be dimmed within 500 feet of an approaching car. All motor vehicles must be equipped with brakes kept in good working order. These brakes must be able to stop the vehicle going twenty miles per hour within thirty feet. Horns are to be used only when actually needed. Mufflers must be in good working order at all times. Only safety glass may be placed in doors, windows, and windshields after January 1, 1948.

***Miscellaneous Rules.*** No motor vehicle must be left unattended without first stopping the engine, setting the brakes, and if on a grade, turning the front wheels to the curb. Coasting on dangerous downgrades is prohibited. Crossing fire hose or following fire apparatus to a fire is

illegal. All vehicles must stop before passing school buses that are loading and unloading children.

***Special Restrictions on Motor Vehicle Drivers.*** In addition to trying to bring about safer conditions on our roads and highways by a highway code of rules, the legislature has attempted to increase safety by placing special restrictions upon motor vehicle drivers. Every driver, for instance, must possess a driver's license. This license is issued only after an examination which determines the driver's minimum fitness to drive a motor vehicle. This license is renewable each two years without a reexamination. It can be suspended by the department of public safety upon proof that the driver has become incompetent to drive on the highways. In addition to possessing a driver's license, a person driving on the highways of the state must show proof of his ability to meet a $5,000 responsibility in case he should have an accident causing this much loss. This requirement becomes effective if and when he has been involved in one accident. Most persons meet this $5,000 responsibility by carrying liability insurance. Two of the unsolved problems in this area have been how to assure that every person who drives a motor vehicle could actually meet a $5,000 responsibility in case he caused an accident involving that amount, and how to devise a plan of liability insurance that will penalize the unsafe driver and reward the careful driver.

## Highway Patrol

To many people, the department of public safety and the highway patrol are practically synonymous, since these officers seem ever present on our highways. When we consider that there are less than one thousand of these patrolmen, and that they must patrol the thousands of miles of Texas highways day and night by working in shifts, we might well wonder why we see as many of them as we do. The answer is partly in the method of assignment. Three-year averages of rural fatal accidents and average daily vehicle miles of rural traffic are calculated; then patrolmen are assigned to those areas where the statistics show they are most needed. These patrolmen drive more than twenty million miles per year in the performance of their duties. The chief duties of a highway patrolman are to direct traffic, investigate accidents, discourage traffic violations through public safety education, enforce traffic laws, apprehend criminals, render service in cases of emergency, and in general to act as a conservator of the peace.

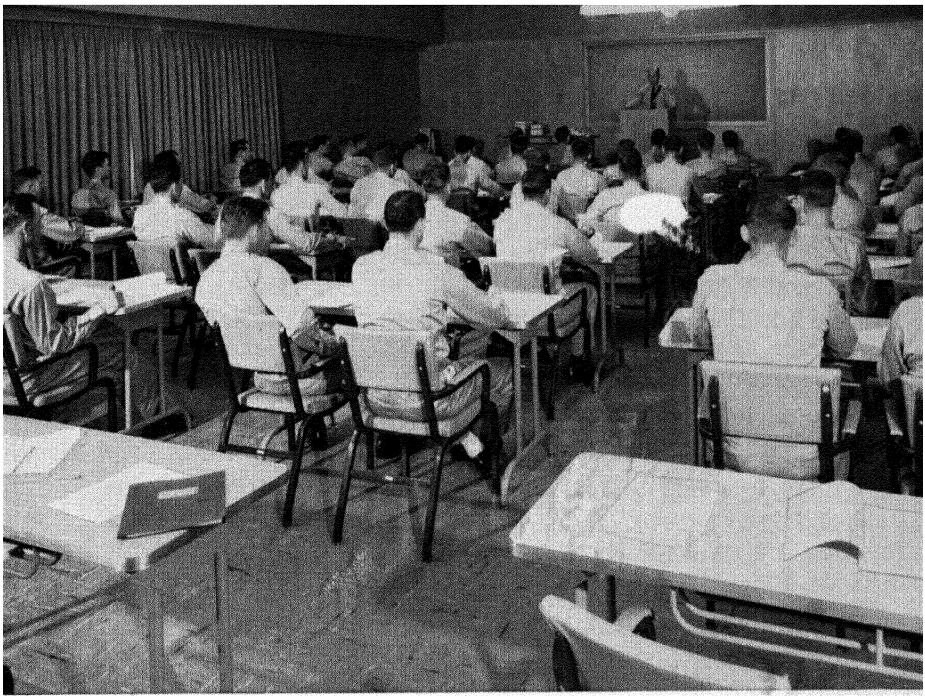

**Figure 40.** *Students in Training* at the Texas Department of Public Safety Law Enforcement Academy at Austin. The men are training to become Texas Highway Patrolmen, one of five law enforcement divisions of the department. The training division of the DPS not only trains all personnel entering the DPS, but offers retraining programs for department employees and almost every other law enforcement agency in the state. (Courtesy, Texas Department of Public Safety)

## Driver's License Division

Texas has almost five million motor vehicle drivers with either operators, commercial, or chauffeur's licenses. These licenses are issued through twenty full-time offices with contacts serving approximately three hundred and fifty towns and cities. There are three basic elements of the driver license program: examination, post license control, and record keeping. About fifty per cent of all applicants fail to pass the examination on their first attempt. The post license control function involves special examinations and interviews with problem drivers, and recommendations for corrective action. The records division supplies around-the-clock information by way of telegram, radio, and mail to enforcement agencies and to field officers of the department where questions of suspension orders or other legal documents are involved.

### License and Weight Service

Before 1920 practically all heavy property, such as livestock, machinery, and farm crops were transported by railroad. When people travelled more than fifteen or twenty miles, they went by rail. With improved and inter-linked highways came the trucks and buses. These became ever larger and capable of carrying more volume and weight. By 1927, it was obvious that these trucks and buses needed regulating as to size and weight. It was in this year that the legislature provided machinery for regulating the commercial use of the highways. Public safety and the preservation of the highways themselves depend on limiting loads and vehicle sizes. As road construction has improved, load limits have been raised. There is constant pressure on the legislature by commercial users of highways to seek more advantages in the use of our highways. The competition between the railroad and truckers lobbies is one of the keenest in Austin.

### Motor Vehicle Inspection

Acting on the assumption that mechanical defects of motor vehicles causes or contributes to the cause of highway accidents, the legislature in 1951 passed the Texas motor vehicle inspection act. This law makes it mandatory for all vehicles operating in Texas to be mechanically inspected annually. This inspection service is carried out by privately owned, but state supervised inspection stations. In addition to selecting and supervising inspection stations, members of the vehicle inspection service test and approve automotive equipment for sale in Texas, and enforce the law requiring inspection stickers on vehicles.

### Identification and Criminal Records

One of the most important phases of criminal law enforcement is the identification of the criminal. Indeed, there would be no criminal law enforcement if police officers could not identify those who violate our criminal laws. "Who done it?" is not only the big question in murder mystery novels; it is the big question when officers are called to solve a crime, big or little. Criminals, especially the professionals, try not to leave any clues or identification at the scene of the crime.

Several devices have been and are used by police departments in the identification of suspects. One of the oldest is the photograph. The Bertillion system, started in 1879, dealt with the measurement of the large bones of the body. The Henry system of identification by finger-

**Figure 41.** *Operation of the Transceiver Machine* sending criminal information in the laboratory. (Courtesy, Texas Department of Public Safety)

prints was first used in Chicago in 1911 when a criminal was convicted on fingerprint evidence, and the conviction was upheld by the Illinois Supreme Court. At the present time, the identification and criminal records division is broken into three sections: (1) fingerprints and records, (2) modus operandi, and (3) laboratory.

***Fingerprint and Records Section.*** Since no two persons have identical fingerprints, and since fingerprints of all persons can be so classified that those of any one individual can be located, if on record, in a matter of minutes, this method of identification is very efficient if the criminal leaves a fingerprint and if his fingerprints are on record. Fingerprints of most criminals are now on record, either in local, state, or federal agencies. Fingerprint records are also kept in this section of all persons who apply for jobs which require a criminal record check. Personal fingerprints submitted by schools, companies, or individuals for purposes of future identification in case of emergencies are also recorded.

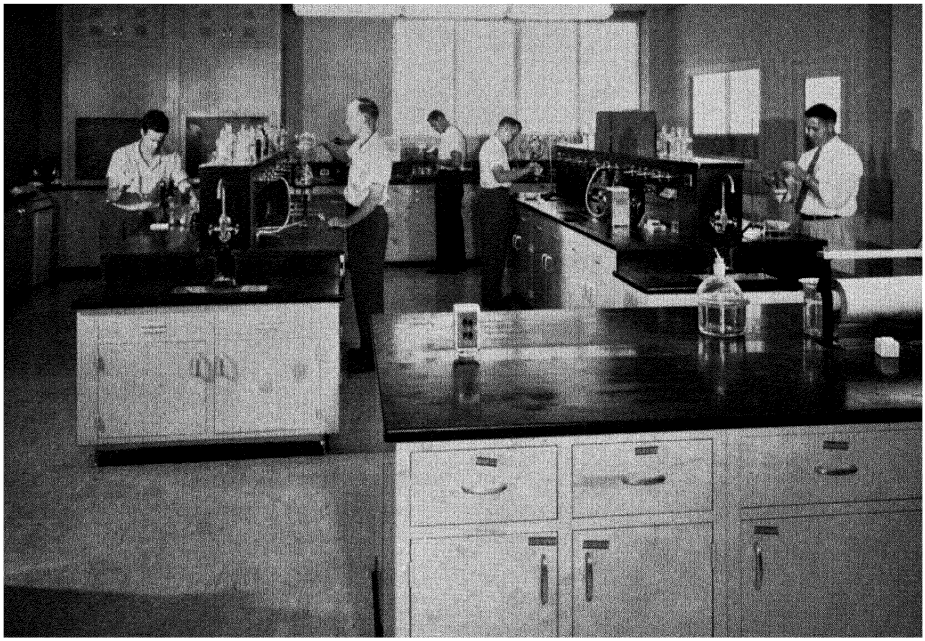

**Figure 42.** *A Scene in the Chemical Laboratory.* (Courtesy, Texas Department of Public Safety)

The name file index of the department of public safety contains more than four million names on criminals and missing persons. The suggestion that every individual, while still a child, have his fingerprints recorded has considerable merit.

***Modus Operandi Section.*** "Modus Operandi" as used here has reference to the method or mode of operating which the criminal follows, rather than the mode of operating this particular section in the department of public safety. This section receives and files reports on all known criminals. From these reports, it is possible by use of a punch card system to give an investigating officer a list of suspects for certain types of crimes. In other words, certain criminals are connected with certain crimes because of their "M. O.," or method of operation.

***Laboratory Section.*** Police officers now use the accumulated knowledge of science in their efforts to apprehend criminals. Through the analysis of firearms, bullets, photographs made at the scene of the crimes, and handwriting, typing, and other printed markings of extortion letters and notes, this section can often determine the name of the criminal. Seldom is a crime committed when something is not left that will respond to chemical analysis. A typical case handled by this section involved a murder by automobile in which an elderly

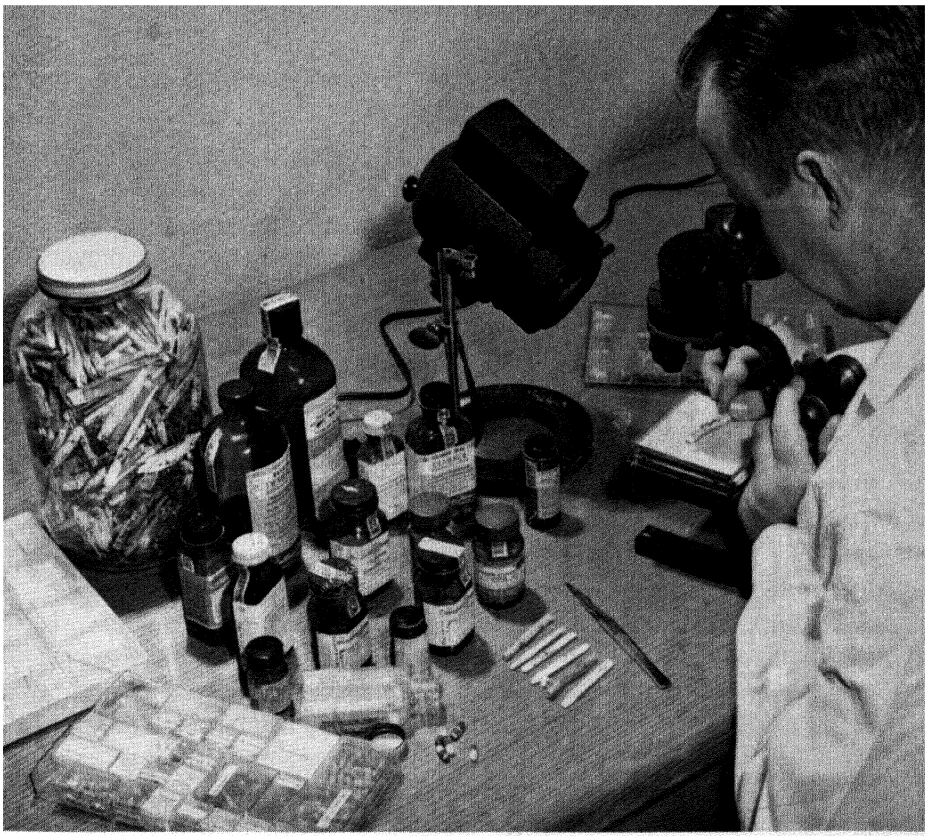

Figure 43. *Narcotics Laboratory.* Narcotics traffic and addiction continues to be one of the big problems confronting us today. Not only does the narcotic lower the moral decency of the user, its use leads to all other forms of major crime. During each year narcotics agents of the Texas Department of Public Safety apprehend hundreds of persons who sell or use narcotics. (Courtesy, Texas Department of Public Safety)

couple was killed. The following laboratory tests were performed: The blood from the victims and the blood on the suspect's vehicle were typed and matched. Hair taken from the suspect's vehicle was found to be the same as hairs from both victims. Headlight glass found at the scene of the accident fitted the headlight glass taken from the suspect's automobile. Paint found at the scene of the accident had the same chemical and physical composition, even in the four layers, as that taken from the suspect's clothing and vehicle. The suspect confessed. If all potential criminals could spend one day in this laboratory, they would be deterred from their criminal plans.

***Narcotics Section.*** Many crimes are committed by persons while under the influence of narcotics, or while seeking the funds with which

to buy the drugs. Narcotic control is a special problem in Texas, since Mexico is the source of much of the marihuana and heroin used in Texas. Enforcement of narcotic laws is very difficult because of the ease of concealment and transportation of these drugs. Once an addict becomes known to the officers, it is a matter of observing his movements to locate the source of supply and the users. Local, state, and federal officers cooperate in fighting this evil.

## DISASTER AND EMERGENCY

Under the Texas Civil Protection Act of 1951, with subsequent amendments, all departments, institutions, and agencies of state government are required to cooperate in a state program of defense and disaster relief with coordination by the governor, acting through a division of defense and disaster relief located in his office. Because of the far-flung activities of the department of public safety, this agency assumes a key position in administering this program. The department is given the specific responsibility for warning, communication, and police services. In event of a major disaster, the highway patrol captain in each of the twelve patrol districts contacts the headquarters office in Austin, from which plans are made to cope with the emergency. Through public safety officers and patrolmen, warnings are given of impending disasters, and communication lines are kept open for all those planning and administering emergency relief. No longer must the people of any local community suffer all the consequences of a major disaster; the burden is shared by all the people of the state, and in some instances by the people of the nation.

## PUBLIC SAFETY EDUCATION

There is no known way by means of which the safety of each individual can be guaranteed by the actions of public officers. For much of his own personal safety, the individual must rely on his own efforts. State officials can do much, however, by alerting individuals and groups to the existence of potential dangers, and by helping private groups and associations, as well as local enforcement officers organize their efforts and resources toward the building and execution of safety programs. In performing this safety educational service, the Depart-

ment works through the schools and colleges in the conduct of their driver education courses; assists in the preparation of newspaper, radio, and television news releases relating to safety; prepare exhibits and conduct driver training courses for police instructors; and furnish a vast amount of factual information relating to safety to various organizations, associations, and individuals who are interested in promoting safety. Almost every division of the department participates in the educational program.

### Selection and Training of Personnel

The appointment of all officers and employees of the department of public safety is made on the basis of merit. Each applicant must pass a written and an oral test, as well as a personal interview and an intensive background investigation before he is selected. All selected recruits must complete a rigid fourteen-week training course in the Law Enforcement Academy, maintained by the department. Subjects studied in the academy include criminal law, traffic law, accident investigation, history, geography, government, photography, fingerprint identification, first aid, the use of firearms, boxing, judo, and other police tactics, the rules of courtesy, public speaking, and other areas helpful in meeting the public. From time to time employees are called to Austin for in-service training. Continuous field training programs are also conducted for most employees. Local law enforcement officers also share in these training programs.

## BIBLIOGRAPHY

The best information about the highway system of Texas can be found in the annual reports of the State Highway Department, and in special pamphlets and information sheets prepared by this department. Two recent studies prepared by the Texas Highway Department are: *History of the Texas Highway Department,* 1959, and *Texas and the Interstate System,* 1959.

The Texas Department of Public Safety prepares a wide rang of pamphlets and reports showing a detailed analysis of the activities of the department.

# 14

# *Regulation of Business and the Professions*

## The Police Power

All state and local regulation is based upon what is known as the police power of the state. Not to be confused with the police authority exercised by sheriffs, constables, and police departments, which is but a small operational detail, the police power of a government is that broad area of authority by which it ministers to the safety, health, morals, order, and convenience of the people. It is not a power constitutionally granted, but a residual power inherent in the very concept of government. (A left-handed definition might describe it as the power of government not expressly denied by law.) It is the very backbone of governmental regulation, and as such affects immediately and individually every person living under the government which exercises it.

In any society the powers exercised by government should be appropriate to the times; in our changing society, therefore, the concept of the state's police power should be flexible. For instance, in early days the police power was used to restrain extravagance in dress, to punish heresy, and for other purposes now obsolete. In fifteenth century England penalties were imposed for throwing refuse and animal filth into rivers; slaughtering cattle in the city was forbidden; regulations were established governing millers, innkeepers, chimney sweeps, and ferry keepers. In those times such laws were perfectly appropriate exercises of what we now call the police power. In our modern day we have laws governing, in the interest of public safety, the construction of buildings, the storage, use, and transportation of explosives, and traffic and speed laws; to protect public health we have quarantine and sanitation laws; to preserve public morals there are laws pertaining to

gambling, liquor, places of amusement, prostitution, and obscene literature; to further the general welfare, laws have been made regulating professions, working conditions for labor, and various types of business activity. In addition, on the local level most city and town ordinances protecting health, safety, and general welfare fall under the category of exercises of the police power, which is delegated to the communities by the state and which may not be given or bargained away by them in any licensing or contracting action of their jurisdiction.

***Limitations on the Police Power.*** The exercise of the police power, of course, is not unlimited, since the rights of individuals are likewise safeguarded under the Constitution. When such restrictions or regulations are deemed to be an unreasonable interference with ordinary personal rights, they may be contested upon the grounds that they violate the "due process" and "equal protection of the law" clauses of the Fourteenth Amendment in the Federal Constitution.

In like manner, our state constitution provides that "no citizen of this state shall be deprived of life, liberty, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land." [1] However, a proper exercise of the police power is due course of the law of the land.

This power must be exercised in the public interest and necessity, and the restraints imposed must not be arbitrary or unreasonable.

## REGULATION OF BUSINESS

In view of the broad and comprehensive nature of the police power, it is evident that any discussion of regulation must limit itself to a very restricted field in the exercise of this power. Only the broad regulatory acts, therefore, are considered in this section.

***Incorporating Under Texas Laws.*** Early in its history, the state enacted laws regulating corporations doing business within its borders. Private corporations may be created by voluntary association of three or more persons who apply for a charter from the secretary of state.[2]

[1] *Texas Constitution*, Article I, section 19.

[2] Private corporations are of two classes: (1) those for nonprofit services, such as those organized for religious, charitable, benevolent or educational purposes; (2) those for profit, such as the ordinary business corporations. These should not be confused with the public corporation such as the incorporated municipality which frames and adopts its own charter.

The charter, or franchise, must set forth the name of the corporation, the purpose for which it is formed, the shares and amount of capital stock, and such other information as the secretary may require.

Out-of-state and foreign corporations incorporated under the laws of another state and wishing to do business in Texas are required to file with the secretary of state certified copies of their articles of incorporation upon which the secretary of state assures himself that the business of any such corporation is not in violation of the state's antitrust laws, its "blue sky" law, or other such laws. Under their ordinances, the towns and cities of Texas also have considerable regulatory power within their jurisdiction which is supplementary to that of the state.

***The Antitrust Laws.*** A primary objective in the state's regulatory policy has been to preserve competition. The state's original antitrust laws date from 1903. This act defined trusts, conspiracies, and monopolies as any combination or conspiracy in restraint of trade and for the purpose of lessening competition by controlling production, transportation, markets, or prices. Subsequent acts have further extended and defined the antitrust restrictions.[3] The enforcement of these laws is in the hands of the attorney general, who institutes suits or proceedings when in his judgment the public interest requires it. The difficulties of enforcement are common to all such laws. The lack of clearly defined rules as to what will lessen competition, and the obstacles to securing and arraying the elusive evidence to prove conspiracy or collusion make enforcement difficult.

There is no specific administrative agency for continuous supervision or observation of such activities, and attempts at enforcement have been sporadic.

Again the federal antitrust laws covering all corporations in interstate commerce have largely supplemented the state statutes and today offer the chief protection from monopolistic abuses.[4]

## Regulation of Banking and Credit Institutions

The regulation of banking and various credit enterprises in Texas is in charge of three closely integrated state agencies, the finance commission, the department of banking and the state banking board.[5] The

[3] Notably those of 1907, 1919, 1923, and 1927.

[4] The Sherman Antitrust Law of 1890, the Clayton Act of 1914, and the work of the Federal Trade Commission in discouraging unfair trade practices are the chief sources of this protection.

[5] Appointed by the governor with concurrence of the senate for six-year overlapping terms.

finance commission is composed of nine members, six of whom constitute the banking section, and the other three the building and loan section. Each section determines certain policies relating to its own institutions. The finance commission as a unit formulates the general policies for administering the state banking code for the protection of bank depositors and stockholders. It appoints the banking commissioner who serves at the will of the commission and directs its work.[6]

The chief operating agency for carrying out the policies of the finance commission is the department of banking. This department is under the direct supervision of the banking commissioner. Its duties pertain to such matters as a periodic examination of state banks and the investigation of credit unions and building and loan associations.[7] It approves or disapproves the merger or reorganization of state banks and the closing and liquidation of insolvent banks.[8]

Operating as an adjunct to the department of banking is the state banking board, which is an ex-officio body composed of the attorney general, the state treasurer and the banking commissioner. This board issues licenses for state banks and credit unions and passes on the closing of banks and the reopening of closed banks. It also serves as a board of appeals for directors, officers, and employees of state banks.

Serving in an advisory capacity to the banking commission is the credit union advisory commission.[9] Its chief duty is to make recommendations for the improvement of credit unions.[10]

***Securities.*** Regulation of the sale of stocks, bonds, and other securities has long been recognized as a valid exercise of the state's regulatory power. The rapid shift of wealth from direct ownership of real property and business enterprises into various forms of securities has been a marked trend of the industrial age. With no early laws to regulate the sale and manipulation of such issues, misrepresentation and fraud ran rampant. Contriving promoters with "get-rich-quick" schemes have preyed mercilessly upon a security-minded and gullible public with no facts in hand by which to judge values and detect frauds.

In Texas, cases of such practices would fill volumes. Almost every community remembers the enterprising salesman who peddled shares in the "lost gold mine," the "sure shot" oil fields, or the "ground-floor"

[6] With senate confirmation.

[7] State law requires that state banks be examined.

[8] The department of banking is charged also with the duty of reviewing the trust funds of perpetual care cemeteries.

[9] Composed of nine nonsalaried gubernatorial appointees.

[10] Credit unions are nonprofit investment corporations.

opportunity of some insurance or security concern. Their gold-embossed and artistically decorated stocks bore promises of fabulous returns, but frequently with little more economic backing than chunks of the bright blue sky. The rule of *caveat emptor* ("let the buyer beware") was the guiding principle in most corporate transactions and security sales.

To offer protection, all states except Nevada have enacted laws to regulate security issues. These acts are commonly known as "blue sky" laws.[11]

The first Texas securities law, somewhat tardy, came in 1935. The present and more basic law was enacted in 1957, with amendments added in 1959.[12] The act places the responsibility for the regulation of security transactions in Texas in the state securities board.[13] A security commissioner, appointed by the board, administers the provisions of the act. The attorney general also is made responsible for the proper enforcement of the law.

The agency regulates the sale and distribution of securities in Texas, with the exception of certain specified transactions and securities that are exempt from the act.[14] The board operates through three divisions:

*The Securities Registration Division.* The securities registration division, by examination, research, and analysis, assists the commissioner in determining approval of application for registration of proposed security issues and whether such issues meet the standards of the law.

*The License Division.* This division examines license applications for securities dealers, salesmen, and oil and gas interest dealers. This

[11] The term "blue sky" originated in the Kansas Legislature in 1911 when a securities bill was being debated in that body. A member, in arguing for the measure, declared that some dishonest promoters would sell shares in the blue sky itself. The statute was dubbed the "blue sky" law and the term was picked up and applied to similar legislation in other states. The term has no other significance or meaning.

[12] Senate Bill 294, Fifty-fifth Legislature, (1957).

[13] The three members of the state securities board are appointed by the governor with senate consideration. The securities commission serves at the will of the board.

[14] General exemption securities include the following:

1. Those issued by the United States Government or any of its agencies, state, or political subdivisions
2. Securities issued by national and state banks and building and loan associations
3. Securities tested on the recognized and approved stock exchanges
4. Securities of non-profit and charitable organizations
5. Securities of insurance companies unless made to another company
6. Securities issued by railroads and by utilities subject to regulation by the railroad commission
7. Securities of farm cooperatives unless sold to non-members or on a commission basis
8. Minor sales to one or more persons
9. Ordinary notes and commercial paper issued in the course of conducting a business.

division also issues licenses to deal in general securities. Licenses may be issued to individual dealers and to corporations or partnerships. It is the duty of the license division to ascertain whether the applicants meet the standards of the securities act.

*The Enforcement Division.* This division is concerned with violations and possible violations of the securities act. In performing this duty it investigates and examines dealers' records and transactions, inspects corporate records, interviews witnesses, and investigates all possible violations of the law. In case of violations, evidence is presented to the distirct and county attorneys, and to the grand juries when requested. This division works with other state officials and with federal agencies in enforcing the law.

The primary purpose of securities regulation is to prevent fraud and other illegal practices. This is done by the licensing of dealers and salesmen, and by registration and approval of security issues. Enforcement involves revoking and suspending licenses, examining the practices of dealers, investigating the financial status of security issues, promulgating rules and regulations, and aiding in criminal prosecutions when necessary.

Security laws are not intended to guarantee buyers sound or profitable investment. In this, as in most other phases of economic life, the rule of *caveat emptor* still prevails. The only purpose of such laws is an attempt to erect safeguards against fraudulent practices.

***State Authority Limited.*** State security laws apply only to sales made within the state. The authority of the state is limited by its own boundaries and to the intrastate nature of such transactions. Most securities are sold on a national scale and the transactions involve interstate commerce which are beyond state control. Sales that are completed outside state by mail cannot be regulated by the state.

Fortunately, security sales made on a national basis through the mails and on the stock exchanges, are under federal regulation.[15] The federal laws require the registration of such securities with the Securities and Exchange Commission, accompanied by a full disclosure of all facts.[16] Any buyer can secure a copy of the corporation's prospectus which contains information about the company and the securities which he wishes to buy.

[15] The Securities Act of 1933 and the Securities and Exchange Act of 1934.

[16] By an amendment in 1945, issues not exceeding $300,000 are exempt from registration. The exemption, however, is not automatic. In such cases the company must file an abbreviated registration statement and get the approval of the Securities and Exchange Commission before the issues are exempt.

In the overall picture of security regulation, the state laws are largely supplementary to the federal law. In this respect they reach an important area that lies outside federal jurisdiction. Door-to-door peddlers, local sales promoters, and security transactions which embrace a wide variety of activities in this field are under the state's regulatory authority.

## Insurance

The insurance business has grown to be one of the largest and most important businesses in the state. More than 1,800 companies are

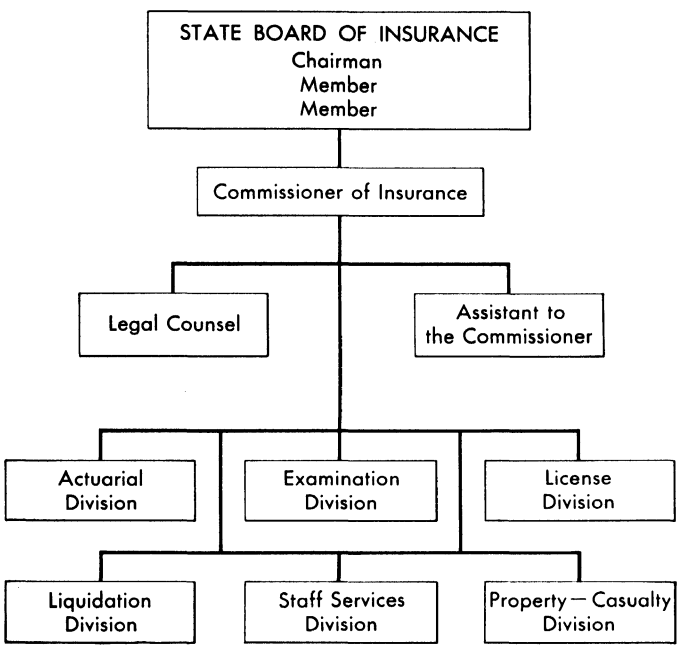


**Figure 44.** *Regulatory Authority: Insurance.*

licensed to operate in Texas and nearly two-thirds of these are home companies.[17] Life insurance in force in Texas exceeds $20 billion. This, of course, is only one phase of the varied insurance business.

Texas enjoys an unusually high number of home companies. This is

[17] The total number was 1,838 (1960). Insurance companies incorporated in the state are termed "home" or "domestic" companies. Those incorporated and domiciled in other states, but licensed to do business in Texas, are called "foreign" or "out-of-state" companies. "Alien" companies are those incorporated and domiciled in other countries. All insurance companies operating in Texas must secure a license from the state board of insurance.

due largely to a special and unusual act passed in 1908 known as the Robertson Law. In those days the state's economy was much in need of investment capital. The law required life insurance companies to invest in Texas three-fourths of all reserves for policies written in the state. As a result of the act, many of the outside companies withdrew from Texas, which opened the way for a very prolific growth of home companies. Under later liberalization of the law, but due primarily to the changing character of the investment markets and new types of insurance, the out-of-state companies returned to do business in Texas. Life insurance companies have become one of the chief sources of investment funds in this country.

The regulation of insurance is almost entirely a state function. Federal regulation is limited largely to the anti-monopoly laws and to securities sold in interstate commerce. The regulation of writing and selling insurance, which aids the supervision of the insurance business, is primarily a state duty.[18]

Insurance is a business very closely associated with the public interest. Although subject to close regulation, it is a business of intense competition. Dozens or even scores of companies may be operating in a single small community.

***How Insurance Is Regulated.*** The task of regulating insurance in Texas rests with the state board of insurance consisting of three members.[19] The board is responsible for the overall enforcement of the insurance laws.[20] A commissioner of insurance is appointed by the board and is directly in charge of the department of insurance in its administrative duties.

Regulation begins with the formulation and incorporation of an insurance company. All insurance companies must register and secure a license from the department. Certain minimum capital requirements must be met in order to establish financial responsibility and protect the policy holders.[21] This is to prevent companies from being set up on unsound financial foundations.

[18] The U.S. Supreme Court declared that insurance was not commerce and therefore not subject to federal regulation (*Paul* v. *Virginia.* 8 Wallace 168 [1869]). This decision was reversed in the *U.S.* v. *South-Eastern Underwriters Association,* 322 U.S. 533 (1944), after state regulation was well established.

[19] Appointed by the governor and confirmed by the senate.

[20] The board is directly responsible for determination of policies, the making of rules and rates, and the disposition of cases appealed from the commissioner of insurance. With these exceptions the duties of the board are performed by the commissioner.

[21] The law requires a minimum capital and surplus of $200,000 for a life insurance company. Not more than one-third of this can be invested in a home office building. A

The proper investment of the money of insurance companies is another phase of regulation. Insurance companies are under the "blue sky" laws and the registration and supervision of their securities is in the hands of the department of insurance.

The premiums paid to companies go for the protection of the policy holders and, in addition, to build up savings accounts represented by the loan or cash surrender values of the policies. As a result, life insurance companies have especially large sums of money to invest. These investments represent the assets of the company and the security behind the holder's policy. For this reason, such investments must be made according to the requirements of the law.

In addition to establishing and maintaining financial responsibility of insurance companies there are other broad phases of regulation which may be summarized as follows:

1. Examining and licensing of insurance agents and conducting hearings concerning complaints brought against companies or agents
2. Reviewing insurance policy forms for life insurance, annuity insurance, and accident and sickness insurance
3. Promulgating rates and regulations and approving standard forms for writing of fire and casualty insurance. This includes the grading and rating of towns for fire prevention programs and establishing key rates for fire insurance. Fire prevention education is a part of this work. An important phase of casualty insurance is administering the Texas Safety Drives Insurance Plan. The purpose of this law is to encourage careful driving by awarding lower insurance costs to those who drive carefully and without accidents
4. Promulgating rates on workmen's compensation insurance, and auditing of workmen's compensation policies to see that they are properly classified and rated.

## Transportation

Texas has enacted considerable legislation for regulating transportation. This work is under the Texas railroad commission which was originally created in 1891 for the purpose of regulating railroads and to which was later added the regulation of express companies, docks, wharfs, terminals, and interurban railways carrying freight.

In its regulatory activities the railroad commission functions in four divisions as indicated in the chart on the next page.

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fire insurance company must put up $150,000 and a casualty company is required to raise $225,000. A minimum of $400,000 of capital and surplus is required if a company plans to write all lines of fire, casualty, and marine insurance.

Through these divisions, the commission has general jurisdiction over all classes of common carriers in Texas. The main office and rate division administers the laws relating to railroads, holds public hearings, and engages in joint hearings with the Interstate Commerce Commission when both interstate and intrastate rates and regulations are involved. It receives reports, makes investigations and surveys, main-

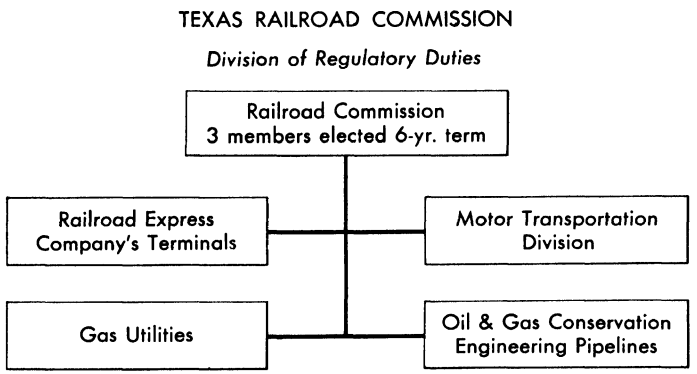


**Figure 45.** *Regulatory Duties of the Texas Railroad Commission.*

tains records regarding the fiscal structure, valuations, revenue, and expenses in train terminal traffic service of Texas railroads.[22]

***Federal Control Paramount.*** The control of interstate rates is under the power of Congress and the national laws are administered by the Interstate Commerce Commission in Washington. Since this conveys the authority to protect interstate commerce from discriminatory intrastate rates, the supervision of railroads has passed largely into the hands of the federal commission.[23]

***Motor Bus and Truck Regulation.*** In less than two decades, motor bus and truck transportation has grown from a local business into vast common carrier enterprises operating throughout the country. Their use of the state highways gives the state, under its police power, a more extensive jurisdiction than it has over the railroads.

The state's regulatory laws first began with issuing licenses, and were followed later with load limitations and a few other restrictions in the interests of safety.

The motor transportation division administers the laws relating to

[22] See annual report of railroad commission, *Railroad and Express Statistics.*

[23] The power to adjust intrastate rates in unjust discrimination against interstate commerce was upheld in the *Shreveport Rate Case,* 234 U.S. 342 (1917).

the movement of passengers and freight for hire in Texas. It issues certificates and permits to operate trucks and buses, holds public hearings, receives reports, and makes inspections for the enforcement of the commission's regulations under the motor carrier law.

The following are some of the more specific features of the motor carrier laws which concern the general safety and establish the legal use of the highways:

1. Drivers cannot drink on or off duty
2. Drivers must be 18 years of age
3. Trucks must be in perfect repair
4. Drivers must leave lights on when parked at night
5. Drivers cannot work more than 10 consecutive hours
6. Commission permit must be posted on both sides of the truck
7. Trucks must have special permission to carry explosives and must have special insurance limits
8. Truck loads are limited to 72,000 pounds.

The more important motor bus rules and regulations laid down by the commission for the safety of passengers are as follows:

1. Drivers must not drink on or off duty
2. Bus may refuse to carry anyone who is drinking or otherwise disorderly
3. Bus must stop for anyone who wants to ride if the person has the fare and the bus is not full
4. Driver cannot smoke while driving
5. Bus must stop at all railroad crossings
6. Bus must be cleaned and disinfected every 24 hours
7. Driver or employee must wear badge showing his position with company
8. Bus must be heated during the winter
9. Bus must be lighted inside at night and maintain specified outside lamps and reflectors
10. Company cannot discontinue service, change fares or timetable without permission of the commission
11. Bus must leave on schedule
12. Bus must issue baggage check free with a limit of 100 pounds of baggage
13. Driver must not converse with passengers except to give necessary information.

***Federal Regulation of Buses and Trucks.*** Bus and truck traffic engaged in interstate commerce is also subject to federal regulation by the Motor Transport Act of 1935. (Due to the fact, however, that motor

carriers operate over state highways, the federal act makes broad concessions to state authority.) This federal act requires all such carriers to register with the Interstate Commerce Commission and secure licenses or certificates before operating. The regulatory functions pertain primarily to matters of safety and service. Such companies are required to deposit bonds or insurance policies to protect the public against injuries. As yet, the commission has not exercised its authority in regulating rates. Trucks operating for local purposes, those operated by cooperative associations, or exclusively for carrying agricultural products, are exempt from the federal act.

**Regulation of Public Utilities**

Texas is one of the few states that has no state utility commission and no general law for regulation of all utilities. This is a task of the incorporated towns and cities where utilities are located. Such places, by ordinance, can regulate the rates and compensation to be charged by electric, gas, water, sewer, telephone utilities, street car companies, and other companies or persons using the streets and public grounds of the city or town. The governing bodies also can prescribe the rules and regulations under which such commodities or services are furnished.

The state law recognizes the established rule that the rates set by the governing bodies shall not deny the companies a fair rate or return on a fair value of property used and useful in rendering such service to the people, but in no event shall the return ever exceed eight per cent.[24]

A gas utility has the right to appeal to the railroad commission for a review of the rate when the city government orders any rate reduced. In case a gas utility makes application to the city for a change in existing rates, and the city rejects such an application or refuses to act upon it within sixty days, the utility can appeal to the commission. If the utility is dissatisfied with the commission's decision, it may file a petition setting forth its objections in a court of competent jurisdiction.

The railroad commission also has far-reaching powers to establish rules and regulations concerning all containers and equipment, together with the storage, transportation and dispensing of liquefied petroleum gases. The equipment and appliances to be used for such gases must be designed, constructed, and installed according to specifications laid down by the commission. The use of butane gas in homes is widespread in Texas. Any home, commercial, or public building in-

[24] Acts of the Forty-fifth Legislature (1947), Chapter 144, p. 274.

stalling butane gas must follow specifications set forth by the railroad commission.

## Liquor Control

State regulation of the manufacture and sale of alcoholic liquors and beverages is one of the oldest problems of state government. It is a perennial political issue in Texas.

The earliest laws on the subject date back to the Republic of Texas. Illustrative of the early recognition of this problem was an act in 1840 which required a liquor dealer to qualify before the chief justice of the county and execute a bond in order to secure a license, conditioned that the licensee "doth constantly keep a respectable and orderly house and both prohibit and prevent gambling, quarreling, and other misconduct within the premises of said tavern or house of entertainment."

In 1854 the first local option law was enacted in Texas, and some ten years later came the first restriction on the sale of liquors on Sundays. Our present constitution, adopted in 1876, carried a provision affecting the sale of liquor.[25] This same act became the prohibitory amendment in 1919.

Repeal of Prohibition came in 1933 with legalization of 3.2 beer, and total legalization with the local option act of 1935, which also legalized the sale of all kinds of intoxicating liquors but with a mandate which prohibited the open saloon.

The Texas regulatory laws was passed in 1935 and is termed the "Texas Liquor Control Act." This act represented a fusion of principles appearing in other state laws, which in turn has been influenced by English and Canadian law. In the principle of specialized administration in a single board, it also followed the example of the national government.

***Work with Federal Authorities.*** In varying degrees the Texas liquor control board works with federal agencies. The Federal Alcohol Administration issues, suspends, and revokes basic federal permits to conduct the liquor business in interstate commerce. It also regulates marketing practices, including such features as labeling, advertising, and selling. The Alcohol Tax Unit, a separate division of the Treasury Department, regulates manufacturing and other features of marketing. The unit has been especially active in combating moonshining as a tax evasion evil.

[25] *Texas Constitution,* Article XVI, section 20.

***Main Regulatory Burden on State.*** The Twenty-first Amendment left to the respective states the power and duty to regulate importation, transportation, possession, and sale of intoxicating liquors within their borders. These include multiple duties such as licensing, state taxation, regulation of trade practices, manufacturing, labeling, and advertising, separation of wholesale and retail outlets, and many other features.

Upon the Texas board, therefore, rests the burden of regulating many complex phases of the alcohol industry where the federal jurisdiction stops, or where the state laws apply to the varied phases of the industry within its own border.

***Chief Features of the Texas System.*** The cardinal principles of the Texas liquor control system may be briefly stated as follows:

1. The Texas Liquor Control Board is the general administrative agency which has general charge of all phases of enforcement. The open saloon is prohibited in Texas. Under the legal definition, the saloon is a place where "spiritous" beverages are sold, or offered for sale by the drink.
2. Local option is preserved and communities are authorized by vote to determine from time to time whether or not alcoholic beverages of varying content may be sold. Under local option, beer may be legalized in exclusion of other types of beverages. Precincts within a county can vote either wet or dry regardless of the status of the remainder of the county.
3. The package store system is adopted for the sale of vinous and spiritous liquors in packages only. For consumption on premises where sold, only beer and wine not exceeding 14 per cent alcohol by volume may be licensed according to local option status of the territory. The sale of liquor in dry territories is permitted in drug stores upon prescription of licensed physicians.
4. Prevention of interlocking control and ownership between all classes of wholesale and retail establishments. In like manner, manufacturers of vinous and distilled spirits may sell only to holders of wholesale permits. Holders of wholesale permits for vinous and spiritous liquors are restricted to selling only to holders of qualified retail licenses and permits. It is also unlawful for any person to have an interest in more than five package store businesses.
5. A graduated tax is levied on all alcoholic beverages and is administered by the liquor control board.

***Enforcement of the Liquor Laws.*** The alcoholic beverage industry presents a social problem which concerns all classes of people. For this reason, the liquor control board has been vested with far-reaching power to make rules and regulations in the public interest. The whole act is to be construed in this light as indicated in Article I, section 2, which reads:

This entire act shall be deemed an exercise of the police power of the state for the protection of the welfare, health, peace, temperance, and safety of the people of the state, and all its provisions shall be liberally construed for the accomplishment of that purpose.

The board is given power to adopt a standard of purity, quality, and identity of all liquor, and to formulate rules governing labeling and advertising. The board maintains a central laboratory in Austin for regular testing of alcoholic beverages. Its inspectors, often aided by federal men, carry on a constant search for stills and moonshine operators. The bootlegger is still a familiar figure in Texas and must be dealt with constantly. In like manner, disorderly places commonly referred to as "honky tonks" or "joints" operating under liquor permits, as well as social clubs dispensing liquor illegally, require surveillance and investigation, much of which is done by the board's undercover men.

The field forces are organized into seventeen enforcement or administrative districts. Special squads are maintained to concentrate on such problems as illicit stills, manufacturing and bottling, especially of wine, and other marketing practices.

All criminal prosecutions under state laws are instituted in the local county courts and the responsibility for prosecuting violators rests with the county attorneys. Operation of establishments where liquor is sold in violation of the law is enjoined by the county or district attorney or by the attorney general acting in behalf of the liquor control board. The duty of enforcing the liquor laws falls not alone upon the board and its agents, but upon all local peace officers, especially the district and county attorneys, county judges, and municipal authorities.

## AGRICULTURE

The states were pioneers in setting up governmental agencies to administer the various laws pertaining to agriculture. The chief functions of the early bureaus were to collect and publish farm statistics, and to exchange information with other states and departments. In 1887 the legislature created the Texas bureau of agriculture, and the first annual report, dated December 1, 1888, was a statistical document of over 300 pages dealing with geography of the state, its rivers, farmers' organizations, rural education, farming, and a brief history of

each county. The present Texas department of agriculture was created in 1907 and has grown to become one of the most important regulatory and conservation agencies of the state. Its varied duties are carried out through several divisions and service bureaus.

One of these is the division of quarantine and pest control. Its work is concerned primarily with enforcing the plant disease and pest control laws of the state and cooperating with corresponding agencies of other states and the federal government. The Texas law prohibits the shipment of any nursery stock, fruits, trees, flowers, or shrubs into Texas by anyone outside the state without first having filed with the department a certificate of inspection from the proper authorities in the state of origin. The department also requires licenses of all greenhouse operators and florists within the state and maintains inspection services.

This division administers quarantine control measures against plant diseases and plant pests. When diseases or pests are found, it is the duty of the commissioner to maintain and enforce necessary quarantines against infested areas both at the boundaries and within the state.[26]

Other activities of the division include the enforcement of the uniform citrus fruit grading laws and the citrus maturity act; laboratory testing and inspection services are maintained to check maturity and color processes of citrus fruit. It also enforces the bonding and licensing regulations which apply to handlers of citrus fruits, vegetables, and other perishable agricultural commodities.

***Marketing Services.*** This program includes a wide range of inspection and supervisory services, for example: (1) inspection of weights and measures, maintenance of weight standards received from the U.S. Bureau of Standards, the licensing of public weighers, and the supervision of local weights and measures inspectors for cities and towns; (2) inspection and supervision of bonded warehouses under the public warehouse laws, including administration of the Texas public grain warehouse law; (3) assistance and advice in the organization and operation of cooperative marketing associations; (4) enforcement of the registration of frozen produce, regulation of the sales of hormone type weed killers and the sales of fungicides and insecticides; and (5)

[26] The disease and pest control projects include: (1) citrus canker, (2) sweet potato weevil and Irish potato tuber, (3) citrus black fly, (4) phony and mosaic peach disease, (5) pink boll-worm and other pests.

cooperation with federal agencies in operating the Texas market news service for the dissemination of current marketing information on livestock, poultry, eggs, rice, fruits, vegetables, pecans, and turkeys.

***Seed Inspection.*** Texas laws require that all seed offered for sale in Texas as planting stock be tested for purity and germination percentages, examined for noxious weed content, and tagged with an official label bearing laboratory analysis and other information. The purpose of this service is to prevent the selling of inferior seed or seeds with large weed content by dealers or truckers.

## THE PROFESSIONS

Most trades and professions in Texas are regulated in some way by specific regulatory statutes. The numerous laws pertaining to training, qualifications and certification, and rights and duties of teachers are illustrative.[27]

In a similar manner the other professions are regulated by general law, while others are singled out and subjected to "specific regulatory acts aimed at maintaining the standards of the professions as well as safeguarding the public interest." This is especially true of medicine and such other professions as are closely related with the public interest.

Only a few of the numerous regulatory activities of the state in this realm can be mentioned. The usual procedure is to set up a state agency vested with authority to administer the laws pertaining to the given professions which includes the work of giving examinations and issuing licenses in accordance with the statute. A glance at the chart of state administration (Chapter 6) will reveal these numerous agencies.

To illustrate the nature and intent of such laws and the activities of such agencies, the nature and functions of the following boards are summarized:

### The State Board of Pharmacy

This board is composed of six members, who are reputable pharmacists appointed by the governor. They reside in their home towns, conduct their own businesses, but give attention as needed to the enforcement of the state pharmacy law. The members draw a per diem allow-

[27] Discussed in Chapter 10 on Public Education.

ance for travel and actual duty. The board selects a secretary on a regular state salary, who has active management of the board's duties.[28] The board likewise employs three inspectors who travel over the entire state inspecting drug stores and enforcing the pharmacy law.

Applicants for licenses to practice pharmacy in Texas are examined by the board of pharmacy on the following subjects: posology, chemistry, materia medica, physiology, pharmaceutical and chemical problems, pharmaceutical laws, bacteriology, and practical prescription compounding.

Applicants for the examination must be graduates of a reputable college of pharmacy with a pharmacy course of not less than four years. The purpose of the fees assessed against all pharmacists is to pay the expenses of the board which are provided in the biennial appropriations.

### The State Board of Medical Examiners

The principle function of this board is to safeguard the ethics of the profession and to protect the people against incompetents and dishonest persons who profess to be physicians and surgeons.[29]

The board passes upon the entrance requirements of applicants for matriculation in medical colleges, and on the length of the courses, equipment, hospital facilities, libraries, clinics, and other essentials of a medical school, in order to assure compliance of the school with the provisions of the law.

It supervises the granting of licenses to practice medicine in this state, and investigates complaints charging malpractice, immoral or unethical practices, and prosecutes such violations when the evidence is sufficient. The board can revoke a license in case of conviction of a felony.

### The Board of Examiners in Optometry

The optometry law in like manner sets up a board of five practicing optometrists.[30] The board meets and elects officers. Its duties may be divided into two main divisions. One is to supervise the profession and see that the law is enforced. The other is to pass upon the qualifications of applicants and hold examinations for those entering the profession

[28] The secretary's office at present is 911 Insurance Building, Dallas, Texas.
[29] Office of secretary, 918 Mercantile Building, Dallas, Texas.
[30] Appointed by the governor with overlapping terms of six years each.

of optometry. The examination consists of seven distinct subjects pertaining to the profession.[31]

The board, at its discretion, may refuse to issue a license, or may revoke or suspend any license for any misconduct considered inimical to the interest of the profession.

It is unlawful for anyone to practice optometry in Texas in any way without first obtaining a license by the above procedure. Illegal practices include falsely impersonating a licensed optometrist, buying or selling a diploma or license, or practicing optometry from house to house in the sense of a peddler.

In order to be eligible for the examination, the applicant fills out forms prescribed by the board, furnishing satisfactory evidence of age, moral character, citizenship, and education. A high school education is required, plus specialized training in optometry of not less than four terms of eight months each in a recognized school of optometry.[32]

In similar manner, the other professional boards examine applicants, issue licenses, and supervise the members of their respective professions in accordance with provisions of the law and the standards of the profession. In each case there are two primary duties of these boards. One is to establish and maintain professional standards by issuing licenses; the other is to maintain standards of professional ethics among their membership by watching for malpractices, fraud, and other professional misconduct that might occur.

### Law Examiners and the State Bar

The board of law examiners, acting under rules laid down by the supreme court, passes upon the eligibility of candidates for examination to practice law in Texas, conducts the regular examinations, and issues licenses to the successful applicants. The examinations are conducted in Austin.

The state bar was created in 1939 as an agency of the judicial department. Membership in the state bar is required of those who prac-

[31] The seven subjects are practical optics; theoretical optics; physiological optics; theoretical optometry; practical optometry; anatomy and physiology of the eye; pathology of the eye.

[32] Students interested in more detailed information pertaining to the requirements of any particular profession in this group, or the work of its agency, should write to the state board and secure copies of rules and regulations and the state laws pertaining to the subject. The name and address of the secretary of the particular board for the year can be found in the *Texas Almanac* or may be secured from the legislative reference librarian, Capitol station, Austin, Texas.

tice law in Texas. The purpose of the state bar is to set up a sort of self-governing system for the legal profession in which the highest court in the state serves as a rule-making body. The state bar directs its attention to such matters as: (1) the advancement of the administration of justice and the science of jurisprudence, (2) encouragement of cordial intercourse among members, (3) improvement in the relations between the bench, the bar, and the public, and (4) protection of the professional interests of its members. The state headquarters of the bar are in its own building located in Austin.

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# *Labor Laws and Workmen's Compensation*

With the passing of the frontier and the rise of industrialism, the responsibility of the government for the protection of workers has come to be a recognized function of both the state and the nation.

## The Background of Texas Labor Legislation

Texas naturally trailed the older states in enacting labor legislation, as the problems of industrialism were late in arriving in the state. As early as the Reconstruction period, however, laws were enacted authorizing issuance of mechanics' liens to insure payment of overdue wages. The act passed in 1869 is ordinarily considered as the first pro-labor legislation in the history of the state. Broader provisions for mechanics' liens, and prohibition of garnishment of current wages were incorporated into the constitution of 1876.

Texas labor laws have followed no regular pattern of development. During the 1880's the Knights of Labor movement was at its height, and several severe strikes took place centering in Jay Gould's railroads and culminating in a tragic gun fight between laborers and peace officers near Forth Worth in 1886. This costly strike made clear to the legislature the increasing need for a framework of equitable labor laws. Several new laws were enacted in the decade which followed, when the legislature placed upon the statute books fundamental rules fixing and defining the liability of the employer toward injured workmen. These laws became the basis for our present Workmen's Compensation Act. They were signed by Governor James Stephen Hogg, who is also remembered by Texas labor as having signed the 1893 bill making Labor Day a legal state holiday.

Other labor acts came at irregular intervals during the following years. The law of 1899, long awaited by Texas labor, gave working men

the right to "Associate themselves together and form trade Unions." This law, of course, represented a milestone in the history of organized labor in the state. In 1903 came the statute prohibiting railroad employees from working more than sixteen hours without eight hours of rest. Other acts were designed to improve working conditions and raise safety standards on the state's railroads and street railways and in the coal mines.[1]

In 1909, an act setting up the bureau of labor statistics marked another great step forward in labor legislation. In addition to gathering vitally needed statistics, the agency was empowered to probe into unsanitary and dangerous conditions affecting working men. The commissioner in charge was to be appointed by the governor and was allowed only one clerk and one factory inspector, each at a salary of $100 per month.

By this time Texas labor laws were beginning to grow into a meaningful body of law. Unions were legally recognized, many safeguards to labor had been established, and an agency had been created which was to have an important part in supplying needed information as a basis for subsequent legislation. The varied labor laws enacted through 1947 are classified and discussed below.

## FEDERAL-STATE JURISDICTION IN LABOR LAW

The regulation of labor-management relationship is recognized today as both a national and a state problem. Although lacking expressed powers to regulate labor, the federal government has enacted extensive labor legislation in recent years. The earlier federal laws pertained largely to government employees, government contractors, and employees engaged in interstate and foreign commerce. Supplementing the earlier laws have come several far-reaching federal labor acts in recent years.

The National Labor Relations Act of 1935 further extended the powers of Congress, and attempted to guarantee collective bargaining. The act was ministered by the National Labor Relations Board (NLRB) operating through nineteen regional offices. Its main purpose was to mediate the differences arising between capital and labor in the interest of industrial peace.

Another extension of federal regulation of labor came in the well-

[1] Acts of 1903, 1905, 1907, 1909.

known Wage and Hour Law of 1938. This far-reaching act provides minimum wages and maximum hours of labor for industries engaged in interstate commerce.

Then in 1947 was passed the hotly contested Taft-Hartley Law, which carries many provisions aimed primarily at curbing the powers and activities of unions as such, and especially the officials of labor unions.[2] In 1959 Congress passed the bitterly debated Landrum-Griffin Bill which imposed further regulation on the internal affairs of unions and proscriptions on union activities. Contrary to most federal labor laws, these acts have been considered as anti-labor, at least by the majority of labor leaders.[3]

## Fields Covered by State Labor Laws

***Intrastate Commerce.*** The question arises as to the legal areas in which the state labor laws can operate in view of the extensive federal legislation on the same subject. Generally, state labor laws are applicable to that area classified as *intrastate* commerce, whereas the federal labor laws apply primarily to the general area of *interstate* commerce. It is conceivable of course that almost any local business may engage in activities that would be held by the courts to "affect interstate commerce." It is also true that the Congress and the courts have consistently widened the scope of business and activities as affecting interstate commerce and therefore subject to federal control. There still remain, however, many types of business of an intrastate nature not subject to federal control. Among these may be included retail stores, hotels, laundries, restaurants, local construction operations, and many others. In

[2] The Taft-Hartley Act provisions: Six types of conduct are prohibited in the new federal law as "unfair labor practices" on the part of unions or their agents. Although not defining mass or violent picketing, as such, the federal law makes it an unfair labor practice for a labor union or its agents to restrain or coerce employees in the exercise of their right either to organize and bargain collectively or to refrain from doing so. (Section 8) (b) (1). Union practices which are aimed at under the federal law, according to its sponsors, and which are prohibited as unfair labor practice, include the following:
Mass picketing
Threats of violence or reprisal in an organization campaign
Coercive organizing by "goon squads"
False electioneering statements by unions
Defamatory articles and statements
Actual violence to prevent a man from working
Preventing employees from entering or leaving plants
All types of coercion designed to prevent people from going to work who wish to do so.

[3] Landrum-Griffin Act provisions: secret ballots; fair dues for union members; unions to make financial reports; elimination of "no-man's land" between state and federal jurisdiction in some labor-management disputes; prohibition of "blackmail" picketing and secondary boycotts.

fact at least one-half of the working people of the state are employed in business operating in intrastate commerce and are supposedly not subject to the federal labor laws. These labor groups are regulated and protected at least in theory solely by state labor laws.

***Interstate Commerce.*** State labor laws may also apply to the general area of interstate commerce under certain conditions. It must be remembered that state sovereignty is all-inclusive except for those powers and functions delegated to the nation in the Federal Constitution or reasonably implied therein. This authority permits the state to enact and apply labor legislation to those engaged in interstate commerce provided there is no irreconcilable conflict between the state law and the federal law. In case the federal law has taken over exclusive control, the state law must give way. It should be noted that the United States Supreme Court has tended to construe more broadly the nature and scope of interstate commerce to the extent that the effect of federal labor laws has been broadened and the effectiveness of state laws somewhat narrowed.

***When Federal Control Is Not Exercised.*** It would appear that there should be no conflict between a state law and a federal authority where the state has exercised control and the federal government has not done so. For example, the Texas law prohibiting picketing and sabotaging of public utilities, and the Texas Anti-Mass-Picketing Law, make criminal certain acts not so dealt with by the federal law. Violations of these laws in Texas are punishable under Texas law without interference from the federal courts, so long, of course, as constitutional questions are not involved. This is true even though the affected business enterprises may be part of the flow of interstate commerce.

However, in 1957 the Supreme Court of the United States held that where Congress had vested in the National Labor Relations Board jurisdiction over labor relations matters affecting interstate commerce, it completely displaced state power to deal with such matters where the board has failed to cede jurisdiction to a state agency pursuant to the Taft-Hartley Act, even though the national board has declined to exercise jurisdiction, thus creating a "no-man's land" subject to no regulation by either state or federal agencies (Guss v. Utah Labor Relations Board, 353 U.S. 1). One of the aims of the Landrum-Griffin Act of 1959 was to eliminate this jurisdictional limbo.

***Concurrent Federal and State Control.*** Although the United States Congress and the state legislature may legislate on identical phases of labor relations, the state enactment will, nevertheless, stand up unless

it is in conflict with the federal law, or unless it is the clear intent of the federal law to take over the particular subject matter to the exclusion of all state control. In other words, both the federal and state laws may exercise similar and concurrent controls over identical subject matters.

Examples of concurrent federal and state legislation over similar matters are controls over the closed or union shop set up in the Taft-Hartley measure, and similar controls established in the Texas Right-to-Work, or Anti-Closed-Shop Law. It is interesting to note that in this instance the federal law specifically supports the state Anti-Closed-Shop Law.

Again, both the Taft-Hartley Law and the Texas laws make declarations against secondary boycotts and against intimidation of employees. Both exact responsibility of unions for breaches of contract. The procedure and remedies differ, but remedies may be sought under either the federal or the state law.

*State Control Over Contracts.* The power of the state to control contracts made, or to be carried out within its borders, has always been recognized. Texas was exercising an inherent and fully recognized state power when its legislature in 1947 enacted the laws outlawing closed shop contracts, contracts providing for the "checkoff" of union dues without the written consent of employees, and collective bargaining contracts with state employees, and providing for equal responsibility of unions with management for breaches of union contracts. The will of the state, of course, must not conflict with the will of the national government on these matters.

As a valid exercise of state power, these laws control contractual provisions, regardless of whether such provisions deal with interstate or intrastate commerce.

*State Police Power.* Police power is the power inherent in the state to enact laws to promote order, safety, health, and general welfare of the citizens of the state.

The O'Daniel Anti-Violence Law, enacted in 1941, was an exercise of state police power. So were the Anti-Mass-Picketing Law, the Secondary Boycott Law, the Utility Anti-Picketing Law, and the Union Trust Law Amendments, enacted in 1947. All actions or transactions occurring in Texas that fall within the scope of the varied provisions of these state laws are subject to the restraints and penalties which their terms provide. Again, this statement is true regardless of whether such actions or transactions are incidental to intrastate or interstate commerce.

## Laws Regulating Wages, Hours, and Conditions of Employment

***Working Conditions.*** Several statutes have been enacted in Texas to improve the conditions under which laborers must work from day to day. The so-called "Health Comfort and Safety Law" requires that adequate measures be taken in factories, mills, mercantile establishments, laundries, and the like to secure and maintain, insofar as possible, reasonable temperature and humidity conditions. Safeguards against odors, dust, and injurious gases and unsanitary or immoral conditions also are demanded by the law. Any establishment where females are employed must provide seats for the use of female employees when not engaged in active performance of duty (and conspicuous notice that female employees are permitted to use the seats is required). A washhouse with both hot and cold water must be supplied coal miners, and sufficient exits and lighting facilities are required.

The state labor commissioner or any of his deputies may enter any such place or establishment for purposes of inspection and for carrying out the provisions of the law.

***Hours of Labor.*** Texas has enacted few laws relating to hours of labor. The eight-hour day is stipulated for workmen employed by the state. The major hour law, however, is the nine-fifty-four-hour law which provides that no female in Texas is allowed to work for more than nine hours in any one day, nor more than fifty-four hours in any one week. Those employed in laundry, cleaning, or pressing establishments are limited to fifty-four hours per week but are allowed to work a maximum of eleven hours during a twenty-four-hour period.

No railroad conductor, engineer, fireman, or brakeman may be on continuous duty more than sixteen hours, after which he must have ten hours off duty.[4]

Forcing employees to work on Sunday is prohibited by law, with exceptions concerning domestic duties, common carriers, eating establishments, drug stores, and theaters.

***Payment of Wages.*** Although there is no state minimum wage law, employees must be paid semimonthly, unless by agreement other provisions are made. This payment of wages must be in the form of lawful money of the United States, or if paid by coupons, chips, script, or store orders, same must be redeemed by lawful money upon demand.

Employees leaving employment, discharged, or absentee employees must be paid their due wages on six days' demand.[5]

[4] *Revised Civil Statutes,* Article 6390.
[5] *Revised Civil Statutes,* Article 5156.

***Child Labor Laws.*** Efforts on the part of the government to restrict or prohibit child labor in industries and commercial establishments have been a marked tendency in recent years. Due to the fact that Texas is not an industrial state and has few factories, the child labor problem has not been so difficult as in eastern states. Local welfare units and compulsory education laws also have helped to curb excessive child labor evils. In some types of industries, however, such as pecan shelling and shrimp packing, as well as in other types of smaller concerns, exploitation of child labor has been a problem.[6] Under setups where work is parceled out in piecework to be done at home, enforcement of the law is especially difficult.

***Children Under Fifteen Years of Age.*** It is unlawful to employ any minor under fifteen in any factory, mill, workshop, laundry, or messenger service in towns and cities of more than 15,000 population.[7] Exceptions are made for newspaper distributors. It is also unlawful to require or permit any child under fifteen to work or to be on duty for more than eight hours per day or for more than forty-eight hours in any one week, or between the hours of 10:00 p.m. and 5:00 a.m.[8] Exceptions are made concerning child labor in domestic pursuits.

Children over twelve years of age whose earnings are needed for support of mother, father, or younger children, may be granted work permits on application to the county judge provided the child has completed the fifth grade in school, or its equivalent. Such permits cannot be issued for a longer period than twelve months.[9]

It is unlawful to employ a child under seventeen years of age in any mine, quarry or place where explosives are used, or to send any minor under seventeen to any disorderly house, or place of amusement conducted for immoral purposes, the character of which could have been ascertained upon reasonable inquiry.[10]

[6] See *Fifteenth Annual Report,* Texas bureau of labor statistics.

[7] *Penal Code,* Article 1573.

[8] *Penal Code, Article* 1575.

[9] The Texas law should not be confused with the child labor provisions of the Federal Fair Labor Standards Act which applies generally to industries in interstate commerce. For general employment, the minimum age is sixteen under the federal law. In all occupations found to be particularly hazardous by the Children's Bureau, the minimum age is eighteen.

Children fourteen and fifteen years of age may be employed under the following conditions: (1) all work must be performed outside school hours. (2) Such minors must not work more than three hours in any one day, nor more than eighteen hours in any one week, when school is in session. (3) Such minors must not work more than eight hours per day, nor more than forty hours per week, when school is not in session. (4) All work must be performed between 7 a.m. and 7 p.m. in any one day.

[10] *Penal Code,* Article 1574.

***Miscellaneous Labor Laws.*** Under the Employment Agents' Law, persons who conduct employment offices or serve as employment agents for others are required to secure licenses from the state labor commissioner. Such agents are required to keep complete records of all persons who make application for employment with them, as well as the names of those for whom they are securing employees. The law likewise makes illegal any acts involving fraud or misrepresentation of facts, certain practices in the employment of children, and practices deemed injurious to the public welfare.

The Emigrant Agency Law levies a $1,000 state tax, in addition to a county tax, on emigrant agencies. This law applies to agents engaged in soliciting or enticing laborers in Texas to accept employment beyond the limits of the state.

Texas has what is known as the Full Crew Law for trains operating in the state.[11] No trainman is allowed to work more than ten consecutive hours.

The Boiler Inspection Law requires annual inspection of all boilers exceeding fifteen pounds pressure per square inch. Cotton gin boilers, and boilers used for agricultural purposes, or boilers in buildings occupied by four or fewer families are not included under the provisions of this act.

There are several other miscellaneous labor laws in Texas among which should be mentioned those pertaining to firemen and patrolmen, civil liberties, legal holidays, plumbing laws, and prison-made goods, etc.

## Restrictions on Employers

***Blacklisting Prohibited.*** Blacklisting by any corporation, company or individual of any employee discharged by that party, or any conspiracy aimed at preventing said employee from obtaining employment is prohibited under penalties up to $250, ninety days in jail, or both.[12]

It is unlawful for an employer to coerce or require any employee to purchase food, clothing, or merchandise from any specific place or store.[13]

It is further unlawful to influence or attempt to influence any voter in the exercise of his franchise, to refuse to permit employees to attend

[11] *Revised Civil Statutes,* Article 6380. A full crew is defined as follows: for passenger trains: engineer, fireman, conductor, and brakeman; for freight trains: engineer, fireman, conductor, and two brakemen.

[12] *Penal Code,* Article 1616–1619.

[13] *Penal Code,* Article 1620.

the polls, or to deduct wages because of the exercise of such privileges. The law also prohibits employment of armed detectives or other persons not residents of Texas, except that this does not prevent such persons from defending themselves or legally protecting their property.[14]

## Regulation of Labor Unions

***The Manford Act.*** Under the provisions of the Manford Act, unions must file annual reports with the secretary of state of Texas not later than February 1 of each year. This report must give a complete account of all actions of each union as well as a statement of union property, affiliation, constitution, and officers. Amendments must be reported within twenty days.

Under this law, an alien or convicted felon whose citizenship has not been restored may not hold any office in a labor union or act as labor organizer.

A labor union, as such, cannot make financial contributions to a political party or to the campaign expenses of any person running for political office. This law further prohibits sale of work permits, or expulsion of a union member without good cause.

The right of the employee to investigate the resources of his union is insured by Section 9 of this act, which states that accurate books or accounts, itemizing all receipts and expenditures, must be kept by labor unions, and any member of such labor union may inspect such books at any reasonable time.[15]

***Legal Activities of Labor.*** As indicated above, labor was given the right to organize in a statute passed in 1899. This act declared it to be lawful for all persons engaged in any kind of labor to associate themselves together and form trade unions and other organizations for the purpose of protecting themselves.

Labor's right to organize to engage in peaceful strikes and to picket is recognized in the laws.[16]

***Illegal Activities of Labor as Determined by the Anti-Violence Law.*** This law provides that any person who, by force or violence, or threat of force or violence, prevents or attempts to prevent any person from engaging in a lawful vocation, is guilty of a felony, punishable by a penalty of imprisonment for one to two years. It is also unlawful for

[14] *Revised Civil Statutes,* Article 5207.

[15] A labor union violating this act must pay a fine of $1,000; a labor organizer or union officer violating the act is subject to a fine of $500, confinement in the county jail for not more than sixty days, or both.

[16] *Revised Civil Statutes,* Article 5152; *Penal Code,* Article 1642.

three or more persons to assemble for the purpose of preventing, by any means, any person from pursuing his occupation.

When persons unlawfully assembled together do or attempt to do any illegal act, all engaged in such act are guilty of riot, punishable by confinement in jail from six months to one year.

Boycotts and other monopolistic actions on the part of labor unions are prohibited through the enactment of Union Anti-Trust Laws, which clearly define labor activities in regard to conspiracies in restraint of trade. The provisions of these laws will be given special consideration later.

***Anti-Checkoff Law.*** This measure outlaws a contract which provides for the checkoff, or the deduction of any part of an employee's wages to pay union dues, except upon the individual employee's written consent, delivered to the employer. The automatic checkoff of union dues likewise is prohibited by the Taft-Hartley Act.

***Right-to-work and Limitations on the Closed Shop.*** This law provides that employees cannot be denied employment on account of either membership or non-membership in a labor union. The state law contains more stringent provisions than the Taft-Hartley Act in that it prohibits any contract requiring employees either to be or to remain members of a union, whereas the federal act provides certain provisions whereby union-shop or maintenance-of-membership agreements may be obtained. The Texas law prohibiting closed shop agreements does not apply to contracts already in existence, but applies only to all new contracts or revision of old contracts executed after the effective date of the act.

Persons, associations, and unions are prohibited from organizing strikes, picketing or other activities aimed at compelling an employer to recognize or bargain with an agent or union that does not in fact represent a majority of his employees.

***Regulation of Picketing.*** This act regulates the method of picketing in the case of a strike or other labor disputes. The use of force, violence, coercion, and conduct dangerous to the health and general welfare of the people of Texas is prohibited. The provisions are as follows: (1) There must not be more than two pickets at any time within 50 feet of any entrance to the picketed premises, or within 50 feet of another picket. (2) Pickets are prohibited from forming an obstacle to persons desiring to enter or leave the picketed premises or any other premises, either by their persons or by placing vehicles or other obstructions at entrances. This act also prohibits the use of insulting or threatening lan-

guage used to interfere with or intimidate another; the use of slander, libel, oral or written misrepresentations; picketing for the purpose of securing the breach of violation of a valid labor agreement; or picketing after a court action enjoining such picketing.[17]

***Legal Responsibility of Unions.*** The Equal Responsibility Law was passed in order to protect employees, the public, and employers against loss resulting from unlawful picketing and strikes, and to develop more responsible union leadership. Under this act, labor unions are made liable for any damages resulting from picketing or striking in breach of contract.[18] This law, it should be noted, applies only to illegal strikes or picketing, and allows damages only in cases of illegal acts on the part of the unions.

***Public Employees Cannot Make Use of Labor Unions.*** A law prohibits any official of the state or of any of its subdivisions from entering into a collective bargaining contract with a labor union concerning public employees, and any such contract entered into after the effective date of the act is declared to be null and void.

A labor union may not be recognized as bargaining agent for public employees, nor may public employees engage in strikes or organized work stoppages against the state or any of its subdivisions. All civil service, re-employment and other rights or privileges of public employment, will be forfeited by public employees who participate in a strike.

Rights of an individual employee to stop work, so long as he is not acting in an organized work stoppage, and to present grievances, individually or through a representative who does not claim the right to strike, are not disturbed. The act also provides that no person shall be denied public employment by reason of membership or non-membership in a labor organization; that is, a union card holder may be given public employment, but the activities and prerogatives of his union are severely restricted in the field of public employment.[19]

***Picketing or Sabotage of Public Utilities.*** Picketing of the plant, premises, or property of a public utility rendering water, gas, or electric service is forbidden, if the picketing is for the purpose, or has the effect,

[17] H.B. 41. Section 8(b)(1) of the Taft-Hartley Act parallels the Texas law by prohibiting any language, threats, or coercion designed to prevent people from going to work who wish to do so.

[18] H.B. 73. Section 301 of the Taft-Hartley Act goes further than our state law in specifying that unions are responsible for the action of any member of their organization.

[19] H.B. 105. Section 305 of the Taft-Hartley Act makes it unlawful for any employee of the United States or any of its agencies to participate in any strike. Federal government employees who participate in a strike will be discharged, their civil service status will be forfeited, and they will not be eligible for re-employment for three years by the United States or any of its agencies.

of disrupting the utility service or its maintenance. No person may intimidate, threaten, or harass a public utility employee, in order to disrupt the service rendered by such utility.

In case of actual or threatened violation of the anti-picketing provisions of this law, the district judge in the district in which the violation occurs is authorized, upon verified petition, to make inquiry and to issue an order restraining such violation.

"Any person who willfully damages, destroys or commits any act of sabotage affecting the building, equipment, machinery or facilities of a public utility, for the purpose of disrupting the utility service or its maintenance, shall be guilty of a felony."

If two or more persons enter into an agreement to violate this law or to persuade, induce, or employ some person to violate it, every person participating in such agreement shall be guilty of a felony.

The law directs the governor and the executive department to exercise all powers available under the constitution and laws of Texas to protect the public against interruption in water, electric, or gas utility service.

The right of the individual utility employee to quit work, leave the premises of his employer, or refuse to report for work when he desires, is not affected by the law.

*Use of Secondary Boycotts.* Labor unions may no longer use secondary economic weapons in order to make an innocent employer, who is not engaged in a labor dispute with his own employees, the victim of a labor dispute existing between the management and employees of another business.

Employers in Texas cannot be brought into industrial strife which they did not cause and with which they had no connection.

It is unlawful to establish, call, participate in, aid, or abet secondary picketing, which is the act of establishing pickets at or near the premises of any employer where no labor dispute exists between such employer and his employees. This prohibition extends to secondary strikes and boycotts. For example, if employer A purchases materials from employer B for use in his business and employer B is engaged in a labor dispute with his employees, if A is not involved in a bona fide labor dispute with his own employees, the union may not picket A, call a strike against him, or advise its members not to patronize his business simply because he deals with a firm that is involved in a labor dispute. Nor may workers agree to or be advised to refuse to handle, install, use or work on the equipment and supplies belonging to A.

Any attempts by unions to cause workers to "enter into any agreement or understanding to refuse to transport, deliver, receive, accept, erect, assemble, operate, use or work with any goods, wares, merchandise, articles, or products of any other person, firm, corporation or association of persons" where "such refusal is intended or calculated to induce or shall have the effect of inducing" [20] an employer to refrain from doing business with such person, firm, et cetera, is a conspiracy in restraint of trade and a violation of the state's anti-trust laws.

The general enforcement of the earlier Texas labor laws (except workmen's compensation insurance) is under the direction of the commissioner of the Bureau of Labor Statistics. Originally established primarily as a fact-finding and educational agency, the bureau now has been delegated certain enforcement duties with the enactment of the various labor laws. The commissioner has full legal powers for collection of statistics and inspection of all establishments coming under the laws. Much of his time is devoted to hearing complaints which arise under the labor laws. The bureau's administrative functions apply chiefly to those labor laws enacted prior to 1941.

### Texas Labor Legislation Summarized

Laws regulating labor-management relationships have developed over a period of eighty-odd years, from the first statute in 1866. Within this framework of legislation is provided a system of checks and balances for both industry and labor. For the protection of labor are the many laws safeguarding working men along the following lines: (1) guaranteeing payment of earned wages and prohibiting garnishment of wages, (2) requiring liability of the employer for injured workmen, (3) providing a system of compensation for injured workmen or for their dependents, (4) guaranteeing labor's right to organize and form trade unions, (5) providing for collective bargaining, (6) setting up health, comfort, and safety laws, (7) limiting the hours of work for certain groups and under certain conditions, (8) regulating the employment of children under specified ages and conditions, and (9) protecting workmen from blacklisting and unfair discriminations imposed by employers.

Laws regulating labor and protecting management or the public from unfair union practices may be summarized under the following requirements: (1) adequate reporting of union finances and activities, together with names of officials; (2) right of a member to investigate the books and accounts of his union, which must be kept accurately; (3)

[20] *Revised Civil Statutes*, Article 7428.

labor unions cannot contribute to political campaigns or to any person running for public office; [21] (4) labor unions cannot use force, violence, or threats to prevent any person from engaging in lawful occupations; (5) unions cannot check off dues or deduct from any workman's pay without his consent; (6) workmen cannot be denied the right to work because of non-membership in a union, and new contracts requiring union membership are prohibited; (7) mass picketing and use of force or coercion in picketing are prohibited; (8) unions are made liable for any damages resulting from illegal picketing or illegal strikes; (9) public officials cannot make use of unions in collective bargaining; (10) unions cannot use secondary boycotts or secondary picketing; (11) laborers, by picketing or sabotage, cannot disrupt essential utility services.

**Texas Labor Laws Appraised**

Texas is still somewhat behind many other states in enacting legislation in the interest of labor and working people. The state has no minimum wage law, and its law pertaining to hours of labor are limited to public employees and women and children. Those protecting women and children are far short of present labor standards, and are of little value. Due to population and other exceptions under the nine-fifty-four-hour law, most women in the state receive no legal protection whatsoever from excessive working hours. In like manner, the child labor law is too limited in its scope, especially as restricted to towns above 15,000 population. Texas is very much in need of adequate child labor laws.

A most obvious defect in the Texas laws is the lack of proper legal machinery for arbitration and conciliation of labor disputes. The laws, especially those enacted since 1941, show a marked dependence on judicial decision. Many of our people have abounding faith in laws. We are particularly inclined to think that labor difficulties can be settled by laws. But enactment of laws alone will not suffice. How the law is going to be administered is an important matter. It would have been much better for Texas, had there been a general labor relations law incorporating the better provisions of the dozen or more separate laws enacted since 1941, containing a simple statement of unfair labor practices, and providing the proper mediation machinery that would bring the two sides together, rather than emphasizing the things that divide them. Such a procedure would take into consideration the very important human element in adjusting labor disputes, and bring together

[21] The first three of these limitations are to be found in the Manford Act.

representatives of the public, of labor, and of industry in adjusting labor disputes.

**Workmen's Compensation**

Under the hazards of modern industry, the states have attempted to set up laws whereby laborers employed by others may receive compensation for injuries incurred while at work. The law establishes the principle that laborers may be compensated for industrial accidents during the period of disability, with certain exceptions such as those due to wilful intention or to intoxication.

The Texas Workmen's Compensation Act was passed in 1913, and followed generally the acts of several other states, especially that of Massachusetts. The Texas act was designed to replace the common law system of employer's liability so as to give relief to injured workmen. The compensation fixed by the act is based on the average weekly wage of the workman.

Death benefits likewise are provided for the widow. The provisions of the law do not apply to farm and ranch laborers, domestic servants, or to employers having less than three employees.

The old common law remedies were proved insufficient because of the defenses behind which employers could retreat in such cases.[22] As a result the injured workman was practically without relief, and the burden of caring for himself and his family fell entirely upon him during the period of his incapacity. Suits of damages, for example, depended for success upon the laborer's ability to prove personal fault or negligence on the part of the employer. The process was costly and cumbersome, and recovery, at best, was slow and uncertain.[23]

***The Texas Employers Insurance Association.*** To provide insurance to pay such claims the law creates what is known as the Texas Employers Insurance Association. There is no state fund for this purpose.

An employer in the state, subject to the liabilities under the Workmen's Compensation Act, may subscribe for this insurance by making application to the board of insurance, and stating the number of his employees and such other information as may be required. The commissioner of insurance has general charge of the compensation insurance, and makes all necessary rules and regulations used in administering it.

The association, under its board of directors, fixes the dividends and

[22] The defenses are classified according to the following doctrines: (1) contributory negligence, (2) fellow servant, and (3) assumed risk.

[23] Ashburn, Karl Everett, *Report on Workmen's Compensation Insurance Act and Its Administration, with Recommendatio..s for Improvement* (1938).

assessments within the limits fixed by the law and the bylaws of the association. The basic object of the organization is to provide for a cooperative association among employers, whereby industrial accident policies may be carried through the media of private insurance companies, which pay compensation to their employees as required and awarded under the laws.

***Administration.*** The administration of workmen's compensation is allocated to two different agencies. The Industrial Accident Board holds hearings on claims and makes awards. The Board of Insurance promulgates all rules and regulations in accordance with the law, including classification of hazards and rates of premiums. This department also prescribes standard policy forms, establishes experience rates, and examines and approves as to form each policy issued.

## PROVISIONS OF THE TEXAS CONSTITUTION RELATING TO LABOR

Article 1, section 18. "No person shall ever be imprisoned for debt."

Article 1, section 27. "The citizens shall have the right, in a peaceable manner, to assemble together for their common good; and apply to those invested with the powers of government for redress of grievances or other purpose, by petition, address or remonstrance."

Article 3, section 56. "The Legislature shall not, except as otherwise provided in this Constitution, pass any local or special law, authorizing: The creation, extension or impairing of liens; . . . Regulating labor, trade, mining and manufacturing; . . ."

Article 4, section 7. The Governor "shall have power to call forth the militia to execute the laws of the State, to suppress insurrections, . . ."

Article 8, section 1. ". . . Persons engaged in mechanical and agricultural pursuits shall never be required to pay an occupation tax; . . ."

Article 15, section 37. "Mechanics, artisans and material men, of every class, shall have a lien upon the buildings and articles made or repaired by them for the value of their labor done thereon, or material furnished therefor; and the Legislature shall provide by law for the speedy and efficient enforcement of said liens."

Article 15, section 49. "The Legislature shall have power, and it shall be its duty, to protect by law from forced sale a certain portion of the personal property of all heads of families, and also of unmarried adults, male and female."

Article 16, section 11. "All contracts for a greater rate of interest than ten per centum per annum, shall be deemed usurious, . . ."

Article 16, section 28. "No current wages for personal service shall ever be subject to garnishment."

Article 16, section 35. "The Legislature shall, at its first session pass laws to protect laborers on public buildings, streets, roads, railroads, canals, and other similar public work, against the failure of contractors, and subcontractors to pay their current wages when due, and to make the corporation, company or individual for whose benefit the work is done responsible for their ultimate payment."

## BIBLIOGRAPHY

References for the varied subjects treated in this chapter must be secured from almost as many different sources. The annual reports of the various agencies constitute the best source of information. The regulatory commissions also publish pamphlets carrying the rules and regulations which apply to the particular activity. Texas labor laws are compiled in a publication, *Laws of Texas Relating to Labor,* issued by the Bureau of Labor Statistics, Austin, 1959. The same agency issues the *Guide to Calculation of Compensation Under the Texas Workmen's Compensation Law,* 1959.

# 16....

# *The State's Role in the Conservation of Natural Resources*

There is much implied in the term conservation. It is a subject as old as civilization. Reduced to its fundamental truth, the history of human progress and the rise and fall of nations have been largely the story of exploitation and exhaustion of resources. Much of the international politics of this century reflect bulging populations bursting through geographic and legal barriers in the struggle for resources and higher standards of living.

Most of the devices by which we gauge our progress—machines, factories, money, credit, and wealth—have been built upon the ceaseless flow of raw materials from the land and earth. They can move forward so long as our soil and water resources continue to yield up their riches in proportion to the needs of our population.

## Nature's Gift to American Progress

Much of the economic progress of the United States has been due, not so much to our own abilities and ingenuity as is popularly assumed, but more perhaps to the exploitation and rapid using up of our great heritage of natural resources; in other words, by consuming our national capital.

Probably no nation in the history of the world has despoiled its resources at a more rapid rate than has our own. When the white man came to America he found a land which was perhaps the most bountifully endowed by nature of all continents. Nearly a billion acres of this land were covered with virgin forests and nearly half a billion acres with luxuriant grass—a veritable promised land awaiting the axe and the plow.

Soil, water, timber, and minerals—these were the resources by which America achieved individual economic independence and gained its industrial leadership in the world of today.

**Figure 46.** *Silt Deposits* as a result of one heavy rain. This valuable soil is leaving the field forever. Studies in one soil conservation district showed that the heavy rains washed away more soil in seven years than nature could restore in 400 years. (Courtesy, U.S. Soil Conservation Service)

To our forefathers only a few generations ago these appeared to be riches without limit. They felt that "there would be land for all to the hundredth and thousandth generation."

***The Great American Tragedy.*** America today is no richer than her remaining resources. One-third of the nation's topsoil is gone. Three-fourths of the country's vast forests have been used up.

All of these millions of acres of exhausted land and depleted forests are areas where men once fished, grazed their cattle, farmed, and harvested the gifts of the forests. Considering the United States as a whole, it is estimated that half of its original fertility has been dissipated. That a nation will become impoverished if such a process continues or that a nation might be "rich for a day and poverty stricken for a thousand years," seems to have given us little concern.

An eminent authority aptly states the situation in the following words which reveal to us the devastating social consequences of soil waste and depletion.

The truth is, America, that your own land-use history records you as the greatest spendthrift of all time. You have developed bigger, better, and

faster ways of using up soil fertility than has any nation in all the world. You are the champion playboy of all history, and your extravagance is exceeded only by your disregard of the consequences. . . .

When the source of man's sustenance and material glory will no longer sustain his way of life, he does one of two things; he sinks into individual and national decay, or he takes, by force of arms, more fertile land from some other nation. That is history! [1]

## Meaning of Conservation

The object of conservation is a simple one. It means taking care in the use of what nature has given us. In its highest sense it means the wisest and best use of the bounties of nature, not only in the interest of this generation but in the interest of all generations who must depend upon the good earth and its products. Conservation is the opposite of waste, yet it is not hoarding. The problems of conservation must be considered from the viewpoint of the general welfare. Individual self-interest is not enough. With our frontiers gone and one-half our resources depleted to some degree or other, we cannot continue indefinitely the traditional American habit of "skimming the cream" and moving on to greener fields.

***A Comprehensive Program.*** It is evident that the problem of conservation cannot be subdivided by parts such as fish, game, soil, and water. Nature, like the human body, is a delicately coordinated organism. Land, water, vegetation, and animal life are dependent on each other.[2] Nature's laws seek a balance in all things. When water goes, vegetation departs; when vegetation departs, soil goes and animal life, including man disappears. The building of fish hatcheries, for example, will not restore fish in great sterile reservoirs lacking in vegetable matter, for the fish will die of starvation or malnutrition. We may as well try to restore a desert by shipping immigrants into the area. Lakes and stream bottoms denuded of vegetation are to the fish as a desert is to man.[3]

## The Problem in Texas

Texas is a comparatively young state. Most of its tillable land, except that in the eastern part of the state, has been in cultivation less than

[1] Quoted from an address entitled "Wake Up, America," by Mel Steen, chief of the fish and game division, Missouri conservation commission. Reproduced in *Texas Game and Fish,* Austin, June, 1947.

[2] *Poverty and Conservation,* National Wild Life Federation Bulletin, Vol. 4, No. 1, Washington, D.C.

[3] *Ibid.,* p. 6.

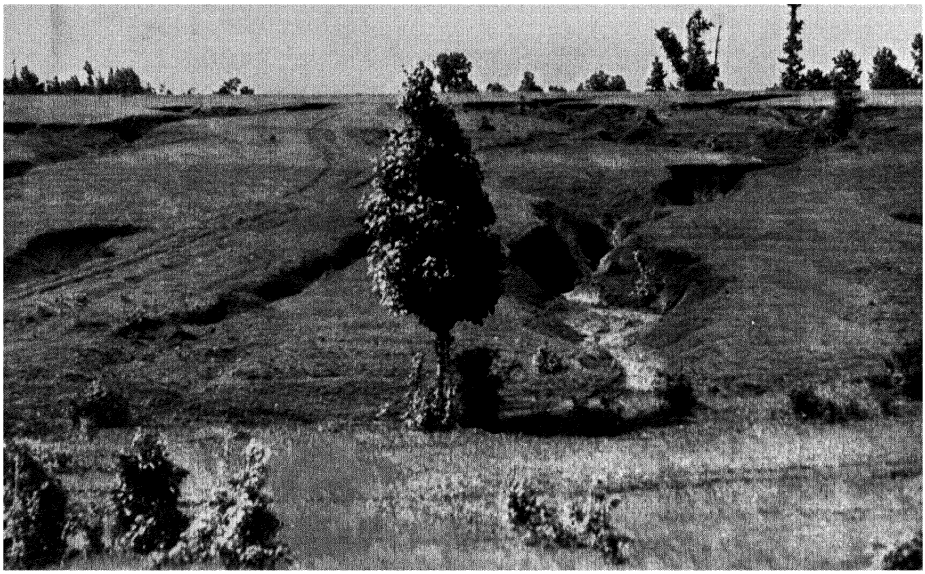

**Figure 47.** *The Results of Soil Erosion.* Soil and fertility are gone forever on this land. In Texas over 11 million acres of crop lands have been lost through erosion. Another 50 million acres have been badly damaged. (Courtesy, U.S. Soil Conservation Service)

three-quarters of a century. No state was more bounteously endowed by the gifts of nature. An endless variety of rich soils, virgin pine forests, wildlife, oil, gas, and other resources has been hers. From the utilization of these resources has come the state's growth and prosperity.

All of these resources today are impaired. Some may become exhausted in the not distant future. Several years ago, surveys of the United States Soil Conservation Service indicated that 11 million acres of the state's crop lands had been badly damaged and an additional 50 million acres had lost approximately 25 per cent of their topsoil. Natural gas, upon which much of this state's current industrial development depends, will be largely exhausted in another twenty years.[4] The depletion of our oil reserves will follow; although extensive wastage characterized the earlier development of these two fuels, waste is no material factor today under the state's probation and conservation policies. The fact, however, that these valuable fuels, especially natural gas, will be used up in a few decades means that the state's economy must lean more heavily upon other resources of the earth. Only in very

[4] See *Hearings Before Committee on Interstate and Foreign Commerce,* U.S. Senate, Eighty-fourth Congress, on amendments to the Natural Gas Act, page 1740.

**Figure 48.** *Erosion Control Techniques.* Terracing, running the furrows by contours, and strip planting are methods of holding back the rain waters and controlling soil erosion. Shown here is an effective combination of all three. (Courtesy, U.S. Soil Conservation Service)

recent years has any attention been given to the task of conservation.[5]

The greater tragedy, perhaps due to lack of education, is the general apathy of the public and more especially our seeming indifference to the needs of those who will come after us. That there is a social obligation to those who will be living in this country in the future seems not to have occurred to most of us.

What right have a few generations to waste and exploit the natural heritage of a continent? As one conservationist remarked to a gathering of farmers as he viewed an area of bleak and severely eroded submarginal lands in north central Texas: "You have no right to live on this land a few years of your life and then return it, exhausted and worn out, to a society that has to live off it for generations and generations." [6]

Terming the process a mass robbery we are committing against future Americans, this social obligation is forcefully expressed by a well-known writer:

We take enormous pride in the fact that we are not pillagers and do not make conquest, lay waste, or despoil. It's funny. For the people we are

[5] Soil conservation as a program began in the 1930's as an activity of the federal soil conservation services.

[6] Quoted from an address by Dr. Vern Scott of Stephenville before a conservation conference, Decatur, Texas, May 30, 1947.

pillaging day and night—a hundred and forty million strong—are the children for whom we proclaim, and idiotically believe, we are "sacrificing so much." . . .

Your petty, private problems will not loom large in their eyes. They will merely see that in those things important to the stream of human life—even in property, which was your God—you didn't have sense enough to act as men. To them, the distinction between the tycoon and the unionized worker will disappear; they will damn all impartially—all Americans alive in this epoch—damn them, and rightly—as the greediest plunderers, the most reckless, insensate rapers-of-earth ever to be born . . .[7]

***The Paradox of Plenty.*** All warnings of soil wastage and exhaustion of other natural resources sound strange to most people at a time when we have surpluses, especially in food. Yet half of the world is hungry. Multiple millions are gradually starving. Existing surpluses offer no answer to long-run problems. World population is exploding. In another fifty years the land in our own country must produce twice as much to sustain the prospective population. The big hope is that technological progress will answer all demands for that period. But by then the real problem will have just begun as the population may double every fifty years.[8]

Another factor which may intensify the problem is the large acreage of productive lands that are being eaten up by communities. As metropolitan areas spread into sub-cities and strip cities, residential areas with expressways and airports, and other public projects, the present amount of productive lands to sustain the increasing population will be severely reduced.

## A Federal-State Program

It is against this general background that we must view the conservation problem in Texas. The problem is national in scope and recognizes no state lines or man-made boundaries. As a governmental task, however, it demands a cooperative program by both state and national government. Under state authority various local jurisdictions are set up, such as soil conservation districts, water control districts, river authorities, and the like. In some phases of the program, such as water supply and conservation, local municipalities play an important role.

[7] Quoted from column by Philip Wylie in *Forth Worth Star Telegram,* August 18, 1946, courtesy George Mathews Adams Service.

[8] There are many projections for population trends over the next fifty years. Some authorities see the United States passing the 350 million population mark by 2000 A.D. and the possibility of the population doubling every fifty years. Basic data: U.S. Dept. of Commerce, U.S. Dept. of Agriculture, U.S. Dept. of Health, Education, and Welfare.

**Figure 49.** *The Elm Creek Watershed Soil Conservation Project* near Temple, Texas. Note on all these farms boundary lines are disregarded in planning the soil erosion control system. Soil conservation districts are set up under state laws. (Courtesy, U.S. Soil Conservation Service)

This program of joint action, designed to give governmental jurisdiction and machinery to reach all phases of conservation as a unified problem, and made to fit the pattern of natural regions and localities, constitutes the real basis of the conservation work.

The general subject of conservation can be broken down into numerous phases, or categories, according to the nature of each program. Programs described below include: (1) soil (2) water (3) wildlife (4) fuels, such as oil and gas, and (5) miscellaneous, such as forests and forestry, public parks and the public domain.

## SOIL

Attention of the government to the need for conservation of our soil resources dates back to the time when George Washington was a farm operator. At that time he gave his farm manager instructions to fill certain washes or gullies on the sloping fields with "vegetable rubbage" to check erosion.

After Washington's time other patriots, including Thomas Jefferson,

observed the need for conservation, but not much was done for many decades.

With the organization of the Cooperative Extension Service, the use of mechanical measures in conservation received new impetus. In Texas one of the earliest county agents was trained in one of the southeastern states in the running of lines for the type of terrace popular in that day. Many thousands of miles of terrace lines were run by county agents and built by farmers in the 1920's and 1930's.

The U.S. Department of Agriculture and the Texas Agricultural Experiment Station began cooperating in studies of erosion and means of control at several stations in the late 1920's. Information from these stations provided the basis for a new concept of wise land use and erosion control.

Educational efforts of the Texas Extension Service and other parts of the Texas A. and M. College system have continued to implement the educational phases of conservation work very effectively. Several privately endowed foundations and agencies with farms and laboratories are conducting research projects in soil improvement practices and related subjects.

### The Soil Conservation Program

The Soil Conservation Service of the U.S. Department of Agriculture provides the major portion of technical assistance in soil, water, and plant conversation to farmers and ranchers through their locally organized soil conservation districts.[9] This effort involves the cooperation of numerous state and local agencies which have contributions to make of one type or another to the general progress of conservation.

The Texas office of the Soil Conservation Service is located in Temple. Organization of the service in the state includes administrative areas comprised of groups of soil conservation districts. An area conservationist is in charge of each of these areas. In each soil conservation district one or more work units staffed by trained conservationists assist farmers and ranchers in planning, applying, and improving conservation plans adapted to the needs of the particular farm or ranch.

In a large area of the western portion of the state the Soil Conservation Service working with soil conservation district supervisors and

[9] The U.S. Soil Conservation Service was created by an act of Congress in 1935, which is the basic law for soil conservation in this country. There are fifty-one state and territorial offices directing the work of several thousand trained conservationists and technicians.

other local groups offers cost-sharing to farmers and ranchers for the carrying out of conservation plans.

The Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture, headquartered at College Station, offers cost-sharing assistance to farmers and ranchers through the Agricultural Conservation Program and the Soil Bank Program. Applications for cost-sharing assistance are made through the county office of the Agricultural Stabilization and Conservation Service.[10]

The Farmers Home Administration of the U.S. Department of Agriculture offers credit facilities for conservation purposes. Other state and local agencies make various other contributions.

***Soil Conservation Practices.*** Conservation practices used in the conservation plans made for farms and ranches vary rather widely over the state because of the differences in soil, slope, climate, plant adaptabilities, and other factors. The student interested in studying the various practices adapted to his home community may obtain that information through the work plan of his local soil conservation district.

In general, conservation practices of cultivated land include crop rotations, crop residue management, fertilization based on needs of the soil, contour cultivation, terracing,[11] strip-cropping, irrigation or drainage when appropriate, and other practices. Pasture and range land practices may involve brush control, seeding, water distribution, cross fencing, stock pond development, grazing management in keeping with forage production, and other practices.

***The State Soil Conservation Act.*** Most of the soil conservation work today is conducted through the medium of soil conservation districts created under provision of the State Soil Conservation Act of 1939. Each soil conservation district constitutes a political subdivision of the state. These districts comprise more than ninety-six per cent of the state's total land area. Under the act, the state soil conservation board assists in the organization of local districts and offers guidance to the districts in all

[10] Under the Soil Bank program a farmer may remove his crop land from cultivation by placing it in the "conservation reserve" for a period of five or ten years. The farmers are paid a flat annual rental rate for the converted crop land. The land must be planted in perennial crops or grasses which cannot be harvested or grazed. While the Soil Bank is primarily an agricultural stabilization program, the return of the land to protective cover will aid in the prevention of erosion.

[11] The terrace is a low embankment placed at intervals to intercept and control the excess water runoff and guide it to safe disposal at the sides of the fields. Contouring is the practice of cultivating sloping fields on the contour—that is curving the furrows around the hillside to fit the lay of the land.

**Figure 50.** *The Result of Uncontrolled Rivers.* Floods sweep over vast areas with great destruction to life and property and irreparable damage to soil resources. (Courtesy, U.S. Soil Conservation Service)

matters pertaining to soil conservation and soil resources.[12] Activities of the state board are in charge of an executive director with offices in Temple.

The purpose of soil conservation districts is to enable land owners to cooperate in carrying out conservation practices. In the process of such cooperation, the land owners are able to make most effective use of assistance available from local, state, and federal sources. Each district is governed locally by a five-member board elected by the land owners who formulate land use programs for the area. The work is closely coordinated with that of the U.S. Soil Conservation Service which supplies the technical services. The state soil conservation board also has been designated by the governor as the approved agency to receive applications for watershed protection and upstream flood prevention programs on small watersheds of 250,000 acres or less.

[12] The Texas Conservation Law of 1939 is the enabling act for the creation of these districts. The local land owners file a petition before the state board requesting such a district. A hearing is held and if approved, the district is formed by a vote of two-thirds of the land owners. The districts have no taxing power and are limited in size to a maximum of 3,000 square miles. There were 176 such districts in the state as of January 1, 1960.

## CONSERVATION AND UTILIZATION OF WATER RESOURCES

Wise men of long ago had an adage, "The source of all wealth is water." While the statement conveys only a partial truth, in the longer view it implies a fact that hangs with heavy significance over the economy of Texas. Our oil, gas, and other minerals may be consumed, but water returns from year to year in an endless round. When conserved and beneficially applied it insures harvests and vegetation, as well as protection from floods and overflows. When impounded and directed through turbines it will produce power for domestic and industrial needs.

In the minds of many students of the subject, water is the number one problem of Texas as well as for the entire Southwest. Over the years it has come to be recognized as the most critical resource of the state.[13] "The growing shortage of water in Texas," says Walter Prescott Webb, "is a slow creeping disaster of gigantic proportions that is moving slowly but steadily in upon the people of the state." [14]

There are evidences on every hand that this is true. Of the ten largest cities in the state, only two, both in the smaller population bracket, have adequate water supplies to insure future growth.[15]

"Our underground reservoirs are being depleted ten to twenty times faster than nature is replacing the supply." [16] Irrigation wells are being deepened in constant pursuit of the sinking water table.

### A Many-sided Problem

The water problem in Texas is a complicated one, consisting of a whole series of interrelated considerations. Geographic and economic conditions vary widely. Annual rainfall varies from a heavy fifty-five to sixty inches in extreme east Texas to a mere eight inches in the El Paso area. In the low lying areas of east Texas the chief concern may turn on the problem of drainage or disposal of surplus waters. In the river valleys a major problem may be that of flood prevention and control. On

[13] Betty Eakle Dobkins, *The Spanish Element in Texas Water Law.* University of Texas Press, 1959.

[14] Walter Prescott Webb, *Water for Texas.* University of Texas Press, 1959.

[15] Austin and Waco; in each case due to the large reservoirs located upstream from the city.

[16] Quoted from talk made by T. P. Rollins, member state board of water engineers, Houston, Texas, October 2, 1952.

the high plains the falling water table may be a matter of concern for the expanding irrigation of the great area.

In wet years the searing droughts of past years are largely forgotten. There seemingly is little realization that the droughts will return with ever-increasing devastation against the state's growing economy. Unfortunately the state's overall water problem is unlike that of the kitchen faucet; it cannot be turned on or off as needed. In contrast it requires long range planning on a comprehensive scale adjusted to the economic conditions of each region. An overriding fact is the state's rapidly expanding industrial life, centered chiefly upon industries that demand large and assured water supplies. Many important industries, in seeking sites for new plants, must figure water in terms of millions of gallons daily. They will not locate in places where ample water supplies are not assured. Government records show that in a five year period Texas towns lost over 300 prospective industries because of inadequate water supplies.[17] Largely for this reason the areas, both in Texas and in the nation at large, that are blessed with abundant water are surging forward in industrial development.

Our growing municipalities require increasing water supplies. The spread of suburbs only intensifies the problem. Of the 837 public water systems in the state, 681 are drawn from the ground. No adequate statutes exist for the conservation and utilization of ground water resources. Legislators are hesitant about proposing any definite plan for fear it will provoke sectional jealousies.

### Who Owns Texas Water?

Texas is a land of diversity and conflict. Any attempt to understand the state's water problem runs into a complex system of water laws and usages that have accumulated throughout our Hispanic-American past. Any attempt at developing a water program for the future, unless it is to bog down in legal conflict, must begin with an understanding of the basic principles and usages upon which the whole water system is founded.

***Ground Water.*** Ground water is found in nature's great underground reservoirs. This water supplies the wells and a small part of it returns to the surface in the form of springs.

The state supreme court has consistently held that the water found under the earth's surface ordinarily belongs to the owner of the sur-

[17] As shown by government figures for the years 1941–1945.

face.[18] The only exception is when the stream submerges for a part of its way and later reappears above ground. Such water assumes the characteristic of surface stream despite its brief underground excursion.

The state has no ownership interest in ground water. The owner of the land, unless he has surrendered the right, may use all or any part of the water under his land without "let or hindrance," even if by so doing he reduces materially the amount of water which his neighbors can obtain from the same underground source.

Until 1949 there was no Texas law which permitted any type of regulation of the taking of ground water by the land owner. Under an act of that year, the land owners in a given area, having a common source of underground water supply, may voluntarily form a district comprising those lands having such a common source of underground water.[19] These self-created districts may exercise a degree of control over the withdrawal of such water by the individual land owners.

***Surface Water.*** The story of ownership and utilization of surface waters is more complicated. Ownership of such waters is vested in the state, originally with the sovereign. When pioneers first migrated into Texas they found in force the law of Mexico whereby the public retained title to the water in all streams. The Republic of Texas derived the same water rights from the Spanish and Mexican laws. When Texas became a state it retained its public domain, which included its public waters. These water rights are still vested in the state:

> The waters and ordinary flow and underflow and tides of every flowing river or natural stream, of all lakes, bays and arms of the Gulf of Mexico, and the storm, flood, or rain waters of every river or natural stream, canyon, ravine, or watershed, within the state of Texas, are . . . the property of the state.[20]

It is likewise a principle of common law that the title to the soil under navigable water is in the sovereign, except insofar as private rights may have been acquired by express grant or prescription. In interpreting this principle in Texas, the state supreme court has said:

> The grant of a tract of land upon the margin of a stream which retains an average width of thirty feet gives title to the grantee only to the water line

[18] *Houston and Texas Central Ref. Co.* v. *East,* Supreme Court, (1904), 81 S.W. 279; *Pecos County W. C. and I. District* v. *Williams,* Court of Civil Appeals 1954-NRE, 271 S.W. 2d 503.

[19] *The Underground and Water Conservation Law,* Vernon's Civil Statutes, 7880–3c.

[20] General and Special Laws, 1905.

of such a stream; the title to the bed of the stream being reserved to the state.[21]

***The Conservation Amendment.*** Over 40 years ago the people adopted an amendment to the constitution called the Conservation Amendment. The sweeping provisions of this amendment are set forth in the following language:

> The conservation and development of all the natural resources of this state, including the control, storing, preservation, and distribution of its storm and flood waters, the waters of its rivers and streams, for irrigation, power, and all other useful purposes, the reclamation and irrigation of its arid, semi-arid, and other lands needing drainage, the conservation and development of its forests, water and hydro-electric power, the navigation of its inland and coastal waters, the preservation and conservation of all such natural resources of the state are each and all hereby declared public rights and duties; and the Legislature shall pass all such laws as may be appropriate thereto.[22]

This amendment, it should be noted, not only recognizes the state's ownership of all the water in its streams, lakes, and bays, and all other storm and flood waters, but also expresses the state's duty to control, store, conserve, and distribute these waters to the people.

It became necessary for the state supreme court to analyze the effect of this declaration of state ownership. This was done in 1926 in the far reaching case of Motyl v. Boyd.[23] In painting the picture of Texas water rights, the court used a very broad brush and bold strokes, leaving to future artists the job of filling in the necessary details. For nearly four decades the principles laid down in this decision have served as broad signboards for legal guidance in formulating the water policies of the state.

***Public Ownership—The Basic Principle.*** Out of our Spanish-American past has come the central concept of today's water laws and water rights. At no time has the sovereign parted with ownership of our water in its streams. This means that the running water in every natural stream, commonly known as the corpus of the stream, is the property of

[21] *City of Austin* v. *Hall,* 93 Texas 597, (1900). See also footnote 23.

[22] *Texas Constitution,* Article XVI, section 59a.

[23] In this case, Judge Cureton said, "A river is composed of its bed, banks, and stream; the bed of the stream defined by the statute is that portion of the terrain between its fast land banks. The bank is that part of a stream alternately covered and left bare as there may be an increase or diminution in the supply of water and which is adequate to contain it at its average and mean stage during an entire year without reference to extra freshets of the winter or spring or the extra droughts of the summer or autumn." *Motyl* v. *Boyd,* Tex. Sup. Ct. S.W. 458 (1926).

no one, but belongs to all men in common. The water in a flowing stream at this moment will be gone the next. People elsewhere are dependent upon it. Everywhere men are in competition for it and it becomes a matter of perpetual social concern.

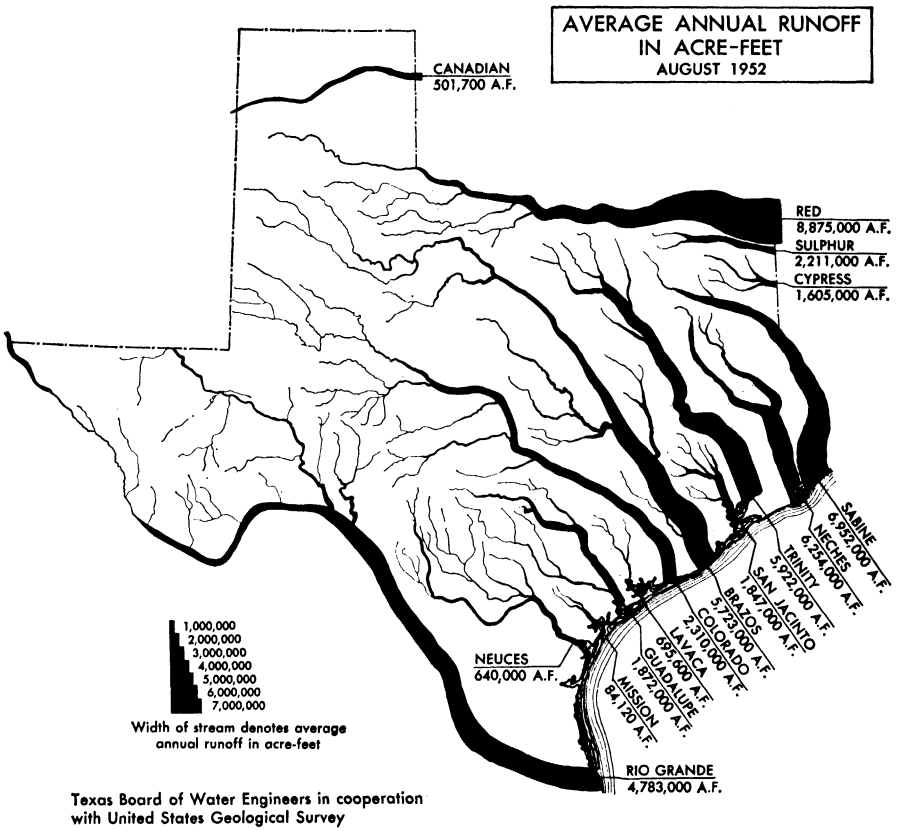


**Figure 51.** *The Water Load of Texas Streams.*

It follows, then, that no one can establish a property right in the corpus of a stream. The state, however, from time to time may grant permanent rights to the use of such waters.

***Two Kinds of Flowing Water.*** In defining water rights, it should be noted that from time to time there are two kinds of water in a flowing stream. First, there is the *ordinary flow*. This is considered to be the normal flow of the stream when not disturbed by rises due to runoffs from rains and floods.

The second kind consists of *floods and storm waters,* which at times may disturb the stream. These are considered as enemy waters, capable

of wreaking loss of life and property damage. Such waters are the responsibility of the state and likewise the property of the state. It is the state's duty to control such waters so as to prevent downstream destruction.

***Rights to Use Public Waters.*** As the owner of the waters in the streams and lakes, it is within the authority of the state to define the use of the waters and how such waters are to be distributed. Here again the chief principles come down from past usage and are recognized in the present water laws.

Perhaps the oldest and most important of these rights belongs to those who own the land situated along the banks of the stream. The man who owns the banks of the stream is entitled to use the water. This is known as a "riparian right" (from Latin *ripa,* river bank). He does not own the water but has the right to use it as it flows by his land. He may withdraw and consume as much of it as he needs for such purposes as cooking, drinking, general household uses, and for watering livestock and home gardening. But his right to use the water for farm irrigation is limited along with other riparians to a fair proportion of the available supply. Riparian rights, it should be stressed, extend only to the ordinary flow of the stream and not to flood or storm waters.

Another system of water rights pertains to the taking of public waters for other uses, such as irrigation projects, manufacturing uses, municipal supplies and the like, without reference to land ownership. This is known as the "right of appropriation." As noted above, some use of water for irrigation may be correlative with riparian rights for land owners, and may be limited according to the needs of other riparians. For this reason the two principles often seem in conflict, especially in cases where early appropriators already have spoken for much of the stream's ordinary flow.

Today the principle of appropriation pertains primarily to the rights to store and use storm and flood waters for the many other needs of the people.

When water is stored in a reservoir, the owner of the reservoir cannot detain any water to which downstream owners or appropriators are entitled. Facilities must be provided for releasing such waters and letting it through as needed and without cost to them.

When the government builds a dam, the state still owns the water stored in it. Those who use it do so by permit and pay for the water. Usually the right to use storage space in the government reservoir is

purchased by a city, water district river authority, or some other public agency. If the water in a reservoir is insufficient to take care of all the applicants for permits for appropriation, the permits will be granted in the order of priority of the intended uses in this order: domestic and municipal, manufacturing, irrigation, hydroelectric power, navigation, and recreation.

## Conservation Agencies

The chief state agency which administers the water laws and is entrusted with the general work of water conservation and flood control is the state board of water engineers.[24] The ultimate objective of the board can best be stated in terms of its statutory duty to conserve state waters, "in the greatest practicable measure for the public welfare. . . ."

The board passes on applications for permits to store, appropriate, or divert surface waters. To obtain a permit to appropriate public waters, the applicant must file a formal request therefor and at a public hearing show that there is water available for the purpose and that his project will not interfere with prior appropriators. The board enforces the rules and regulations pertaining to the taking and use of public waters, other than those for domestic and livestock uses.[25]

The creation of water control and water improvement districts, and the bonds issued by such districts, must have the board's approval. The board designates and defines underground water reservoirs and authorizes the creation of underground water conservation districts.[26]

The board is required, after public hearing, to approve all federal projects when the Congressional authorization for such projects necessitates approval by the governor.[27]

The board of water engineers conducts a number of studies and surveys pertaining to the varied phases of the water problem. A planning division was established in 1957 to do research work in water needs but without authority to recommend an overall plan.[28] Much of the board's

[24] Established in 1913, the board is appointed by the governor with approval of the senate. It consists of three members, one from each of the three water divisions of the state.

[25] These pertain to such matters as priorities for water uses, and the reasonableness of water rates for purposes mentioned in the act when complaints are filed.

[26] By act of the Fifty-first Legislature (1949).

[27] This includes projects constructed by the Corps of Army Engineers and Bureau of Reclamation but exempts soil conservation districts.

[28] Under present plans the division expects to make a report in 1963. A federal agency is making a similar study for a master water plan for Texas.

research work is done in cooperation with federal agencies engaged in similar work.[29]

In 1957 the legislature enacted two important water measures. It set up a water development board with a $200 million fund to make loans to help in the construction of local water projects.[30]

In another measure it set up a planning division in the state board of water engineers to conduct research and studies on Texas water needs. The studies will be embodied in a report to be made to the legislature.

### The Texas River Development Program

Two scenes are written vividly in the history of a typical Texas river. Each portrays an extreme in nature's highly eccentric and erratic moods. In seasons of heavy rains the river thunders and roars through its rocky chutes and chasms, and wreaks havoc and devastation across the low lying valleys on its relentless journey to the sea.

The cycle turns and severe droughts come unexpectedly and unannounced. The river dwindles to a mere trickle and even ceases to run in places. The merciless sun whitens the dry beds of the tributaries. The springs cease flowing and the farmers' wells go dry. Many municipalities are forced to impose severe restrictions on the uses of water.

Since the first settlements the people of Texas have been the victims of alternate floods and droughts. It took the great Brazos River flood in 1913, which destroyed all crops and much of the wealth between Waco and the Gulf, to fire the people into action. The result was the great conservation amendment of 1917. For the first time there was a legal means by which the people in a given area could organize as a civil subdivision of the state for controlling river waters as safeguards against both floods and droughts.

Under this amendment the legislature in 1929 created the Brazos

[29] The important work of federal agencies in water conservation must be included in any consideration of the water problem in Texas. The Corps of Engineers is the main construction agent for flood control and navigation projects. Many such projects include hydroelectric generating capacity. The Bureau of Reclamation is the prime construction agent for conservation, irrigation, water supply, and power projects. The Soil Conservation Service is responsible for upstream flood water retardation dams and the improvement of soils to lessen water runoff. The U.S. Geological Survey measures water runoff and maintains records on the quality of the water. The Federal Power Commission is the consultant authority for the development of hydroelectric capacity. The International Water Commission allocates the water in the lower Rio Grande valley.

[30] This amendment permits the state to issue $100 million in bonds and authorizes the legislature to issue an additional $100 million to establish a fund for buying the bonds of water conservation districts and other civil subdivisions.

River conservation and reclamation district, which later became the Brazos River authority. This was the pioneering move and was the first authority ever set up to administer the waters of a major river. As a result the Brazos River authority became a sort of model for the many other river authorities which followed.[31]

The Brazos River authority is an official agency of the state of Texas. It is governed by a board of directors appointed by the governor and who reside in various places throughout the watershed.[32] The general manager, with offices in Mineral Wells, directs the work of the agency.

The basic function of the authority is to control and regulate the waters of the Brazos River and its watershed. This includes the administration of equitable water rights of the people in all parts of the watershed for a beneficial use of public waters. A secondary function is the generation and distribution of hydroelectric power.

The authority's first project was the Possum Kingdom Dam for both water conservation and power generation. Flood control projects, such as the Whitney and Belton Dams, were built by the federal government and are operated by the authority. The agency can issue bonds against its anticipated revenues from the sale of water and electricity. The authority has plans under way for building six new dams encompassing a vast program of water conservation and power generation along a stretch of 250 miles of the Brazos River and its tributaries.

### The Lower Colorado River Authority

As a political subdivision of the state of Texas, the lower Colorado River authority is a reclamation and conservation district composed of ten counties along the lower Colorado River. Its affairs are managed by a board of twelve directors appointed by the governor with the general manager and administrative offices located in Austin.

When the legislature voted the authority in 1934, the agency was charged with the following duties: (1) controlling devastating floods; (2) conserving by storing, preserving, and distributing the waters of the Colorado and its tributaries for irrigation, power, and other useful purposes; (3) developing, generating, distributing, and selling electric energy for the benefit of Texas consumers; and (4) protecting the watershed land resources.

[31] This was the first project of its kind in the entire United States, encompassing an entire watershed. During the 1930's under the New Deal conservation programs, Texas created eighteen other river authorities of this nature for varying purposes.

[32] The Brazos watershed includes an area of 44,600 square miles which covers sixty-five counties, a sixth of the state's area and a sixth of the state's population.

A series of six dams have been constructed along the river above Austin. The control of flood waters now stored for irrigation, municipalities, industry, and the generation of electricity is another fine example of what can be done in the management of a river. The authority produces an important portion of the electricity generated in Texas from its six hydroelectric plants. A total of thirty-five towns and cities are served by its plants. It also sells electricity to eleven rural electric cooperatives and a number of private utilities.

By planned releases of the stored waters the rice growers in the three-county area nearest the coast are assured an adequate and reliable supply of irrigation water.

The Brazos and lower Colorado River authorities, operating two of the oldest and most extensive river management programs, are used as examples of what can be done in the control and utilization of Texas river waters. Others have similar programs on a more limited scale. The last created was the Trinity River authority in 1955. It has for its primary concern the storage of more adequate water supplies for Texas urban centers such as Dallas, Forth Worth, and Houston.[33]

According to the United States Geological Survey records eighty-one per cent of the flood flow of Texas streams still escape into the Gulf of Mexico. The watershed protection and flood prevention program, recently inaugurated, is planned to check the runoff from the upper reaches of the watersheds before it reaches the larger streams.[34] The growing demand for water in Texas, however, can be met only by further development of storage facilities along the main streams of the state.

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[33] Originally organized by the Trinity Improvement Association for water conservation purposes.

[34] Watershed districts are organized by vote of the land owners. The district can levy taxes to receive federal aid for the construction of small dams on the tributary streams of the watershed.

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# 17....

# *Conservation of Natural Resources—Continued*

In the preceding chapter we have discussed the role of the state in maintaining our soil and controlling our water resources. Just as compelling in importance, though perhaps not so closely interrelated, are measures of conservation activity relating to wildlife, parks, and mineral resources.

## WILDLIFE

***A Glance into the Past.*** A study of Texas wildlife calls for a glance at its history. Safe and sane plans for the future must draw lessons from the follies of the past.

Little is to be found in the popular history of Texas relating to the abundance of its game and other fauna. In the early days the plentitude of game was too commonplace for comment. One of the earliest accounts of this paradise of wildlife comes from an Englishman, William Kenedy, who visited Texas in 1839 "to witness its novelties and tell the story in nearly 1,000 pages." [1]

Similar accounts were also written by Captain Bonneville a few years earlier. The buffalo was one of the most numerous species of wild game at that time. The wanton and rapid destruction of this animal is often used as an illustration of the traditional American attitude toward his wildlife resources.

From one of these observers we get the following glimpse of Texas over 100 years ago:

[1] J. G. Burr (statistician, Texas Game, Fish and Oyster Commission), "Texas Fauna, Past and Present," *The Texas Geographic Magazine*, December, 1938.

They now come to a region abounding in buffalo—that ever-journeying animal which moves in countless droves from point to point of the vast wilderness; traversing plains, pouring through the intricate defiles of mountains, swimming rivers—ever on the move; guided in its boundless migrations by some traditionary knowledge like the finny tribes of the ocean, which, at their certain seasons, find their mysterious paths across the deep, and revisit the remotest shores.[2]

What was happening even in those years can be gleaned from a report as transmitted to the Senate in 1853 by Secretary of War Jefferson Davis, on the exploration of the Red River by Captain R. B. Marcy. Referring to the buffalo, this report said:

Thus this monarch of the plains was allowed free range from one end of the continent to the other, but this happy state of things was not destined to continue. . . . Thousands of these animals were annually slaughtered for their skins and often for their tongues alone. . . .

Colonel Charles Goodnight, famous for the buffalo calves he preserved and nurtured into a domestic herd, was a witness to the passing of the buffalo. He said:

They were slaughtered for meat by settlers, and by Indians in Texas, Oklahoma, New Mexico, Kansas, Colorado and Nebraska; by professional hunters employed to supply meat to military forts and railroad construction companies; by sportsmen who killed merely because they could kill. The performance of the sportsmen was to me one of the most distressing features of buffalo extermination. The majority killed needlessly and with ruthless abandon. I have seen passengers on a train, which had been held up by a herd that was slowly crossing the track, shoot buffaloes for hours at a time. Hundreds were slaughtered in this way, while others were wounded and left to a lingering death. For years the most conspicuous objects along western railroads were bleaching bones of these defenseless creatures that had furnished sport for passengers. Seasoned frontiersman though I was, I could never become inured to these scenes of brutal and wanton butchery. The buffalo had to go, of course, but there was no excuse for the hurry, waste, and savagery that attended their extermination.

Since the passing of the buffalo, other forms of wild game have shared a fate less dramatic, perhaps, but frequently no less tragic. In recent decades, however, Texas has made marked progress in the restoration of several species of wildlife. Deer have become more plentiful over larger areas. The once almost vanished antelope herds are

[2] From Captain Bonneville's accounts, quoted by Kenedy.

appearing again in protected areas. Many lakes and ponds are stocked with fish. Scientific programs of game management are doing much to restore game birds and other kinds of wildlife.

***The Importance of Wildlife.*** Conclusively a big proportion of Texas people are actively interested in the wildlife of their state. There is a greater appreciation of the importance of wildlife conservation today than ever before.

About 1.7 million Texans hunt or fish annually in the state. The number increases each year. These sportsmen spend in excess of $200 million annually for their hunting and fishing.[3] This is more money than all the people of the state spend on all football, baseball, and basketball games, plus all other spectator sports, and plus all movies and stage attractions. It is greater than the total amount spent on all medical and dental bills. Such is the terrific impact of outdoor sports upon the state's economy, not to mention the intangible values, as our sportsmen take to the fields, the streams, and marginal waters in ever increasing numbers.

## Wildlife Protection

***The State's Legal Rights in Wildlife.*** From the earliest traditions the right to take and possess wild animals has been subject to the control of the law giving power. Of ancient Athens it is said that "Solon, seeing that the Athenians gave themselves up to the chase, to the neglect of mechanical arts, forbade the killing of game." [4]

"In the feudal as well as the ancient law of the continent of Europe, in all countries, the right to acquire animals (ferae naturae) was recognized as being subject to governmental authority and under its power, not only as a matter of regulation, but also of absolute control." [5] The common law of England also based property in game upon the principle of common ownership and, therefore, subject to governmental authority. After the Norman conquest, the ownership of wild game was vested in the king to be held as a "sacred trust" for the people.

This principle formed a part of the common law doctrine and did not rest upon statutory enactment. When the colonists settled America they brought with them the common law. After the American Revolution, it was judicially decided that, according to the principles of common law,

[3] According to survey made in 1955–56. See *Texas Almanac* covering this period.
[4] Cited in *Greer* v. *Connecticut,* 161 U.S. 519, 522–528.
[5] *Ibid.*

the state acquire the title of the king, and that the wild game was owned by the state in its sovereign capacity "in trust" for the people of the state. This principle has since been universally applied and all statutory enactments to that end are merely declaratory of the common law principles.[6]

***Rights of Property Owners.*** Since the state owns the game, it follows that an individual cannot obtain an absolute property right in such game except upon such conditions, restrictions, and limitations as the state may permit. Although the state owns such game, the individual owner of real estate also has an interest in game on his property. This interest, however, is not an absolute property right, but subject to such restrictions as the state, in the exercise of the police power, may see fit to impose.

The individual, on the other hand, has the right to prohibit others from trespassing upon his property or taking his game. In other words, he has the right to control the game upon his own property, subject to the regulations imposed by the state. These, however, are only rights which the state leaves to him. In the absence of legislation, the property owner doubtless may take or dispose of any game or fish as he sees fit without restraint.

It is upon this primary ownership that the state has based its game and fish laws. In the words of the court:

> . . . fish and game, being by legislative enactment and declaration the common property of the whole people and part of the food supply of the State, the Legislature has not only the authority to regulate the slaughter of such game, but to make such laws as may be necessary to accomplish this purpose and as may and will defeat evasions and prevent violations of this law.[7]

***Hunting and Fishing Rights.*** The equal right of each individual, therefore, to kill game is subject to two limitations. The first is the right of the state to impose reasonable regulations on hunting such as the time, method or taking, size and bag limits, etc. The second limitation concerns the rights of the land owner.

The right to hunt is dependent on the ownership of the soil. The legislature cannot authorize another to enter the premises for the pur-

[6] The Texas law reads: "All wild animals, wild birds and wild fowl within the borders of this state are hereby declared to be the property of the people of this state." (1925 P. C. Article 871A.)

[7] Ex parte Blardone, 55 Tex. Crim. 189, 194.

pose of taking game, and the granting of a hunting license gives the holder no right to invade the private properties of another.

This right, of course, can be acquired from the owner. The right to shoot waterfowl from a boat is analogous to the right to take fish from the water. The public has a right to resort to all public waters to fish or shoot waterfowl, subject to the state and federal regulations. Even in public waters the hunter or fisherman must not trespass over private property to reach the shooting grounds. The mere fact that he has a right to pass along a stream in a boat gives him no right to shoot fowls on the banks or where the soil beneath the water is privately owned. In Texas, however, all navigable rivers and the bottoms of bays are owned by the state, and the wildlife in such habitats is controlled by the state through the Game and Fish Commission.

## The Game and Fish Commission

The game and fish commission was created over sixty years ago originally to enforce the fish and oyster laws.[8] During the intervening years as it became apparent that the future of wildlife was being endangered, the commission's work was expanded to protect existing game and restore the depleted populations.[9] Today the commission is dedicated to the task of providing some 10 million people of Texas with hunting, fishing, and conservation of wildlife through a program of law enforcement, research, management, and education.

***Law Enforcement.*** Most of the public contact with the game and fish commission is through the game wardens. These are the uniformed men who work in the field and with the people. Their chief duty is to enforce the hunting and fishing laws. They also aid in all wildlife programs. Wardens assist the landowners with the solution of game and fish problems. They make preliminary surveys of deficient game areas for preparation for restoration programs. The game wardens meet with sportsmen in civic groups, especially Boy Scouts and 4-H Clubs, and give pertinent information on wildlife, hunting, or fishing. The game warden is the closest contact with the game and fish commission for the local citizen.[10]

[8] Originally created in 1895 with headquarters in Port Lavaca.

[9] The game and fish commission is composed of nine members appointed by the governor. The commission employs an executive director. Its headquarters are in the Walton Building in Austin. There are regional offices in San Antonio and Houston.

[10] The law classifies as game animals deer, elk, antelope, wild sheep, bear, and squirrels. It classifies as game birds, in their wild state, turkeys, ducks, geese, brant grouse, prairie chickens, pheasant, quail, wild pigeon, dove, snipe, chachaloca, plover, and shore birds of all varieties.

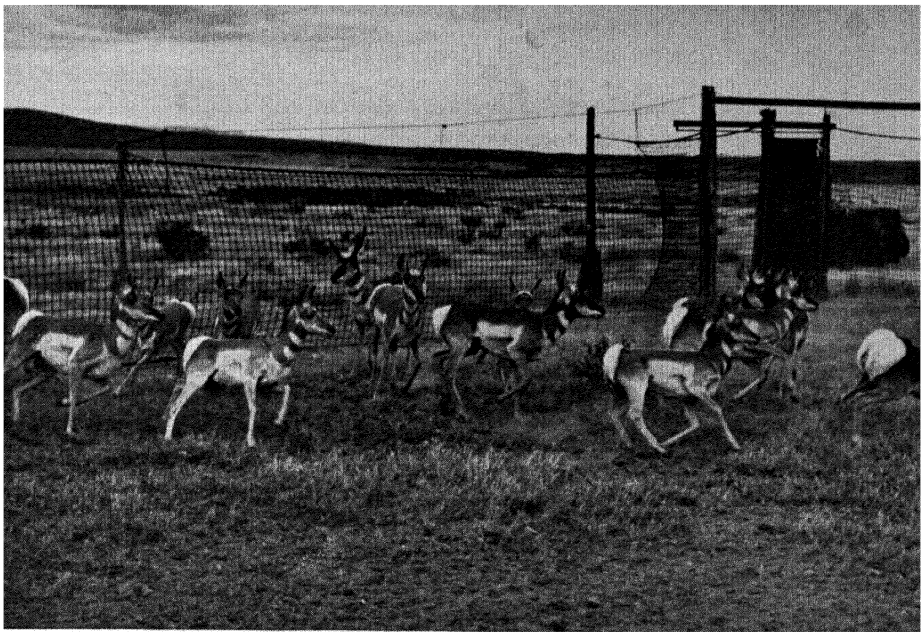

**Figure 52.** *Trapped Antelope* on a game preserve are being moved to a stocking area. (Courtesy, Texas Game and Fish Commission)

## Wildlife Restoration

Perhaps the most important aspect of wildlife conservation is that of restoring wildlife in the state. This is known as the game management program and covers a wide range of activities. These include deer, antelope, and turkey restocking efforts, producing and releasing quail for suitable sites, and distributing surplus game to depleted areas. The commission restocks inland waters with millions of fish annually from its own waters. It operates seven wildlife management areas totaling over 67,000 acres of its own for conducting research programs and as demonstration areas. The many scientific studies and research projects conducted on the commission's technicians and skilled biologists cover all places of wildlife restoration problems in the state.[11]

## Marine Fisheries

Over 200 million pounds of marine fishery products are taken annually from the gulf waters along the 600 miles of the Texas coast. The game and fish commission is charged with the management and development of these important resources. Shrimp boats and other com-

[11] The chief source of revenue for defraying the costs of the restoration programs comes from a federal grant derived from the eleven per cent tax on the sale of guns and ammunition.

mercial operators must secure licenses from the commission and abide by the laws pertaining to open and closed season and other regulations. The commission has the responsibility of protecting and preserving the live oyster reefs. A laboratory is located at Rockport for making scientific studies for management of the marine resources. The building also houses an aquarium where can be seen the many forms of marine life.

### Wildlife Education

Realizing that education is an important factor in wildlife management, the commission distributes publications covering every phase of wildlife in Texas. This work is done by the department of information and education. Through the use of printed matter in the form of booklets, pamphlets, and folders, and through the use of films, the program of education is carried to the people. Suitable materials for classroom use in the public schools can be secured from this department. The commission also publishes a monthly magazine which provides interesting information about hunting, fishing, and the conservation of wildlife resources.[12]

### Sand, Shell, and Gravel

Sand, shell, and gravel in the stream beds and public waters are valuable resources and must be conserved and properly administered. Permits must be secured from the game, fish, and oyster commission before the removal of these resources from public waters can take place. The revenue derived is used in administering the affairs of the commission, primarily for the benefit of wildlife and the construction and maintenance of fish hatcheries.[13]

The game and fish commission also has jurisdiction in pollution control in public waters when fish and wildlife are affected.

## THE TEXAS STATE PARK SYSTEM

When Mrs. Isabella Neff, in 1922, wished to deed a small tract of land on the banks of the Leon River to the state of Texas to be used by the general public, her son, then Governor Pat M. Neff, discovered that

[12] This is the magazine *Texas Game and Fish* with an authorized subscription rate of $2.00 per year.

[13] Other revenues are derived from fishing and hunting licenses. The sportsmen pay the cost of wildlife protection and management in Texas. No tax revenues are used for these purposes.

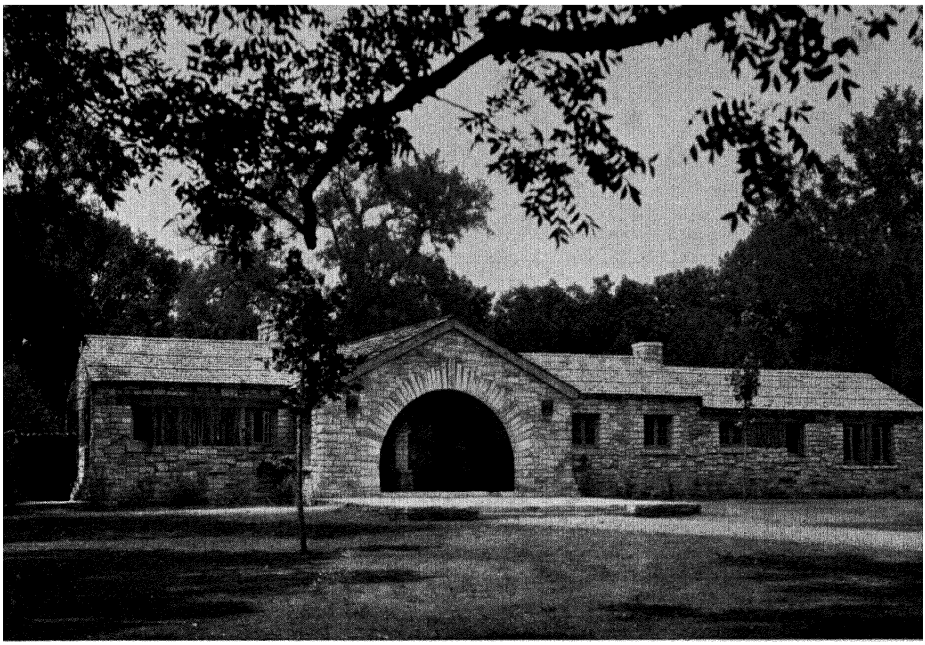

**Figure 53.** *Mother Neff State Park Refectory.* The Mother Neff State Park was the beginning of the Texas State Park System. The park's refectory was built of native limestone and cedar logs. Most of the improvements in the state parks were built during the depression of the 1930's with the assistance of the Works Progress Administration and the boys in the Civilian Conservation Corps. (Courtesy, Texas State Park Board)

Texas had no state park system and no department of the state authorized to hold title to park lands. The following year the governor secured an act creating the state park board to be composed of interested citizens who were instructed to solicit donations to the state of appropriate lands and to make recommendations to the legislature regarding suitability of park sites. Much credit is due these members for their diligent work in acquiring sites and as pioneers in promoting the first public parks program in the state. In 1931 the legislature authorized the park board to lease concessions and make concession contracts and utilize convict labor wherever feasible. In the same year it also authorized the state park board to acquire "by purchase, gift, or otherwise, and to improve, beautify and equip; and to contract with any person, firm or corporation for the improvement, beautification, or equipment of the state parks of the state." [14]

Many tracts of land were donated to the state or acquired by the park board in order to utilize the services of federal agencies in an im-

[14] See Statutes on State Parks, Articles 6067–6070.

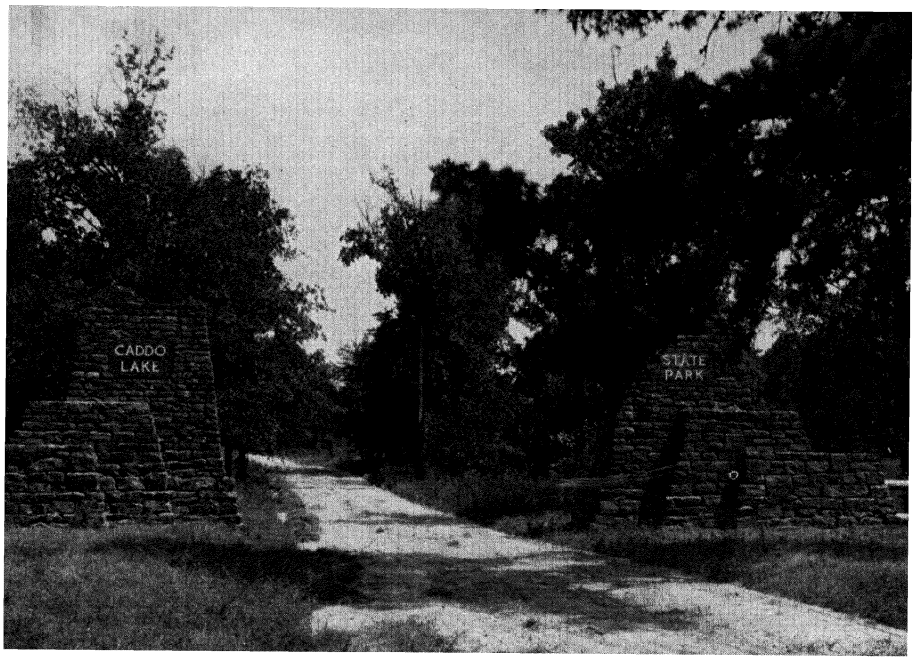


**Figure 54.** *Rustic Park Entrance.* State parks are for public use. Rules and regulations are made to preserve the park's facilities and make them safe places for recreation. (Courtesy, Texas State Parks Board)

provement program such as the construction of roads, buildings, and other facilities.[15]

***The Present Park System.*** There are forty-two state parks in the present system. In addition, there are several strictly historic places that are maintained by the park board or other agencies. An act of the legislature in 1959, known as the Open Beaches Law, recognizes the public's right to use the beaches along the Gulf of Mexico. This area normally means the sandy beach from the water line to the vegetable line, or a distance of 200 feet in area where there is no natural vegetable line that near the water. These beaches belong to the people and it is an offense against public policy to bar the public from the use of such beaches.

Several historic parks are under the control of special commissions. These are the Alamo, San Jacinto, the Fannin Battlefields, and the battleship "Texas." The San Jose Mission is under the joint management of the Texas state park board, the National Park Service, and the

[15] The Works Progress Administration made federal grants for public projects. The Civilian Conservation Corps, composed largely of unemployed boys who lived in the C.C.C. camps, constructed many of the buildings and other facilities in the parks.

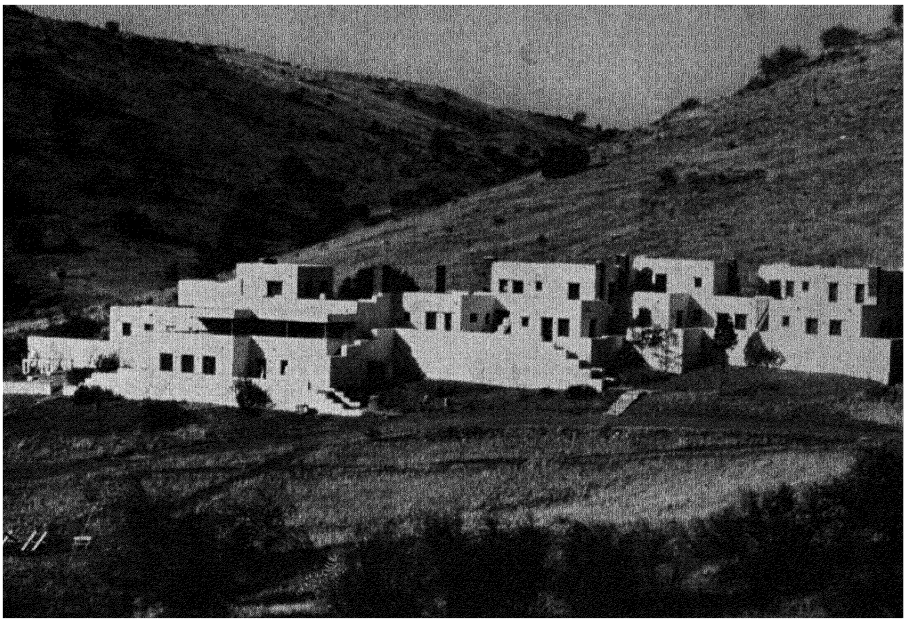

**Figure 55.** *Indian Lodge in the Davis Mountains State Park.* Over 5 million people visit the state parks annually. (Courtesy, Texas State Park Board)

Catholic Diocese of San Antonio. San Jose is the only designated national historical site in Texas. The largest public park in Texas is Big Bend National Park, which is part of the national park system.

## The Public Parks Program

More than five million people visit the Texas state parks annually. The state parks program, still young in terms of years, represents one of the finer services of the state to its people. Public parks are social assets of uncalculable values. From the rush and whirl of modern life, here people can find beautiful retreats for rest and recreation, for nature and wildlife study, and for boating, fishing, and hiking. The whole program should be expanded. When we consider the negligence and shortsightedness with which the larger part of our public domain was dissipated until the last two or three decades with only unconsequential returns, it is our responsibility to make recompense to future generations by setting aside and preparing these retreats for public use. When dams are built and lakes created at public expense, efforts should be made to secure the shore areas for park purposes and recreation. The enrichment of a few land owners and more particularly a few land speculators, through spending millions of public funds and leaving the contiguous lands in the hands of private owners, is another folly of the

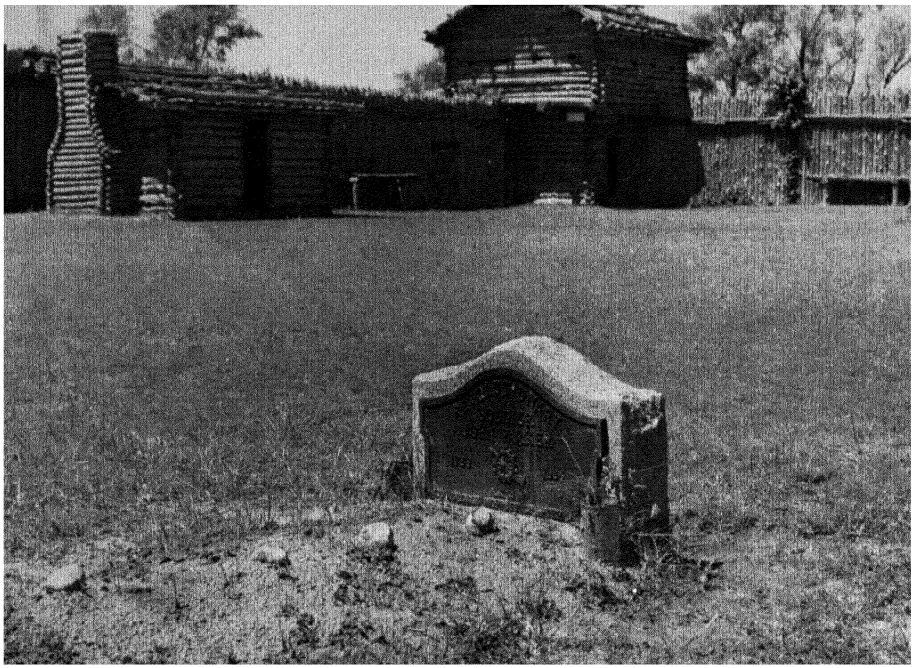

**Figure 56.** *Inside Fort Parker.* Fort Parker State Park, Limestone County. The state maintains several historic parks; others are under special boards or commissions. (Courtesy, Texas Highway Department)

present that will be difficult to explain to future generations. There are no more appropriate spots for public parks than the areas around the beautiful lakes such as have been created at public expense in recent years.

## THE CONSERVATION OF OIL AND GAS

### Oil

The rise and importance of the oil industry in Texas constitutes an outstanding phenomenon in the history of natural resources. Prior to 1960 the state had produced a total of more than 20 billion barrels. In recent years the annual production is around one billion barrels. Approximately one-half the remaining oil reserves in the United States are within the Texas borders.[16] There are 192,000 producing wells, and forty-three per cent of the entire acreage of the state is under lease for oil and gas.

The rise of the oil industry is largely a story of this century. There

[16] 46.96 per cent as of January 1, 1959.

were a few discoveries before 1900, but the foundations for the oil age were laid in 1901 when the first well in the great Spindletop field near Beaumont roared in and ran wild for nine days. In the next two decades a succession of discoveries brought in major fields in widely scattered areas of the state.

Early production in the flush fields was accompanied with enormous wastes. Modern technology and extractive processes were unknown. Oil and natural gas were imprisoned in the same sands and gas furnished the pressure to bring the oil to the top. Since there was a market only for oil, no attempt to prevent the wastage of gas was made. Pure "gassers" were allowed to blow themselves out. Fields were foolishly depressured with much of the oil remaining in the sands.

The chaotic development and wasteful operating methods made clear the need for conservation. By 1919, waste in the oil fields became a subject of statewide concern. As a result the legislature in that year, after the adoption of the Conservation Amendment in 1917, passed a conservation act giving regulatory authority to the railroad commission. During the decade that followed, various regulation and proration orders were issued for different fields. Proration orders were challenged in the courts. The state's legal authority for regulating oil production had not been clearly established.

By 1930 the oil men had gone everywhere in Texas. These were the great days of the "wildcatters." Probably no hardier or more adventuresome breed of men ever lived. In that year an Oklahoma wildcatter, C. M. (Dad) Joiner, set up a crude pine derrick on the little sandy farm of Daisy Bradford in east Texas. Two dry holes had left the old man without funds. He traded shares in the lease for used pipe and persuaded a banker in nearby Overton to lend him some money. The banker even worked as a roughneck on the night shift. On October 3 oil shot over the derrick. The Daisy Bradford number 3 had tapped the greatest oil field in the world—east Texas.

An orgy of drilling followed. A year later the field was producing over a million barrels daily. Many operators ignored the commission's proration orders and in June, 1931, a federal court declared such orders invalid.[17] The price of oil in the field was posted as low as five cents per barrel.

Conditions in the field were chaotic, and in 1932 the governor declared martial law over the area, calling out the militia to stop oil production. The object was to prevent physical waste and to raise the

[17] Issued by Federal District Court of East Texas, 1932.

price of oil. The governor and others were enjoined by a court order from enforcing their executive and military orders, but they refused to be restrained.

Soon afterwards the United States Supreme Court upheld the orders of the lower court by declaring that the policy was "an evasion under color of a state law of rights secured by the Federal Constitution." [18]

The next move toward regulation of production was made under the authority of the National Industrial Recovery Act of 1933. Under the provisions of this act the President was authorized to prohibit transportation in interstate or foreign commerce of oil produced in excess of the amount permitted under state regulations. This act was declared to be an unconstitutional delegation of legislative power.[19]

Attempts to regulate oil production under the N.R.A. codes met a similar fate in 1935.[20] Congress, however, did pass one law that stands today. It is known as the Connally Hot Oil Act which forbids interstate transportation of oil illegally produced under state laws. This act operates as a supplementary aid to the state's proration laws which limit production.

***The Interstate Oil Compact.*** Conservation of oil and proration of its production to coincide with market demand is a problem requiring joint action or cooperation of several states, especially those producing the major portion of the oil. In the summer of 1935 an interstate oil compact was formed by several of the oil producing states and later sanctioned by Congress. An interstate oil compact commission was set up for the purpose of advising and securing cooperation among the states and to collect and disseminate information about oil and gas. The agency is purely advisory with no regulatory powers.[21]

***How the Laws Are Enforced.*** The Texas railroad commission is the administrative agency for this important work.[22] The strict regulation of such an enormous industry requires vigilance and extensive supervision. The work can best be explained by using a single well to illustrate the procedure in oil proration.

If a well is to be drilled in unproven territory, it is known as a wild-

[18] *Sterling et al.* v. *Constantin et al.*, 287 U.S. 378, 404 (1932).
[19] *Panama Refining Co.* v. *Ryan*, 293, U.S. 338 (1935).
[20] *Schechter* v. *U.S.*, 293 U.S. 485, 542 (1935).
[21] Public Resolution No. 64, Seventy-fourth Congress, first session.
[22] The railroad commission was authorized by the constitution in 1891. By successive legislative acts it has become the administrative agency for the administrators of the common carrier laws, the Gas Utilities Act, and the oil and gas conservation laws. The three members are elected for six-year terms.

cat. Wells drilled in proven areas are classified as development or field wells. In either case, "Notice of intention to drill" must be filed by the operator and, provided the location is regular (conforms with established spacing provisions for that area), is acknowledged by a permit to drill. Upon completion of the well, a log of the well, together with specified completion forms, must be filed.

When a well is brought in and a new field is discovered, the railroad commission holds a hearing on that field. Engineers and geologists for the operators testify, and their testimony is augmented by private inquiries by commission engineers. Usually the operators themselves present proposed field rules. If all operators agree on field rules, the requested rules usually are promulgated in the form of an official order. If there is disagreement, or if some rule is requested which the commission believes not in the interest of conservation, the commission determines the weight of evidence and writes the rules.

The rules and regulations pertain to such matters as spacing for the drilling of new wells, the oil-gas ratio, proper well equipment and production.

***Proration of Production.*** The production of oil in Texas is limited according to the market demand. Each well must be considered in relation to (1) the other 192,000 wells in the state which must share in the market demand for oil; (2) other wells within the given field, all of which must get their prorata share of the field's outlet; and (3) the physical condition of the well itself. In other words, a well may produce with the least expenditure of energy at a higher rate of flow than would be desirable to maintain market demand; or, if prorated back, it may turn into a water well or a gas well due to the intrusion of these two elements.[23]

Each month the Austin engineering staff prepares a schedule showing the allowable yield of every individual well in the state. This schedule, or that part of it in which a particular producer is interested, is mailed to the producer. He is granted tenders covering this allowable oil, and may not move any more than that amount except by special permission after hearing.

***Other Aspects of Oil Proration.*** While proration is concerned primarily with the prevention of physical waste, a major aspect of the program turns on the issue of price stability. Proration in Texas has been used as a sort of balance-wheel for the entire industry. Some states

[23] Texas wells as a rule are permitted to produce only nine or ten days per month.

in the Union do not attempt to control oil and gas production but let the wells run at maximum capacity, while the Texas wells are severely prorated in order to keep total production within market demand.

There are also international implications in the Texas petroleum policy. With the development of vast fields in Venezuela, the Middle East, and other areas, large supplies have become available to the world, often at prices favorable for their importation into the United States.[24] Many of the firms engaged in production in foreign fields are substantially American owned and also produce oil in the United States. Large imports of foreign oil naturally exert pressure upon available markets which in turn reduces the allowable production for Texas wells. This has created a conflict between the major international companies and the independent operators who rely solely on domestic production.[25] The independents maintain that imports are being used to supplant regulated production in Texas in order to provide a market for the foreign oil.

Limited production also reduces revenues for the state treasury since oil pays a state production tax of about fourteen cents per barrel.[26]

### Natural Gas

Texas is the leading natural gas producing area in the world, producing over six trillion cubic feet per year for industrial and domestic uses.

It is estimated that Texas recoverable reserves in natural gas are in excess of 115 trillion cubic feet, or perhaps forty-five per cent of all gas reserves in the United States.

It is difficult to overestimate the value of natural gas. Its superiority as an industrial fuel is well known. It supplies comfort for the home and fuel to generate power to turn the wheels of industry. It is used as a lifting force for oil, and in itself yields millions of barrels of gasoline annually. It constitutes today the principal source of carbon black, of which Texas supplies over fifty per cent of the nation's output.[27]

[24] Foreign imports constitute almost one-fifth of the domestic consumption. The President has urged the majors to voluntarily limit their imports.

[25] See "Texas Umbrella Burden Approaches the Impossible," *The TIPRO Reporter* (Texas Independent and Royalty Owners Association Publication), Austin, October, 1939.

[26] Oil produced in Venezuela and the Middle East also pay heavy taxes. Venezuela collects over one billion dollars annually on a production of a billion barrels, or approximately the same as the Texas production taxes, normally from fifty to sixty per cent of all profits. The chief differential seems to be in cheaper and unlimited production policies in those countries.

[27] Only "sour gas" is used in the manufacture of carbon black.

In recent years the production of natural gas has come under effective regulation to prevent wastage. In the earlier years of the industry, however, wastage was enormous. Gas blown off in the great Panhandle field alone exceeded by seventeen times the amount used by all the domestic consumers of the United States over a period of several years. In other fields gas was burned off as waste. At the present rate of production the life expectancy of the state's gas supplies appears to be twenty to twenty-five years. With the increased number of interstate pipelines being authorized by the Federal Power Commission, calling for increased exports, the gas may be taken in another fifteen to eighteen years unless new reserves are discovered and technological advances are achieved to keep pace with the ever increasing demand for Texas gas.

***Regulation.*** The natural gas industry is divided into three operations: production, transportation, and distribution. There are several thousand gas producers in Texas. Some of the major producers also control pipelines. Local gas distributors are public utilities with a monopoly of the business in a given area.[28]

Under the conservation laws the railroad commission has largely eliminated wastage of this important fuel. "Popping off" is prohibited, and through better utilization methods nearly all the flaring of casing head gas has stopped. The commission administers the provisions of the law pertaining to ratable takings, repressure operations, gas stripping, and carbon black plants.

***Federal Control.*** Since 1938 the interstate transmission of natural gas and its sale for resale have been subject to regulation by the Federal Power Commission.[29] In 1938 Congress passed the Natural Gas Act which placed the transmission of natural gas and its sale for resale under regulation of the Federal Power Commission. Under a decision of the Supreme Court in 1954 the Commission was directed to extend its powers and to set just and reasonable prices for gas entering the pipelines. By this ruling the many thousands of gas producers became subjected to the utility type of regulation, which has been vigorously opposed by the gas interests and the gas producing states. Like many other resource issues, the natural gas control controversy has been drawn along sectional lines. Various groups representing consumer interests chiefly in the northern states, such as municipal officials,

[28] Rates charged the consumers are regulated by the local city governments, with right of appeal to the Railroad Commission by either the city or the company.

[29] Under the Natural Gas Act of 1938.

labor unions, and industries benefiting from the relatively cheap Texas gas, have actively supported well-head price controls as a part of an integrated regulation for the entire gas industry.

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# 18....

# *The State Judiciary: I*

***The Law of the State.*** There are three kinds of law which the courts of Texas must interpret: (1) constitutional law, (2) criminal law, and (3) civil law.

*Constitutional Law.* This consists of the Constitutions of the United States and of Texas, and the city charters. Cases involving these three divisions of constitutional law, if they are brought before the courts, call for the exercise of their most important function—that of passing on the constitutionality of an act of Congress, or an act of the state legislature, or of a provision of a city charter, or the state constitution. The Constitution of the United States, being the supreme law of the land, controls the validity or constitutionality of the acts of all governments whether national or local and whether their acts are executive or legislative in character.

*Criminal Laws.* The laws which provide a punishment for their violation are called criminal laws and have for their object the maintenance of law and order or the peace of the state. If the punishment for the violation is confinement in the penitentiary or death, the crime committed is called a *felony.* If the punishment for the violation is a fine or confinement in jail, or both, the offense is called a *misdemeanor.*

The criminal law in Texas consists exclusively of statutory law made by the legislature of the state. The criminal law is a very important division of the law because it deals with the rights of society. While its violations may extend to the murder of an individual, the crime committed is against society or the peace of the state. Hence the state is always the prosecutor in criminal cases. In other words, the dignity and force of the state are back of the enforcement of the criminal law. This means a greater protection of the person of the individual than if its enforcement were left to the individual who was injured. This is one of the refinements of the polity of the state. It results from the social compact on which all municipal law is founded. When man

enters society he surrenders a part of his natural liberty for the protection by society of his life and liberty.

*The Civil Laws.* All laws which are not criminal are civil. Civil laws are those which protect the rights of persons or groups without the necessity of resorting to criminal procedure. The civil laws protect private rights of the individual alone or in association with other individuals. The state or society is only indirectly involved. It maintains courts to assist the individual in protecting his rights, but in contrast with the enforcement of the criminal law, the individual injured must do the prosecuting.

Civil rights include a category of such matters as freedom of speech, freedom of worship, freedom of assembly, freedom of occupation, and the right to own property. In general these rights are found in our bills of rights. These rights may be violated by individuals or by our governments. In such instances the individual has access to the courts maintained by the state to enforce his rights.

***Important Terms.*** To understand the legal process and the work of the courts it is necessary to know the meaning in law of certain terms which must be used in discussing the organization and functions of the courts.

*Jurisdiction.* Jurisdiction is the powers of the courts. While we speak of the *powers* of the governor or of the legislature, we speak of the *jurisdiction* of the courts. Jurisdiction may be original, appellate, concurrent, exclusive, or final. It may be criminal or civil; hence we have criminal courts, civil courts, courts of original jurisdiction, of appellate jurisdiction, and of final jurisdiction. In a hierarchy of courts, jurisdiction determines the relationships of the various units of the hierarchy, and where litigation must begin, the course it may follow, and where it must end. In other words, a set of courts is tied together into a system of courts by means of *jurisdiction.*

*Cases.* The jurisdiction of courts is limited to cases. Courts cannot consider mere questions about which two citizens may be debating. The dispute must assume the character of a case at law. What is a case? A case is a legal question involving controversy as to rights of two or more parties; such rights may be determined by an action or suit in a court of law or equity. A case, therefore, is a judicial question contested before a court of justice.

*Plaintiff and Defendant.* The parties to a case are called the plaintiff and defendant. The party that files a civil case in court is the *plaintiff* and the party against whom the suit is filed or brought is the *defendant.*

In criminal cases the state of Texas is always the plaintiff. The state is always the prosecutor in criminal cases because the offense is always against the dignity and peace of the state.

## THE COURTS OF TEXAS

The judicial power of the State shall be vested in one Supreme Court, in courts of Civil Appeals, in a Court of Criminal Appeals, in district Courts, in county Courts, in Commissioners Courts, in Courts of justices of the peace, and in such other courts as may be provided by law.[1]

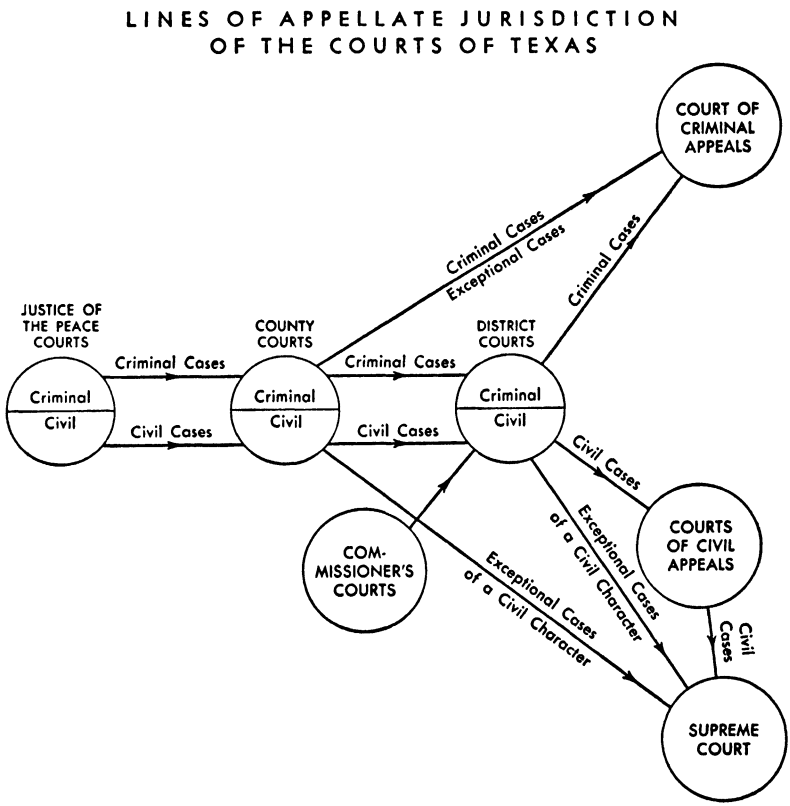


**Figure 57.**

The criminal district courts of Galveston and Harris counties are given a constitutional status subject to legislative change. The legislature is further empowered by the constitution to establish such other

[1] *Texas Constitution,* Article V, section 1.

courts as it may deem necessary, to prescribe their organization and jurisdiction, and to confirm the jurisdiction of the district and other inferior courts thereto. By virtue of these powers the legislature has established a number of courts of specialized jurisdiction. Of course, there are city courts for incorporated towns and cities to which the legislature has granted the right of self-government. These courts are

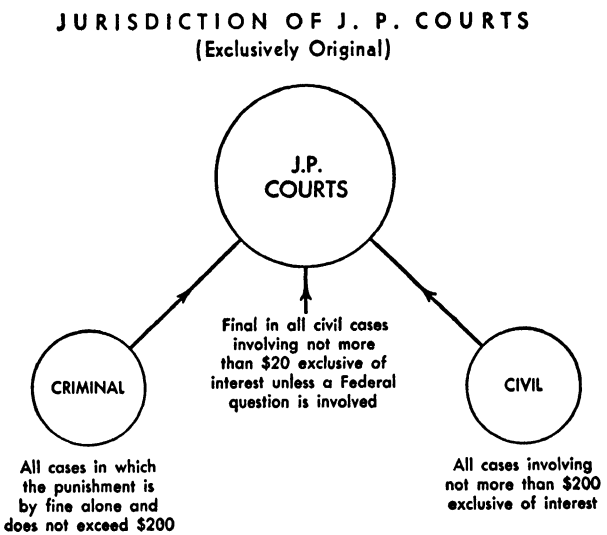


Figure 58.

variously called mayor's courts, recorder's courts, or corporation courts, and will be discussed in the chapter on municipal government.

Since litigation as a rule begins at the bottom of the judicial ladder of hierarchy and passes through a process of refinement called appeal from a lower court to the court of final jurisdiction, it is felt that it is more logical and conducive to a better understanding of the judicial process to discuss the courts in the same order. In other words, the discussion will begin with the lowest court and end with the highest or court of final jurisdiction. Every court has a certain amount of final jurisdiction in order to limit the number and character of the cases which may be appealed. Every court, in other words, is a stopgap for a certain kind of litigation. It therefore follows that only certain kinds of cases may be appealed from a lower court to the next higher court. This process is followed from the courts of the justices of the peace to the court of criminal appeals and to the supreme court.

## Justice of the Peace Courts

***Qualifications, Election and Compensation of Justices of the Peace.*** The justice of the peace must be a qualified voter of the state. He is supposed to be a person of some standing in the community, of some knowledge and experience in community affairs, and of a common-sense attitude toward justice. He represents a layman's or an average man's type of justice.

Every county is divided into not less than four nor more than eight justice precincts.[2] Some urban precincts have two justices of the peace. They are elected every four years by the qualified voters of their precincts, and their pay is based upon salaries or fees received in the cases which are brought before them. They must sit as a civil court once a month in their districts and may sit as a criminal court at any time.

***Jurisdiction of the Justice Court.*** *Criminal.* In criminal matters the justice has jurisdiction of all cases arising under the criminal laws of the state in which the punishment is by fine alone and not exceeding two hundred dollars. In cases in which the defendant is charged with felony the justice has the power to hold an examining trial and may release the defendant, commit him to jail, or permit him to give bond to await the action of the grand jury. However, if the offense committed by the defendant is capital, that is, punishable by death, the justice has no power to admit the defendant to bail. In such cases the defendant has the right to go before a district judge or a judge of a higher court and have a trial on the question of whether he is entitled to give bond. This proceeding is called suing out a writ of habeas corpus. There is an unlimited right of appeal from a decision of a justice's court in criminal matters.

*Civil.* In civil matters the justice has jurisdiction of all matters in which the amount involved does not exceed two hundred dollars exclusive of interest, provided such cases are not in the exclusive original jurisdiction of the district or county courts.[3] In civil cases in which the judgment of the justice's court is for more than twenty dollars exclusive of costs, there is the right of appeal to a county court. In all other civil cases the decision of the justice's court is final. Justices of the peace are ex officio notaries public.

[2] *Texas Constitution,* Article V, section 1.
[3] *Ibid.,* Article V, section 19.

*Small Claims Court.* Recently small claims courts have been created as part of the jurisdiction of the justices of the peace. Their purpose is to provide the means of settling small claims by a simple and inexpensive procedure in cases where the amount in dispute does not exceed $50, or if salary or wages are involved not exceeding $100.

Court cost is limited to a two dollar filing fee, a jury fee of three dollars (if either party requests the use of a jury), and a fee of one dollar for citation. The formality of common procedure is not required. No lawyer is required and unless a jury is requested the justice renders the decision. An appeal to a county court is permitted if the amount in controversy exceeds $20. This is a monumental reform and will save small litigants unnecessary expense in collecting small sums heretofore made prohibitive by court costs and lawyers fees.

## County Courts

***Qualification, Election, and Term of Office.*** County judges "shall be well informed in the law of the state." [4] As a matter of practical politics, this means that no formal study of the law nor a license to practice law is required as a part of the qualifications of a county judge. The main qualification is the ability to be elected. Fortunately a great many young lawyers are willing to hold these offices as a means of professional promotion. While the constitution does not require law graduates for county judgeships, it does not prohibit such persons from holding these offices. The county judge is elected for a term of four years by the qualified voters of the county and is compensated by "such fees and perquisites as may be prescribed by law." [5] County judges may be removed by the district courts for defined causes, upon allegations in writing and trial by jury.

***Jurisdiction of the County Court.*** *Civil.* In civil matters the county court has *original* jurisdiction of all cases in which the amount in dispute exceeds $200 and does not exceed $1,000. This jurisdiction in cases involving more than $200 and not more than $500 is *exclusive* and in cases involving $1,000 it is *concurrent* with the district court. The county court has *appellate* jurisdiction from a decision of a justice's court in which the judgment exceeds $20.[6]

*Criminal.* The county court has *original* jurisdiction of all criminal cases which do not involve punishment by death or confinement in

[4] *Ibid.*, Article V, section 19.
[5] *Ibid.*, Article V, section 15.
[6] *Ibid.*, Article V, section 16.

the penitentiary or a fine above $200. It has *appellate* jurisdiction in all criminal cases originating in the justice's court. In all appellate cases, whether civil or criminal, the trial is *de novo*. This means that the trials of these cases in the county court are conducted as though there had been no trial in the justice's court.

JURISDICTION OF COUNTY COURTS

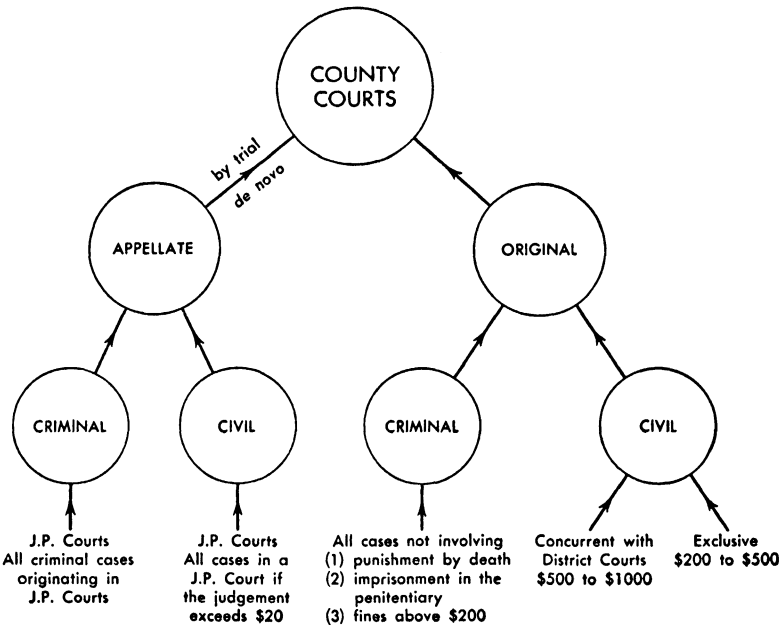


Figure 59.

The county court sits as a *probate* court exercising jurisdiction over the probating or proving and the recording of wills and over the administration of the estates of deceased persons. In some of the more populous counties the jurisdiction of the county court is divided by the establishment of a county court at law which has jurisdiction of civil or criminal cases or both, but does not have jurisdiction in probate matters, which are left in the jurisdiction of the regular county court. In one county where the civil and criminal cases are very numerous, there are two separate county courts at law, one for civil and one for criminal matters. In probate matters cases may be appealed from the county court to the district court, but in civil and criminal matters such appeals as are permitted by law in civil matters go to the courts of civil appeals and in criminal matters to the court of criminal appeals.

## District Courts

***Qualifications, Election, Term of Office of District Judges.*** The district court is the chief trial court in Texas. For this purpose the state is divided by law into judicial districts, each consisting of one or more counties or parts of counties. At present there are 170 district courts in the state. There is one judge for each judicial district. He must be a citizen of the United States and of the state, and a resident of the district for two years. He must also have been a practicing lawyer or a judge for four years in Texas prior to his election. He is elected by the qualified voters of the district for a term of four years.[7] The district judge may be removed by impeachment and conviction. He may also be removed by orders of the supreme court in proceedings instituted upon complaint of ten or more practicing lawyers within the district.[8] The salaries of district judges are fixed by law and, therefore, may be changed each biennium. At the present time (1960) the salary of a district judge is $12,000 per year. He is required to hold court at least twice a year at the county seat of each county in his district.[9]

***Jurisdiction of District Courts.*** *Original.* In civil matters district courts' original jurisdiction is limited to cases involving $500 or more and in criminal matters to felony cases. In civil matters their jurisdiction is *concurrent* with county courts in cases involving more than $500 and less than $1,000, but it is *exclusive* in cases involving more than $1,000. Their jurisdiction extends to all cases of divorce, all land suits, libel and slander cases, contested elections, and suits by the state to recover penalties, forfeitures, and escheats. In some populous counties or districts there are district courts exercising exclusively civil jurisdiction and others only criminal jurisdiction.[10]

*Appellate.* From the county courts cases involving probate matters, appointing guardians, granting testamentary letters, administering and probating wills, settling the accounts of executors, administrators, and guardians, and transactions of all business relating to estates may be appealed to the district courts under rules and regulations fixed by law.[11] Subject to such exception as may be made by law, the district

[7] *Ibid.*, Article V, section 7.

[8] *Report of Joint Legislative Committee on Organization and Economy*, 1933, Part IV, 10.

[9] *Texas Constitution*, Article V, section 7.

[10] The county courts, the district courts, and criminal district courts have original jurisdiction of cases involving delinquent children; when they exercise this type of jurisdiction they are known as juvenile courts.

[11] *Texas Constitution*, Article V, section 8.

courts exercise appellate jurisdiction and general supervisory control over the work of the county commissioner's court.[12]

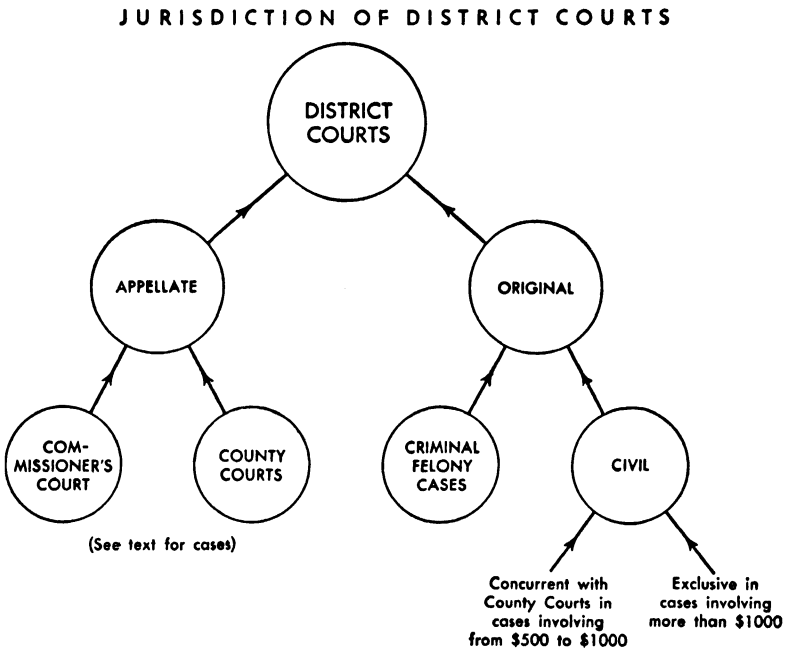


**Figure 60.**

***Administrative System for District Courts.*** For purposes of increasing the efficiency of the district courts, the state is divided into nine administrative judicial districts. The governor appoints one of the district judges in each administrative judicial district as presiding judge over the district. All of the district judges in each of these nine districts form a judicial council which meets one or more times each year and is presided over by the presiding judge appointed by the governor. The clerk of the district from which the presiding judge is selected acts as clerk of the administrative district.

In the meetings of the council reports are made by the various judges as to the condition of their dockets, the disposition of cases, and pending business. By this means a comparison of the relative conditions of all the district courts in any one administrative district can be made and a basis discovered for the transfer of judges from one district to

[12] Since the county commissioner's court is primarily an administrative agent, its work is discussed in connection with county administration.

another in order to equalize the judicial work and to prevent the delay of the trial of cases in courts whose dockets are heavy. This expedites the work of the courts and saves time and expenditure of litigants, familiarizes the judges with their common problems and creates an *esprit de corps* among them.

The judicial council has the power to prescribe such rules and regulations for the trials of cases as will best promote the administration of justice, and to execute their regulations. The presiding judge may assign district judges to the regular or special terms of court in any of the counties in his administrative district where the dockets are crowded. He may request the presiding judge of another administrative district for additional judges to aid in the disposition of congested litigation.[13]

## The Courts of Civil Appeals

The state is divided into eleven supreme judicial districts in each of which is located a court of civil appeals consisting of three judges. These courts are now located at Austin, Amarillo, Beaumont, Dallas, Eastland, El Paso, Fort Worth, Houston, San Antonio, Texarkana, and Waco.

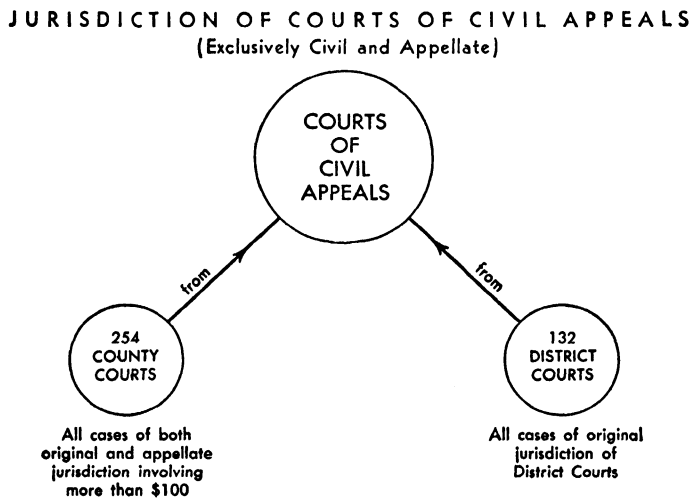


**Figure 61.**

***Qualification, Election, and Term of Office of Their Judges.*** Judges of the courts of civil appeals must be citizens of the United States and of Texas and at least thirty-five years of age and must have been prac-

[13] *General and Special Laws*, Fortieth Legislature Reg. Sess., 1927, 228–281.

ticing lawyers or judges in a court of Texas for at least ten years.[14]

The judges of the courts of civil appeals are a chief justice and two associate justices and are elected by the qualified voters of their districts for six-year overlapping terms, one justice being elected every two years. A majority of the justices is necessary for a quorum and the concurrence of two justices is necessary for a decision. Their salaries, fixed by appropriation, are now $16,000 annually. The justices may be removed by conviction on impeachment charges.[15]

***The Filling of Vacancies.*** In order to eliminate bottlenecks on the dockets of the courts of civil appeals, the Forty-seventh Legislature in 1941 made provisions for filling immediately any vacancy on these courts caused from physical or mental incapacity of a judge. When such a vacancy occurs it is the duty of the two remaining judges to certify the facts to the governor. If after an investigation the governor finds that a vacancy exists, he appoints a special commissioner who performs the duties of the absent judge. The opinions of the special commissioner must be adopted by the court before they are valid.

***The Equalization of Dockets.*** Another measure designed to lessen delays in handling cases in the courts of civil appeals was adopted in 1941. Under the terms of an act adopted by the Forty-seventh Legislature the supreme court is authorized to equalize twice a year the business found on the dockets of the eleven courts. This equalization is effected by the transference of cases from one court to another.

***Jurisdiction of Courts of Civil Appeals.*** As the title of these courts indicates, their jurisdiction is exclusively appellate and is restricted to civil cases. It extends to all civil cases of which the district courts have original or appellate jurisdiction and to all civil cases of which the county courts have original or appellate jurisdiction when the amounts involved or judgments rendered exceed $100. Their decisions are final on questions of fact brought before them on appeal for error.[16] The courts of civil appeals prevent a large amount of civil litigation from further crowding the docket of the supreme court and also furnish a more convenient and less expensive appellate service.

## The Court of Criminal Appeals

***Qualifications, Elections, and Term of Office.*** The judges of the court of criminal appeals must be citizens of the United States and of Texas and at least thirty-five years of age, and must have been practic-

[14] *Texas Constitution,* Article V, section 6.

[15] *Report of Joint Legislative Committee on Organization and Economy* (1933), Part IV, 10.

[16] *Texas Constitution,* Article V, section 6.

ing lawyers or judges or both combined for at least ten years prior to election. They are elected by the qualified voters of the state for six-year overlapping terms, one every two years. Vacancies occurring between regular elections are filled by the governor. The salary of these judges is fixed by law and at the present time is $20,000 annually.

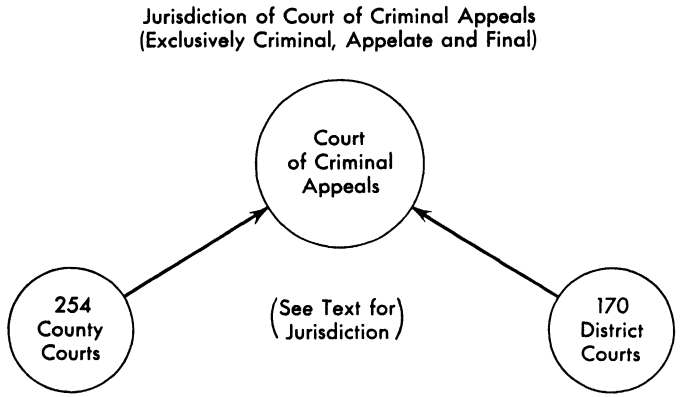


**Figure 62.**

The court of criminal appeals consists of three judges, one of whom is chosen to preside by the members of the court. A quorum consists of two judges and the concurrence of two is necessary for a decision. The judges may be removed by impeachment and conviction.[17]

***Jurisdiction.*** The court of criminal appeals has appellate and final jurisdiction of all criminal cases tried by any court in Texas, except cases appealed from an inferior court to a county court in which the fine does not exceed $100.[18] Of course, the right of appeal in criminal cases is limited only to the defendant. If the state loses in a criminal case, that is, if the defendant is not found guilty, it cannot appeal.[19]

***Commission of Criminal Appeals.*** To assist the court of criminal appeals, the governor has the power to appoint a commission consisting of two judges who shall have the qualifications of the judges of the court of criminal appeals. Their salaries are fixed by law at $20,000 a year. The commission performs such duties as are assigned to it by the court. As a matter of fact, the commission hears appeals and renders decisions which, after approval by the court, have the effect of a decision of the court.[20] While the commission in law is not a second court

[17] *Ibid.*, Article V, section 4.
[18] *Code of Criminal Procedure* (1925), Article 53.
[19] *Texas Constitution*, Article V, section 16.
[20] *General Laws*, Thirty-ninth Legislature, Reg. Sess., 1925, 269–270.

of criminal appeals, in fact it does the work of such a court and shows that the court of criminal appeals should consist of at least six judges and sit in two chambers of three judges each.

## The Supreme Court

***Qualifications, Election, and Term of Office of Judges.*** The supreme court consists of nine justices: a chief justice and eight associate justices, who must be citizens of the United States and of Texas and

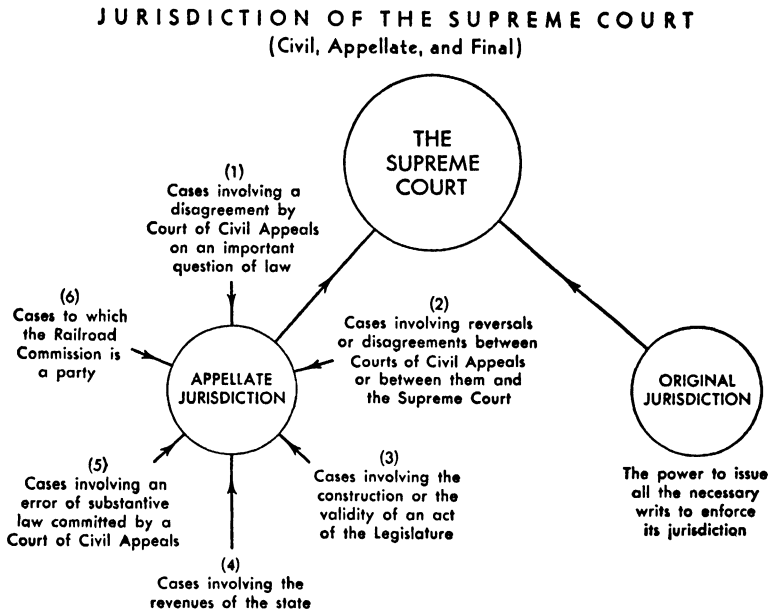


**Figure 63.**

thirty-five years of age, and must have been practicing lawyers or judges, or both combined, for at least ten years in Texas prior to election. They are elected by the qualified voters of the state at a general election for six-year overlapping terms, three every two years. Their salaries are fixed by law every two years and are at present $20,000 a year. Vacancies in the court occurring between general elections are filled by the governor. The justices of the supreme court may be removed by impeachment and conviction. They may be removed also by the governor upon address by two-thirds of each house of the legislature for reasonable cause insufficient for impeachment after notice and hearing. A quorum consists of a majority of the court, and the concurrence of five justices is necessary for a decision.

***Jurisdiction.*** The supreme court is the highest court of the state in civil matters. It occupies the same position in civil matters that the court of criminal appeals has in criminal matters. Both are courts of last instance in their respective jurisdictions. From the decisions of the courts of civil appeals there may be appeals to the supreme court in the following cases: (1) those in which the court of civil appeals disagreed on a material question of law; (2) those in which a court of civil appeals reverses itself or holds contrary to a decision of another court of civil appeals or of the supreme court; (3) those involving the construction or validity of an act of the legislature; (4) those involving the revenues of the state; (5) those involving an error of substantive law committed by a court of civil appeals; and (6) those to which the railroad commission is a party.[21] Of course, the court has original jurisdiction to issue the various writs necessary to exercise its jurisdiction.

## Retirement of State Judges

Five per cent of the salaries of the judges is withheld by the comptroller for the retirement fund. At the age of sixty-five after ten years of service with one year of active service immediately preceding retirement, a judge may retire with an annuity not exceeding fifty per cent of his current salary.

Disabled judges, regardless of age, after ten years of service, may be paid annuities. A judge, regardless of age after twenty-four years of service, provided the last ten years of his service before retirement has been continuous, is also eligible for retirement benefits. A retired judge cannot receive retirement benefits if he practices law. He may, however, with his own consent, be recalled to active service by the chief justice of the supreme court. Upon death or retirement before the retirement age, a judge's contribution to the retirement fund will be returned to him or his estate.

## The Jury System of Texas

There are two kinds of juries which are used in legal procedure: (1) petit jury and (2) grand jury. The petit jury is the trial jury, while the grand jury is the indictment jury.[22]

***The Petit Jury—Constitutional Right.*** When one speaks of the right

[21] *Revised Civil Statutes* (1925), I, Article 1728.
[22] *Texas Constitution,* Article V, section 13.

of trial by jury he refers to the petit jury. The constitution of Texas says: "The right of trial by jury shall remain inviolate." [23] This means that anyone brought into court for any reason has the right to demand a jury trial. A jury is a body of men and women, usually twelve, who are carefully selected and sworn to listen to the evidence of the witnesses and to render a verdict according to this evidence; that is, decide the case. Any person charged with committing a crime or great wrong is entitled to trial by a petit jury if he desires it.[24] If he is charged with the commission of a felony, that is, a crime for which he may be put to death or sent to the penitentiary, he must be tried by a jury even though he pleads guilty.

In civil cases, that is, in cases in which one person is suing another at court for the collection of a debt, or damages for injury, or for the settlement of some dispute between them, any party to the law suit has a right to demand a trial by jury. Trial by jury for hundreds of years has been regarded by English-speaking people as the surest guarantee of justice and is a right of the common law system guaranteed in all of our bills of rights in both national and state constitutions.

***Selection of Petit Jury.*** The juries are drawn for each term of the district and county courts. In most counties this is done by three jury commissioners who are appointed by the judge of the court and who select from the list of the qualified citizens of the county a sufficient number of members to serve as jurors. In the larger counties the jurors are drawn by placing the names of all qualified citizens of the county in a jury wheel and by drawing a sufficient number of names from the wheel. This wheel is a hollow cylinder, usually made of tin or zinc, with a handle to it, spokes or cross pieces inside for scattering the names, and with an opening in the rim through which the slips of paper on which the names are written may fall as the wheel is turned.

Regardless of which of these two methods is used, a great many more persons are selected than are needed for any one jury. A list of all the names is given to the clerk of the court to be held by him until the court is ready to begin the trial of a case. Then the list is given to the parties to the case, who with their lawyers select a jury of twelve members to try the case. The parties through their lawyers have the right to reject a certain number of persons and to challenge

[23] *Ibid.*, Article I, section 15.
[24] *Ibid.*, Article V, section 10.

for cause the right of others to act as jurors. *In the justice of the peace courts and city courts the constable or city marshal selects the jurors in person.*

A jury in the district courts is composed of twelve members and women are now eligible for jury service on both grand and petit juries. In courts below the district courts it is composed of only six members.[25] In appellate courts such as the courts of civic appeals, the court of criminal appeals, and the supreme court, juries are not used. In appellate courts the judges hear and examine the evidence and decide the cases. They are judges of both fact and law.

***The Grand Jury—Selection and Duties.*** The grand jury is composed of twelve members selected from a list of sixteen prepared by the jury commission. The grand jury meets at each term of the district court and inquires into the violations of the law from their own knowledge or from information furnished by the attorney representing the state or by any other credible person.

***Indictment.*** The sessions of the grand jury are secret. All witnesses are sworn to keep secret all they hear in the grand jury room, and to make true answers to all questions asked them. After investigation of an offense, if the grand jury decides there is probably sufficient evidence to convict a certain person or persons suspected of having committed the offense, it prepares and draws up an indictment, which is a written statement of the grand jury accusing some person of a particular crime. It requires the votes of nine members of the grand jury to indict a person. The indictment is signed by the foreman of the grand jury, who is elected by its members. No person in Texas can be brought to trial on a felony charge unless he has been previously indicted by a grand jury. The grand jury has nothing to do with the trial of cases. It is, therefore, not a part of trial by jury.

***Complaint.*** When an offense not punishable by confinement in the penitentiary has been committed, it is not necessary that the accused be indicted by a grand jury. Any credible person can file a complaint, which is a sworn statement of such a person to the effect that he believes that a certain party committed a certain offense. Then the district or county attorney may draw an information formally charging the defendant with the offense. This information takes the place of indictment by grand jury. No one charged with a misdemeanor can be tried unless he has been indicted by one or the other of these two methods: (1) by grand jury or (2) by information.

[25] *Ibid.*, Article V, section 13.

## Officers of the Courts

***Police Officials.*** All the courts have officers who arrest offenders and bring them before the courts for trial. Each justice precinct has a constable who arrests offenders, produces them in court, serves citations, collects fines, and in general waits upon the justice's court. The sheriff and his deputies are officers of all the courts which sit in the county. It is their duty to serve citations and all other papers required by law to be served, to arrest offenders, to keep order in court, and to take charge of prisoners.

***Court Clerks.*** All of the courts have clerks and deputy clerks who constitute the clerical force of the courts to keep the records and collect court fees and costs. The supreme court, the court of criminal appeals, and the courts of civil appeals appoint their own clerks who appoint the deputy clerks. They are appointed for four-year terms and their salaries are fixed by law.

The clerks of the district courts are elected by the voters in each county for a term of four years. The county clerk in each county is the clerk of the county court.[26]

***Prosecuting Attorneys.*** The state prosecuting attorney, who is appointed by the court of criminal appeals, represents the state in all actions before this court except those of which the attorney general has charge.

There is a district attorney for each judicial district, who is elected by the qualified voters of the district for a four-year term.[27] There is also a county attorney for each county, who is elected for a four-year term by the voters of the county.[28] These officers prosecute in the name of the state before their respective courts those persons accused of criminal offenses. Their compensation is fixed by law.

***The Bar.*** The members of the state bar are officers of the courts. Admission to the bar is in charge of a board of law examiners who are appointed by the supreme court. The board conducts the examinations for those seeking the right to practice law and makes recommendations to the supreme court for the granting of licenses to practice law.

***Miscellaneous Officers of the Courts.*** *Librarian.* The clerk of the supreme court, together with an assistant librarian, has charge of the

[26] *Ibid.*, Article V, sections 3, 5, 6, 9, 20, 24.
[27] *Ibid.*, Article V, section 21.
[28] *Ibid.*, Article V, section 21.

supreme court library. The clerk of each of the courts of civil appeals is the librarian for his court. These officers are appointed by the courts which they serve.

*Reporter.* There are reporters for the court of criminal appeals and for the supreme court. It is the business of the reporter to prepare for publication such decisions of these courts as are designated for this purpose.

*Shorthand Reporter.* Each district and county judge appoints a shorthand reporter for his court. Stenographers, secretaries, law clerks, and porters are provided for some of the courts.

***The Advisory Civil Judicial Council.*** In 1929 the legislature created an advisory judicial council to gather information as to the organization and operation of the civil courts of the state and upon the basis of this information to make recommendations to the legislature for legislation for the improvement of the administration of civil justice in the state.

The personnel of the council consists of two groups: (1) ex officio and (2) appointive. The ex officio members are the chief justice of the supreme court, two justices of the courts of civil appeals designated by the governor, two presiding judges of judicial administrative districts designated by the governor, and the chairman of the civil judicial committees of the senate and house of representatives. The appointive members consist of seven lawyers and two laymen, one of whom must be a journalist. While the governor appoints these members, two of the lawyers must come from a list recommended by the state bar association. The terms of the ex officio members expire with their terms of office, while the appointive members serve for six years. The members of the council serve without pay.[29] The duties of the council are well outlined in the statute establishing it:

1. To make a continuous study of the organization of the civil courts; the rules and methods of procedure and the practice of the civil judicial system of the state; of the work accomplished, the results attained, and the uniformity of the discretionary powers of the civil courts, to the end that procedure may be simplified, business expedited, and justice better administered

2. To receive and consider suggestions from judges, public officers, members of the bar, and citizens, touching remedies for faults in the administration of civil justice

3. To formulate methods for simplifying civil judicial procedure, expedit-

[29] *Laws* (1929), Forty-first Legislature, 1st Called Sess., 51–54.

ing the transaction of civil judicial business, and correcting faults in the administration of civil justice

4. To gather civil judicial statistics and other pertinent data from the several judges and other court officials of the state

5. To make a complete detailed report, on or before December 1st of each year, to the Governor and to the Supreme Court, of all its proceedings, suggestions, and recommendations, and such supplemental reports from time to time as the Council may deem advisable. All such reports shall be considered public reports and may be given to the press as soon as filed

6. To make investigations and reports upon such matters, touching the administration of civil justice, as may be referred to the Council by the Supreme Court or the Legislature

7. To hold one meeting in each calendar year, and such other meetings as may be ordered by the Council or under its authority.

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# 19....

# *The State Judiciary: II*

## Court Procedure

The procedure of courts is possibly more important than their organization and jurisdiction. The test of any institution is its achievement in actual operation. If it accomplishes the purpose for which it was established it justifies its existence.

***Rules of Procedure.*** All institutions operate by rules of procedure. All organizations of any consequence, whether clubs or legislatures, control their procedure by means of parliamentary law, which is a body of rules for the regulation of deliberative assemblies. These rules are necessary for protection of the rights of their members and maintenance of order.

It is much more necessary for courts to be controlled by rules of procedure because of the importance of their decisions. They deal with the rights of life, liberty, and property of the individual, and with the general welfare of the community. Experience over hundreds of years has developed a set of rules by which they are guided in their procedure. These rules are for the protection of the litigants.

## THE PROCESS OF A TRIAL IN CIVIL AND CRIMINAL CASES IN TEXAS

Because our courts and their procedure are less understood than other divisions of our government despite their paramount importance, it is necessary, for a complete understanding of our government, to have an elementary knowledge of the work of the judiciary. Possibly the best means of accomplishing this object is to study the following brief story of the various steps involved in a civil and a criminal trial in the courts of Texas.

## Civil Cases

Civil cases are those which deal primarily with property rights and therefore generally involve disputes between individuals. The state is only indirectly concerned.

***How Begun.*** A civil case in a district or county court is begun by the filing of a *petition* in the proper court by the plaintiff. In this petition, which is a written instrument, the plaintiff states the nature of his complaint or the reasons for his grievances against the defendant and asks for whatever relief or remedy to which he feels that he is entitled. He files this petition with the clerk of the court who issues a citation.

A *citation* is a written instrument which contains the substance of the plaintiff's petition and certain matters prescribed by law among which is the day on which the next term of court meets. This citation is addressed to the sheriff or a constable of the county of the defendant upon whom a true copy of the citation is served by the sheriff or constable. This must be done at least ten full days before the first day of the next term of court, otherwise the case will be delayed till the next term. The defendant, if he desires to contest or fight the suit, files a written *answer* with the clerk of the court in which he states his defense or the reasons why he thinks the plaintiff is not entitled to the relief for which he asks.

***The Use of a Jury.*** The use of a jury is optional. However, either party has the right to demand a jury to try the case and pass upon the facts. If neither party demands a jury, the case is tried by the judge alone who passes upon both the law and the facts. If a jury is used, it passes upon the facts after the judge has instructed it upon the law in the case in his charge.

***Date for Trial.*** The judge fixes the dates for the trial of all cases. This is not always an easy matter because there may be more than one plaintiff and defendant to a case. All persons who have an interest in the case have the right to become parties to the case by requesting the judge to permit them to intervene by filing their *pleadings* in which they state the reasons for their interests or rights in the case. All *petitions, answers,* and *pleas* in intervention are called the pleadings, the object of which is to show to the court the matters in dispute between the parties.

***Place of Trial.*** The law provides that except in specified cases a person must be sued in the county of his residence. If he is sued in some other county, he may file a *plea of privilege,* asking that the case be

transferred to his own county. If the case does not fall within the excepted list, the judge orders the case transferred to the county of the defendant.

***The Case in Court.*** When the day fixed for trial arrives, the case is set. If a jury has been demanded, the jurors, a *panel* of thirty-six if the case is in the district court, assemble in the courtroom. The judge examines the jurors to determine if they are qualified and whether they have any valid reasons why they should be excused from service.[1] The law regulating excuses is so liberal that the matter simply becomes the pleasure of the judge. The judge then calls the case and the plaintiff and defendant, either themselves or by their lawyers, state whether or not they are ready for trial. If either party to the case claims he is not ready and desires the case to be continued until the next term of court, he files a written motion stating his reasons for not being ready for trial and asking the court to continue the case. If the judge accepts the reasons for delay he orders the case continued; if he overrules the motion for delay the parties must proceed with the trial.

***Picking the Jury.*** The lawyers in the case then question the members of the jury panel to see if any of them could not qualify as fair and impartial jurors to the parties to the case. If any member of the panel is related to any of the parties to the case, or is prejudiced against any party, or for any reason is unable to be fair and impartial, he is excused from the list of the jury panel.

Then a list of the remaining jurors in the panel is given to both the plaintiff and the defendant, each of whom has the right to exclude any six persons whom he does not want. These lists are then given to the clerk of the court. The first twelve members remaining on the list constitute the jury for the case.[2]

***The Trial.*** The lawyer for the plaintiff reads his petition to the jury and the lawyer for the defendant reads his answer. The plaintiff through his lawyer introduces his testimony. That is, his witnesses are called and sworn by the clerk of the court and are asked to give evidence in response to questions asked them by his lawyer. He may introduce other evidence such as deeds, notes, or other written statements. After the plaintiff has completed his evidence, the defendant's lawyer is allowed to question the witnesses of the plaintiff. This is called *cross-examination.* Then the defendant through his lawyer and

[1] Caleb Perry Patterson, "The Jury System of the Southwest," *Southwestern Political and Social Science Quarterly,* 1923, IV, No. 3, pp. 10–11.
[2] *Ibid.,* pp. 11–12.

witnesses produces his testimony, which is followed by a cross-examination of his witnesses by the lawyer of the plaintiff.

In the process of offering testimony frequently the lawyer for either party may object to the introduction of certain evidence or testimony on the ground that it is inadmissible and improper under the law. It then becomes the duty of the judge to decide whether such evidence can be given. For instance, a witness may offer to tell what he heard someone else say. This is called *hearsay testimony* and is inadmissible except under certain conditions. The judge must decide in such instances whether the witness is permitted to give such testimony. If the lawyer of either party to the case is dissatisfied with the ruling of the judge, he has a right to object to the evidence which the witness has been permitted to give. If he objects he files a *bill of exception.* That is, he asks the court reporter who makes a shorthand account of the entire proceedings of the trial to make a record of his objections to the ruling of the judge.

***The Charge of the Judge to the Jury.*** After the evidence is finished the judge writes his charge to the jury and submits it for approval to the lawyers in the case, who have the right to object to anything in the charge which they think is incorrect and to ask the judge to change it. When the charge is approved, the judge reads it to the jury. The lawyers then make their speeches to the jury. This is usually the most interesting and dramatic feature of the trial. The jury retires to the jury room for deliberation and decision. Its decision is called a *verdict.*

Sometimes the judge submits the case to the jury on the basis of *special issues.* This means that he asks the jury certain written questions about the case to which they prepare the answers in the jury room. This is called a *special verdict* and is accepted in lieu of the *general verdict.* This method simplifies the task of the jury and is generally considered as a means of increasing the efficiency of a jury.[3] All twelve jurors must agree before a verdict can be rendered by the jury. If they fail to agree the case has to be retried.

After the jury returns its verdict, the judge writes his opinion or decision which is called a *judgment* or *decree.*

***New Trial.*** If either party is dissatisfied with the decree of the court, he has the right to file a motion for a new trial in which he states the reasons why he thinks that he did not have a fair trial. If the judge grants the motion, then there is a new trial involving the same process as in the first trial. If the judge overrules the motion, then the case may

[3] *Ibid.*, p. 14.

be appealed to the courts of civil appeals. A complete record of the trial of the case in the district court, containing all the objections and exceptions made during the trial, is prepared by the clerk and court reporter and is sent to the higher court along with the statement of the facts in the case prepared by the court reporter.[4]

***Difference in Jury in a Justice or County Court.*** If the same case were tried in a court of a justice of the peace or in a county court, while the procedure would be the same, a jury of only six persons would be required.[5] A panel of twelve jurors is summoned and each party to the case has the right to eliminate three names from the panel, thus reducing the list to six, the number required by law. A jury is not required by the constitution and the party demanding the jury must pay the fees of the jury. Since the court of a justice of the peace is not a court of record, the pleadings are not written but are given orally.

### Criminal Cases

In a criminal case the procedure in the trial in broad outlines is the same except in the following respects. The defendant does not file written pleadings. He simply pleads guilty or not guilty. In a capital case in which the punishment may be death, the jury panel consists of a special *venire*. When a special venire is necessary in a case, sometimes hundreds of persons are summoned and examined before a jury is selected. They are placed on the stand one by one and questioned at length by the district attorney and by the attorney for the defense as to whether they could be fair and impartial jurors. Those who by their answers indicate that they could not meet this requirement are excused from jury service in the case.

In capital cases both the state and the defendant are permitted fifteen *peremptory* challenges. If there is more than one defendant, each is allowed eight challenges and the state is allowed eight for each defendant.[6] There is no limit on the number of challenges which may be made *for cause*. There are fourteen causes listed in the law, any one of which may be made the basis for striking a name from the list of those summoned for jury service. A challenge for cause is evaluated by the judge who decides whether it is sufficient to exclude the individual from the jury. The first twelve on the list not excused by the judge nor challenged by the parties to the case constitute the jury for the case.

[4] For a discussion of trial by jury, see Robert Von Moschzisker, *Trial by Jury*, 1922, pp. 87–144.

[5] *Texas Constitution*, Article V, section 17.

[6] John S. MacIlwaine, *Digest*, Article 3142.

The jury finds the defendant guilty or not guilty. If they find him guilty, they assess the punishment at whatever they think it should be within the limits of the law which has been explained by the judge in his charge.

In felony cases, in contrast with capital cases, the procedure in selecting the jury is practically the same as in civil cases. The reason is, of course, that there is not nearly so much involved as in capital cases—it is a matter of life or death in capital cases. The conduct of the trial in felony cases after the jury has been selected is also practically the same as in civil cases.

## CRITICISM OF THE JUDICIARY

For a half century or more there has been a rising tide of criticism of judicial organization and procedure of American courts.[7] In the main it has concerned state judiciaries, and it has been made by judges, lawyers, publicists, law deans and professors, and laymen. It is a friendly criticism and is purely constructive in character. It is generally recognized that an efficient judiciary in any system of government and particularly in ours where the courts are the guardians of our rights and liberties against other individuals, groups, and the political divisions of our government, is imperatively necessary. The criticism of the Texas judiciary may be briefly summarized as follows:

### Criticism as to Organization

***Lack of Unity.***[8] While organization is less important than some other features of a judiciary and is only a means to an end, it is nevertheless important. It is more important in the American state judiciaries because of the inflexibility of their organization. The hard and fixed separation of the various grades of courts by jurisdictional lines results in a multiplication of repeals, reversals, duplication of effort, waste of time, and unnecessary expense on the part of both the state and the litigants. The Texas judiciary is a highly disintegrated and differentiated set of courts. It is a copy or replica of the English medieval court organization which had been transplanted to the American colonies prior to the Revolution and which was retained by the original states and later

[7] *Efficiency in the Administration of Justice* (A Preliminary Report of the National Economic League) by Charles W. Eliot and others, Boston, pp. 13–31.

[8] C. S. Potts, "Unification of the Judiciary: A Record of Progress," *Texas Law Review*, Vol. II, 1924, pp. 445–463.

adopted by the western states. It is interesting that the American Revolution made tremendous changes in the executive and legislative divisions of government but failed to make any radical changes in judicial administration. About the only unifying factor in the Texas judiciary is *jurisdiction* which makes it possible for a case by means of appeals to go from the lowest to the highest court. This is a mere device of procedure and is frequently abused. Unity should be an inherent feature of the judiciary rather than a mere procedural device which is capable of such manipulation as frequently to defeat justice itself.[9]

***No Administrative System.*** The judiciary is the headless division of our state government. It lacks an administrative head for both the judicial function and the business side of justice. This is a fault of organization. Only a unified judiciary could be subject to a single administrative agent. The present practically independent and separate courts rest on their individual jurisdictions which they jealously guard and try to expand. Each has its own bench, clerks, reporters, stenographers, offices, records, supplies, and fees. Here is a tremendous amount of duplication of machinery, unnecessary expense, and duplication of records.

***Too Many Courts and Judges.*** The frontier method of solving the problem of judicial congestion by providing more courts and more judges has been used excessively, apparently as the easiest means of providing a ready justice for a growing society. It is a singular fact that there has been only one legislature in the history of the state that has not created more courts and added more judges. One could get the impression that there has been a problem of unemployment among Texas lawyers.

Of course, growth of population and increased industrialization multiply litigation, and would naturally call for more courts or greater efficiency in existing courts, but in solving this problem greater efficiency deserves careful consideration. A comparison of the work of Texas courts with that of the British courts for any single year leaves no doubt that great improvement could be made in the administration of justice in Texas.[10] Great Britain has about one-fifth as many judges as Texas for about seven times as many people in a much more highly industrialized society than that of Texas. The Texas judiciary above the justice of the peace courts costs about twice that of Great Britain,

[9] S. B. Dabney, "Judicial Reconstruction," *Texas Law Review*, Vol. VI, 1928.

[10] See Caleb Perry Patterson, *The Administration of Justice in Great Britain*, University of Texas, Austin, 1936, pp. 122–130, 131–138.

though the salaries of the British judges are much higher than those of Texas judges.[11] Since the justices of the peace in Great Britain serve without pay while those of Texas receive about one million dollars in fees, it is realized that about 6.5 million Texans pay about three times as much for their judicial privileges as 40 million British. Moreover, it would doubtless be conceded by any fair-minded Texas judge or lawyer that the Britisher receives a higher order of justice than the Texan.

Many factors are involved in the above comparison: (1) inadequate utilization of the judicial force,[12] (2) more extensive use of the jury system in Texas than in Great Britain, (3) technicalities of procedure,[13] (4) English judge more powerful than Texas judge, (5) English bar less powerful than Texas bar, (6) emphasis on substantial justice in Great Britain rather than on procedure, and, therefore, (7) fewer retrials and appeals.

**Criticism as to Procedure**

***Expense to the Taxpayer.*** Civil litigation should pay a larger share of its own expenses. Of what concern is it to the taxpayer whether John Jones or Dick Smith wins in a civil suit? The litigation is a purely private matter. The court fees in the county courts in Great Britain practically pay the cost of these courts.

***Appropriateness of Trial by Jury.*** Trial by jury—a slow and expensive luxury—should be restricted to felonies and murder cases. Summary procedure or trial without a jury should be used for misdemeanors, with the right of appeal. The jury in civil cases should be abolished except in disputes involving the public interest. The jury in both civil and criminal cases has largely been abolished in Great Britain.[14]

***Limitations on the Judge.*** The Texas judge cannot instruct the jury on the facts. This matter is left to the lawyers despite the fact that the judge is the impartial representative of both parties to the case. The judge and the jury are the representatives of the state and should be colleagues in the judicial process. The task of the jury in judging the facts is the most difficult part of the judicial process and it should be assisted by the judge. An instructed jury would be a decided improvement.

***Rigidity of Procedure.*** Procedure should never be allowed to con-

[11] *Finance Accounts of the United Kingdom*, 1930–31, pp. 45–48; consult the *Annual Reports of the United Kingdom* and of the *Texas Civil Judicial Council.*

[12] *Report of the Joint Legislative Committee on Reorganization and Economy*, part IV, pp. 6–8.

[13] *Ibid.*, p. 20.

[14] Patterson, *op. cit.*, pp. 214–215.

trol justice. Even though some rule of procedure is violated in the course of a trial, if substantial justice is obtained there is no valid reason for a new trial. A new trial in such an instance would have for its object the mere compliance with rules. Rules should never be allowed to become a substitute for substantial justice. The appellate courts of Texas are largely responsible for the technicalities of our judicial procedure.

### Criticism as to Personnel

***Qualification Requirements for Judges.*** Regardless of the high character of the Texas judges, especially those of the higher courts, there is no doubt that the personnel of the bench as a whole could be improved. This much could be said about the personnel of any of our institutions. The judge is the most important figure in the judicial process. No court can rise above its judge. Judges should be better trained and should be required to serve a longer apprenticeship at the bar. As has been previously noted, a county judge need never have studied law nor be a member of the bar. After he becomes a county judge he is eligible to the supreme court bench.

***Election vs. Appointment.*** The bench should be appointed, not elected. Politics and justice live in different worlds. Politics is distasteful to the judicially minded. It does its meanest work in connection with the election of judges of local courts where too frequently it controls the process of justice. The state judges should be appointed by the governor with the consent of the senate from a list of lawyers selected by the state bar. Recent studies have shown that the senates have not been a real check on the executives' appointments. For a multitude of reasons their interests are frequently identical with those of the governor. It is necessary that nominations by the governor be limited to qualified persons.[15]

## THE REORGANIZATION OF THE TEXAS JUDICIARY

The civil judiciary council of Texas has proposed that Article V of the constitution of Texas be amended to provide for a scheme of reorganization and administration of the Texas judiciary, the chief features of which are as follows:

[15] For a very illuminating discussion of this problem, see John Perry Wood, "Elements of Judicial Selection," *American Bar Association Journal*, Vol XXIV, No. 7, 1938, pp. 541–544.

***Unification of the Judiciary.*** The judicial power of the state shall be vested in one supreme court, a court of criminal appeals, and such intermediate and trial courts as may be established from time to time by the supreme court. With the exception of the court of criminal appeals, this proposal places the entire system of state courts, since the county courts are not state courts, under the supreme court because it is given the power to establish or abolish the intermediate and trial courts as circumstances and the judicial business may require and to determine their jurisdiction. For traditional reasons mainly, the court of criminal appeals is retained as a court of final appeals in criminal matters. A similar court has practically the same position in the British judiciary and in that of Oklahoma.[16]

***Determination of the Number of Justices of the Higher Courts, Quorums, and Qualifications of State Judges.*** The supreme court shall consist of one chief justice and eight associate justices five of whom are required for a quorum and the concurrence of five as necessary for a decision. The court of criminal appeals shall consist of five judges, three of whom are required for a quorum and the concurrence of three is necessary for a decision.

All appellate judges must at the time of their appointment or election be citizens of the United States and of Texas, thirty-five years of age, and have been qualified for at least ten years under the laws of the state to practice law.[17]

***The Division of the State into Supreme Judicial Districts.*** The supreme court is to be given the power to divide the state into as many supreme judicial districts as it sees fit and to establish a court of civil appeals in each. It may change the number of these districts and the names and number of the courts of the system with the exception of the court of criminal appeals.[18] The jurisdiction of the supreme court and of the court of criminal appeals is to remain unchanged.[19]

***Advisory Judicial Council.*** An advisory judicial council is to be created to consist of (1) ex-officio members and (2) appointed members. The ex-officio members shall consist of one judge from the supreme court, one from the court of criminal appeals, two from the courts of civil appeals and two from the trial courts, all of whom are selected by the supreme court and the chairman of a judiciary committee of the house and of the senate or some member thereof designated by him. The service of the ex-officio members is to be optional and for the term for which his office as judge qualifies him.

The appointed members shall consist of six lawyers who must be citizens of the state and licensed to practice law by the laws of the state, and of three laymen, citizens of the state, one of whom must be a professional journalist. These appointments are to be made by the governing board of

[16] Proposed amendment to Article V of the state constitution (1946), sections 1 and 2.
[17] *Ibid.*, section 3.
[18] *Ibid.*, section 4.
[19] *Ibid.*, section 5.

the state bar for a term of six years, but their initial terms may be adjusted as the governing board sees fit.

It shall be the duty of the council to study the organization and operation of the judicial system of the state, its accomplishments, failures, and methods for its improvement, and to meet in conference at least once a year with the supreme court for the purpose of devising such means as may be thought necessary for the further improvement of the judicial system of the state.[20]

***Administrative System.*** The supreme court shall be made the judicial, executive, and administrative head of the state judiciary, and charged with the supervision of its judicial and administrative functions. It is to be given the power to name an administrative director together with an adequate staff, and to select and appoint the personnel of the administrative office for such terms and with such non-judicial functions, duties, and responsibilities as it may prescribe. The salaries of the Director and his staff are to be fixed by law.[21]

***The Rule Making Power.*** The supreme court shall have the power to prescribe all the rules of practice and procedure for all the courts of the system and to fix and determine the judicial and territorial jurisdictions of all the lower courts and the powers and qualifications of the judges except as specified by the proposed amendment.[22]

***Nominating System for Justices and Judges.*** A district nominating commission for each supreme judicial district shall be created to consist of five members, three of whom shall be lawyers residing in the district and elected by the members of the state bar residing in the district in such manner as may be prescribed by the supreme court, and two of whom shall be lawyers of the district and appointed by the governor. Their terms of office shall be six years to be arranged initially by the supreme court so as to prevent the expiration of all of their terms at the same time. These district nominating commissions are to be the nominating agencies for the judges of their respective districts.

Each district nominating commission of each supreme judicial district shall designate one of its members as chairman and the chairman of all of the supreme judicial district commissions shall constitute a supreme court nominating commission for the justices of the supreme court and of the court of criminal appeals.[23]

When the supreme court deems it necessary for the governor to appoint a justice of a court of civil appeals or a judge of a trial court, it shall notify the district nominating commission of the supreme judicial district in which that court is located and at the proper time direct the commission by a

[20] *Ibid.*, section 6.
[21] *Ibid.*, section 7.
[22] *Ibid.*, section 8.
[23] *Ibid.*, section 11.

majority vote to submit to the governor three nominees for each office who shall be residents of the district. The governor shall appoint one of these three.

When a vacancy occurs in the supreme court or the court of criminal appeals, the supreme court nominating commission shall, by majority vote, submit to the governor three nominees, one of whom the governor shall appoint for the unexpired term.

All vacancies whether for an unexpired term or a full term in all the courts are to be filled by appointment according to the method applicable to the particular court. In addition to the usual vacancies as a result of death, resignation, or removal, the decision of a justice or a judge not to succeed himself will create a vacancy. Such a vacancy shall be filled by appointment for a full term. Also if a justice or a judge fails to be elected to succeed himself, the vacancy is to be filled by nomination and appointment in the regular way. In other words, the entire personnel of the courts is to be recruited by nomination and appointment. Election is restricted exclusively to the continuation of the appointed personnel in office.[24]

The justice or judge shall have no opponent in the election. The voters shall merely say yes or no as to whether the candidate shall be retained in office. If the majority say yes, the justice or judge is elected for a full term; if the majority say no, a vacancy is created and is filled by the nominating and appointment system.[25]

***Removal and Retirement.*** All justices or judges shall retire when they become incompetent to discharge their official duties by virtue of physical or mental infirmities. The supreme court shall judge as to such incapacity. Also it may remove justices or judges for misconduct if they refuse to retire or to resign. All questions of incapacity or unfitness shall be investigated by the supreme court, or at its request, and determined by it. If requested by any justice or judge so involved, the supreme court will grant the right of trial under such proceduce and in such manner as it may prescribe.

Justices and judges may retire at seventy and must retire at seventy-five, and if retirement is on account of age or physical or mental incapacity after ten years of service on the bench, they shall receive one half their current salary and be relieved of all official duties except such as may be assigned to them by the supreme court. However, if they are called back into active service, they shall be paid the same remuneration as is being paid at the time to the justices or judges on the court on which they serve.[26]

***Assignment of Justices or Judges.*** The supreme court may assign justices or judges to temporary duty on any court of the system for such time as it

[24] *Ibid.*, section 12.
[25] *Ibid.*, section 13.
[26] *Ibid.*, section 15.

sees fit. If the assignment is to a higher court than that of the justice or judge, he shall receive the compensation paid to the justice or judge of the higher court.[27]

***Salary Schedule.*** Justices of the supreme court and of the court of criminal appeals shall receive not less than $12,000 a year; justices of the courts of civil appeals not less than $10,000 a year; and judges of the trial courts of a certain jurisdiction not less than $6,000 a year. These are minimum salaries. Whatever the exact salaries may be is to be fixed by law and paid in equal monthly installments.[28]

This is almost an ideal proposal. For some reasons, one supreme court with a civil and a criminal division, each exercising final appellate jurisdiction in its respective field, with the power to issue its opinions in the name of the supreme court, would be a little more nearly ideal from the point of view of unification. There have arisen in the past, and it could and likely will happen again, some differences on points of law between the supreme court and the court of criminal appeals. Complete unification would create the opportunity to eliminate these conflicts. Certainly one supreme court is more desirable than two. The layman who is not an expert on procedure, jurisdiction, and the differences between civil and criminal law, is unable to understand how there can be two supreme courts, even though only one is called supreme. Also, since the trial courts are to exercise both civil and criminal jurisdiction it would seem logical for this unification to characterize the entire system. It is inconsistent to argue that the trial judge should be able to exercise both civil and criminal jurisdiction by himself while a panel of appellate judges, presumably more able, should not be burdened with both civil and criminal jurisdiction, even though the trial court has necessarily simplified the problem of appellate jurisdiction. Furthermore, if final appellate jurisdiction in both civil and criminal matters were to be vested in one supreme court, its entire personnel could be used to dispose of the burden of the work regardless of whether civil or criminal in character. Again, if there were specialization among the judges, this matter could be considered in assigning them to different types of cases.

However, an ideal is seldom attainable and frequently is not practicable. This proposal has been the subject of a tremendous amount of study and deliberation by the most able judges and lawyers of the state and is not only in harmony with the best traditions and judicial

[27] *Ibid.*, section 16.
[28] *Ibid.*, section 17.

experience of the state but is thoroughly consistent with the recognized scientific principles of judicial organization and administration. Space forbids further elaboration on the great advantages of its various phases, but its merits force the statement that its adoption would mark a great advance in the administration of justice in Texas.

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# 20....

# *County Government in Texas*

## The Position of the County in Texas

For the administration of all the functions of state government reserved to the states by the Constitution of the United States it is obviously impossible for the entire machinery of state government to be located at the state capitol. Much of the work of administering the laws of the state must be done by administrative subdivisions of the state. There are two methods of accomplishing this: first, by the establishment of subordinate offices of the state administrative and judicial organizations in various parts of the state, such as the twenty-odd divisional offices of the highway department; second, by dividing the state into permanent subdivisions such as counties, whose major function is the exercise of the general enumerated state powers and duties. In a very real sense the county is a judicial and administrative subdivision of the state. Chief Justice Taney once said, "Counties are nothing more than certain portions of territory into which the state is divided for the more convenient exercise of the powers of government." This is somewhat too broad for the county of today, but in a large measure it is still true. The county is created by the state, its powers derived from the state, and its identity interwoven with that of the state.[1]

The control of the legislature over the counties as creatures of the state obviously limits their autonomy. The powers of the state legislature over the counties have gradually been restricted by amendments to the state constitution. These amendments freed the counties in part from legislative whims, but placed them under the more stringent regulation of the constitution. Hence, there was really no gain in county self-government. While the municipalities were securing both functional and procedural freedom through constitutional means, the counties were suffering from increased constitutional restrictions. "With

[1] Wallace C. Murphy, *County Government and Administration in Texas,* 1933, pp. 9–14.

few minor exceptions, therefore, the entire county system is set out in the Constitution, a condition which takes from the people of the counties the control of their government and leaves them only the empty honor of electing candidates for the several offices each biennium." [2]

As a subdivision of the state for administrative and judicial purposes, the county functions as a unit of highway administration, as a supervisory unit over public education, as a state assessment and collection unit, as a judicial unit, and as an election unit. The sheriff and district attorney, though supported by the county, are actually state officials. The state, however, provides little or no supervision over their activities, though they may be removed by the district judge, a state official, after due notice and hearing.

While in some states the county in addition to being an administrative agent of the state has a corporate character, giving it a certain freedom of action and an entity of its own, in Texas it is very much restricted, and can only be considered a quasi-corporation in the strictest sense. Being a creature of the state, it has immunity from suit. Its organization is so definitely restricted, however, that it has few opportunities to make fundamental changes. While the county is legally held to be an integral part of the state organization for enforcing the laws of the latter, from a practical administrative point of view it is assumed to be a local corporation with the responsibility of solving its own problems of revenue and administration within the rigid limits of the constitution and statutes. It may acquire property, provide various services, collect and expend money. Under the county home rule amendment in effect today the county may revise its structure and assume functions of a municipality. The procedure for accomplishing this right of substantive as well as procedural home rule is so intricate, however, as to make it practically impossible for the county to change its status.

## The Evolution of the County in Texas

In the southwestern portion of the United States the heritage of local institutions may be assumed to be less English in its origins than in large sections of the country where either directly or indirectly the early English influence predominated. In Texas, where strong county government would logically develop because of the general sparsity of population, the heritage of the South Atlantic states was brought face to face with the Spanish precedents which had developed during

[2] *Ibid.*, p. 14.

the period of the Spanish and Mexican domination. The municipality or very large district comprising a number of communities established under the Spanish and Mexican rule was forced to compromise with the influx of new ideas of the American colonists from the East. Actually all that remained of the Spanish influence after the Texas county had developed was the partial use of Spanish and Mexican names and their system of land division.

The American antecedents of contemporary local government are four in number, all derived from eighteenth century England. They are: (1) the New England town which includes both urban and rural areas; (2) the western town-city system in which the urban areas are separated from the town to form municipalities; (3) the New York–Pennsylvania combination of town and county where the town and county vied for supremacy; and (4) the county system of the South Atlantic states.[3] As the people moved west they carried their particular local organizations with them. One of the most interesting developments in county government in Texas is the conflict between the several sections of the state which resulted from the variation in the sources of its population group of the early settlers in Texas who came from the South Atlantic states. It was natural and inevitable that its form of local government would follow the type found in this area.

Originally the state of Texas followed the large county board plan of New York although the board was constituted of the justices of the peace, but in 1845 the Pennsylvania plan of a small county board was adopted, under which the county was divided into a small number of precincts, each of which chose a member of the board. With few changes, this plan still continues.

***The Number of Counties in Texas.*** There are today in Texas 254 organized counties, all the territory in the state being under an organized county government. The last county organized was Loving in 1931. Prior to 1901 there were certain unorganized counties which were merely geographical units, which were attached to some other county for judicial, taxation, and election purposes. Not only are there many more counties in Texas than in any other state, but they vary in size and population to great degrees. The smallest, Rockwall, is only about one-sixtieth as large as Brewster, the largest, which is larger than either Delaware, Rhode Island, or Connecticut. In 1930 what was to become

[3] For a discussion of the legal status of the county in Texas see the following cases: *Cummings* v. *Kendall County* (1894), 7 Tex. Civ. A. 167; *City of Sherman* v. *Shobe* (1900), 94 Tex. 129; *City of Galveston* v. *Posnainsky* (1884), 62 Tex. 127; *Heigel* v. *Wichita County* (1892), 84 Tex. 392.

Loving County the next year contained but 195 people, whereas Harris County at that time contained more than 350,000 people. By and large the western counties are the largest.

While Texas never introduced the township plan of New England or of the Middle Atlantic states, it does not follow that the organization of the subordinate units of government in Texas consists exclusively of counties and cities. A veritable maze of subdivisions for special purposes has been developed, nullifying in part the general assumption that the county plan of government means that the county is the primary unit. For many years each commissioner's precinct constituted a road district over which he, for whom the precinct was organized as an election district, was the legally constituted road supervisor. Election districts for members of the commissioners' court and justices of peace have been established. A veritable maze of school districts has developed with varying freedom from the power of the county. Closest to the county is the common school district. Less closely connected is the independent school district and the junior college district. There may be union high school districts which combine several school districts for high school purposes only. In some instances all the schools of the county are grouped in a county unit. Each of these districts with the exception of the common school district may have its own tax organization. In addition there is a complicated system of special districts for the production, improvement, conservation, distribution, and disposal of water, which crosses city and county lines indiscriminately. Partially in control of their own personnel and financing, they not only do not cooperate with the county but definitely resist its interference. Furthermore there are twenty or more special districts created by special legislative action such as the lower and central Colorado River authorities. One of the major problems of the theorists is to discover the proper size for a county and a scope of functions which it can perform without the necessity of so many subdivisions for special purposes.

***The Establishment of Counties and County Seats.*** Like all states, Texas has provided stringent provisions regarding the method of establishing counties, but has left the method of their abolition without ample regulation.[4] If it is necessary that a county have certain qualifications, it would seem logical that, when those requisites have been reduced or destroyed, the county should automatically cease to exist. Actually, however, in Texas the only qualification of a county is that of size, a very minor factor in the successful functioning of county gov-

[4] *Texas Constitution,* Article IX, section 1.

ernment. Much more important factors are population and wealth. No new county may be established with an area of less than 700 square miles, and no part of a county may be joined to another county without the approval by a majority vote of both counties concerned. There is great need for a readjustment of the number of counties in Texas in accordance with the mechanized era in which we now live. From the standpoint of the dormant capital investment in courthouses alone, a huge waste of available resources is taking place by investing public money in unproductive property. Unorganized counties may establish a county government upon the petition of seventy-five qualified voters, with the approval of the majority of the voters therein.

One of the most complicated arrangements imaginable is provided for the determination of the county seat. The basic provision is that the county seat must be within five miles of the geographic center of the county.[5] After a county seat is established, no election for its removal may be had for five years. As the years after its establishment increase, the difficulty of its removal becomes greater. If less than ten years after its establishment, a petition for removal requires a hundred freeholder voters; if less than forty years, two hundred such signers; and if more than forty years, a majority of the eligible voters. Nor is this the final provision. While only a majority vote is necessary to locate a county seat within the five-mile limit, it requires a two-thirds vote to move it outside the five-mile limit.

### County Administration

***The Commissioners' Court.*** As far as its policy forming functions are concerned, if a county board can be said to possess them, they have been narrowly restricted by the constitution and by statutes concerning the use of funds until almost the vanishing point of ability to decide policy has been reached.[6]

*Its Personnel.* It is composed of the county judge and four commissioners. The county judge is elected by the qualified voters of the county for a term of four years and the commissioners are elected from single-member districts for a term of four years. The court is presided over by the county judge who does not vote except in the case of a tie. Three members constitute a quorum for the transaction of all business except the levying of taxes, when all must be present. The court meets on the second Monday of each month, but may be called into a special

[5] *Ibid., Article* III, section 56; Article IX, section 2; Article X, section 9.
[6] Murphy, *op. cit.*, p. 19.

session at the request of three commissioners or by the county judge. Vacancies on the court are filled by the county judge. The county clerk is ex officio clerk of the commissioners' court.

*Its Powers.* The powers of the court are both mandatory and discretionary in character. In the former capacity it acts as an administrative agent of the state, and in the latter as an agent of local self-government.

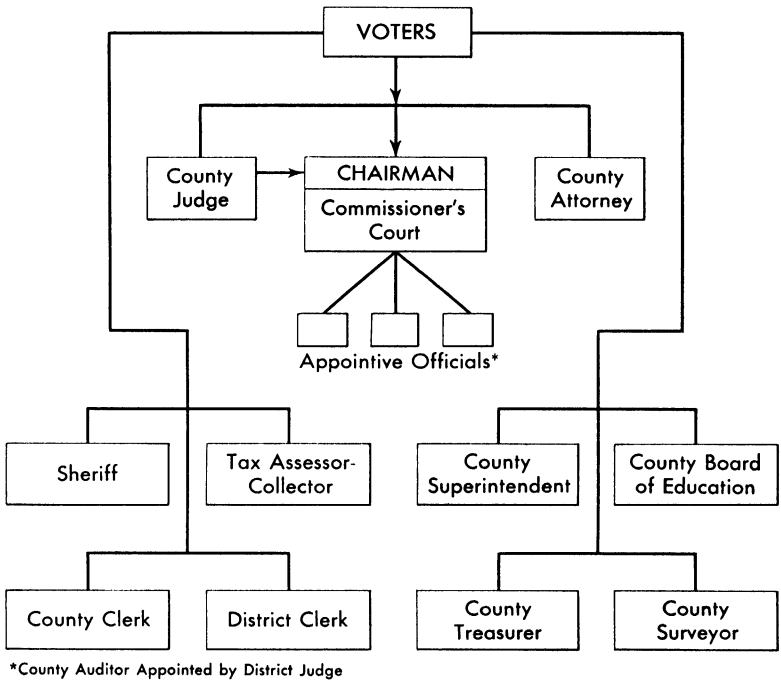


**Figure 64.** *County Government in Texas.*

It is in the latter capacity that it may be said to be a policy forming body. Under its appointive duties it must appoint a health officer, and may appoint many other officials at its discretion. It must call for competitive bids on contracts of more than $500. It may establish new roads and discontinue or change old ones within the restrictions laid down by the state highway commission. It must establish a courthouse and jail, and may establish county hospitals, libraries, and parks. It must provide for the insane and paupers, and may provide for indigents and dependents. It must acquire certain property as the sites for courthouses and jails, and purchase grounds for cemeteries, park, et cetera.

Its taxing powers are restricted by a maximum rate to be exceeded only after due approval by the voters. By an amendment to the state

constitution [7] adopted November 7, 1944, the commissioners' court of any county was granted the power to reallocate various taxes by increasing or decreasing any of them at its discretion provided that the sum total of all rates does not exceed eighty cents per $100 valuation for any one year. However, the exercise of this power by the commissioners' court must be authorized by a majority of the qualified property tax payers of the county, but such authorization remains in force for only six years. However, it may be renewed every six years by the same process of authorization.

In theory a small board should work far better than the large board which prevails in many places in this country, but trading and collusion may be facilitated by a small board. Deals are more difficult to make with a large board and are more likely to be opposed.

***Other County Officers.*** *County Judge.* In addition to the members of the commissioners' court, there is an imposing list of administrative officials who are elected. The outstanding official in the county is the county judge, who is elected by the voters of the county for a term of four years. A vacancy in this office is filled by the commissioners' court. His duties are multifarious in nature, and in many respects have no relation to the qualifications for the office that the county judge be "well-informed in the law of the state." [8] He is seldom a judge by training and experience. He is the judge of the county court which is the court directly above the justice's court in the state hierarchy. As judge of this court he has original jurisdiction in certain misdemeanors, in civil cases beyond the jurisdiction of the justice's courts, and appellate jurisdiction in cases arising in the latter courts. He also has general probate powers such as the settlement of estates, the appointment of guardians, et cetera. He has power to issue various writs. Working with the judge in his judicial capacity is the clerk of the court, elected biennially except in counties under eight thousand people where he is ex officio clerk of the court as well as clerk of the commissioners' court and recorder of the county.

As a member of the commissioners' court, the county judge presides over its deliberations, and because of the fact that he does not vote except in case of tie, he holds the delicate position of arbitrator among its members.

He has many duties in regard to elections, being required to post the notices thereof, handle and allocate the supplies, record the re-

[7] *Texas Constitution,* Article VIII, section 9.
[8] *Ibid.,* Article V, section 15.

turns on county and state officials and submit them to the state, and handle the elections in the various districts for such varied things as the incorporation of villages, bond issues, increased tax levies, et cetera.

He appoints several subordinate officials such as road overseers, probation officers, matrons in county rest rooms, et cetera. His fiscal powers extend to the signing of bond issues of the county and control over the sale of certain issues made by special districts. He is a notary public and has the power to marry people.

*County Attorney.* The county attorney is the legal advisor of the county and is elected by the voters of the county for a term of four years. He must represent the county in civil suits such as suits to collect taxes, advises officials on their rights and duties, and brings actions to force other county officials to perform their duties according to the law.[9] He must be distinguished from the district attorney, who handles all criminal actions within the county on behalf of the state.

*Sheriff.* One of the oldest officers in county government is that of sheriff, who is also elected by the voters of the county for a term of four years. His duties may be divided into three types. He is first of all the law preserving and enforcing official of the county with power to prevent criminal actions and to arrest offenders. He is secondly an administrative official in charge of the courthouse and jail, with the duty to keep order in the courtroom, and to serve various writs, citations, et cetera. Finally, in counties under 10,000 population he is the ex officio tax assessor and collector.

*County Clerk.* The county clerk or clerk of the county court, as he is legally called, is also elected quadrennially by the voters of the county. As his name implies, he is the secretary for the county court and for the commissioners' court and is responsible for the keeping of their records and such other materials as they may require. He is also responsible for a quarterly statement of the funds received and dispersed by each county officer and is required to keep an account of these funds. He likewise issues the annual county financial statement. These financial duties may be performed by a county auditor in the larger counties. He acts as the county recorder, registering such documents as deeds, mortgages, contracts, et cetera, and keeping a file of these documents. Finally, he issues hunting and fishing licenses.[10]

*Assessor and Collector of Taxes.* In all counties of more than ten thousand people an assessor and collector is elected quadrennially. As

[9] *Ibid.*, Article V, sections 17, 21, 24.
[10] *Ibid.*, Article V, section 20.

assessor, he has the duty of making the highly complicated evaluation of the property within the county. While this is a highly technical function, few assessor-collectors are trained in this work. As now performed the collection aspect of his duties is a mere routine procedure and is very ineffectively done. Politics is a factor in both assessment and collection of taxes and accounts for the improper evaluation of property and the large amount of delinquent taxes. The assessor and collector acts for the state as well as for the county, and many act also for municipalities and various special districts.[11]

*County Treasurer.* A county treasurer is also elected in each county and is the custodian of the county funds. He receives and disburses the money of the county according to law and reports to each session of the commissioners' court on the status of the county funds.[12]

*County Superintendent of Schools.* Every four years a county superintendent of schools is chosen in counties having at least 3,000 children of school age. He is secretary and executive officer of the county board of school trustees. He has general supervision of the public schools of the county. He visits these and inspects their work, holds institutes for teachers and consults applicants for teaching positions. He is primarily an advisory official.

*Surveyor.* The county surveyor is elected by the voters of the county and holds office until his successor is elected and qualified. He is paid by fees.[13]

There are other officials such as the inspector of hides and animals, and the justice of the peace.[14] This enumeration of county officers is significant for at least two reasons: first, as showing their character and functions and, second, as indicating the task of the voters who in the primary election are required to select nominees for these offices from a tremendous list of candidates about whom they know little or nothing. This is one of the greatest farces in our democracy.[14]

## County Functions

***Welfare.*** From the days of the early English settlers down to the present time the work of providing for indigents and dependent persons has been a county function. Despite increased federal, state, and

[11] *Ibid.*, Article VII, sections 14, 16.
[12] *Ibid.*, Article XVI, section 44.
[13] *Ibid.*, Article XVI, section 44.
[14] The justices of the peace are discussed in connection with the hierarchy of courts. For a splendid discussion of county officers and their functions, see Herman G. James, *County Government in Texas* (revised by Irvin Stewart), 1925, a University of Texas Bulletin, No. 2525, pp. 42–70.

municipal participation in welfare matters, in Texas the county remains the chief administrative agent in providing for the needy. In many counties welfare has been administered haphazardly for a long time. Poorhouses, poor farms, and old people's homes have been established and maintained; these are socially expensive. However, the current trend is toward rendering assistance externally of such institutions, and as this trend grows the necessity for them may gradually be abolished.

A second welfare problem is the treatment of juveniles, both as dependents and delinquents. The former are normally handled in one of four ways—by being placed in a county-maintained home, a state institution, a private orphans' home at county expense, or in a boarding home. In the class of juveniles are included children without parents as well as those whose parents are adjudged to be unfit for parenthood.

In theory the delinquent child is handled separately and differently from the adults. In the better organized counties juvenile courts or courts of domestic relations are established in which the procedure is adapted to the handling of these problems in accordance with their delicate character. Three state institutions are maintained for the care of juvenile delinquents, but the large number of inmates precludes the close supervision and socializing aspects which are basically necessary for the rehabilitation of these youths.

The state maintains institutions for the insane, deaf, dumb, and blind, and hospitals for the tubercular. Patients are admitted to these institutions by the proper county authority, but when the facilities are full the county must assume full responsibility for the care of the remainder. The duty to provide for the insane, et cetera, is a mandatory function of the county. The county is permitted to maintain a county hospital.

The present county organization for welfare work is unduly cumbersome and ineffective. The work is not integrated, being by and large in the hands of elective officials. The commissioners' courts or some of their members have supervision of the poor. As counties increase in population more latitude is given in the type of organization which they may provide. The need for trained specialists in social work is only gradually being recognized. Juvenile boards or juvenile officers may be selected in the larger counties.

Without awareness of the techniques of the social workers, county officials frequently adhere to the letter of the law rather than to its spirit. In recent years the state has assumed important social welfare programs which have relieved the counties of much of their responsi-

bilities in these services. The Texas Youth Council administers the states policies relative to the care of delinquent and neglected children. The Public Welfare Department conducts a wide range of services including aid to the dependent children and the blind and public assistance to the needy aged and the permanently disabled.

***Health.*** Among the last of the governmental activities to be developed in an effective way is that of health. Texas has gone but a short way in this field. By and large the state cooperates with the county through two bureaus of the department of health, those of sanitary engineering, and child hygiene. Because the former bureau is concerned generally with water supply, its activities touch the municipality and school district rather than the county. It is the bureau of child hygiene which most frequently touches the county.

Each commissioners' court is required to appoint a county health officer. He must cooperate with the state program of disease prevention and suppression on penalty of dismissal by the state board of health after judicial hearing, but generally speaking he has little to do with the state organization. He must care for the indigent sick and for those under county care. Being poorly paid, he is apt to have little in common with a comprehensive county preventive disease program.

In a majority of the counties the health officer is the total health organization, but in a number of counties a state aid system has permitted establishment of a comprehensive program of school inspection, immunization, education, and infant health work under the supervision of the field workers of the bureau of child hygiene and the county appointive health committee. A full-time nurse may be employed. Where the program is more extensive, more employees are maintained. In at least one instance an intercounty health organization has been established.

The state aid system has been employed to bring about this type of organization in a few counties. It is apparent that not only is state money required, but also that there must be a certain amount of supervision from the state in order to maintain reasonable standards. Lack of both finances and interest have prevented the counties from becoming efficient health units. Since 1929 they have been relieved of the duty of recording vital statistics because they performed this function very inefficiently.

***Education.*** The county control of education is more a theory than an actuality. The actual control is more nearly in either the state or the school district itself. But there are some real county educational func-

tions, and there is a conscious movement to make the county the actual school unit.[15]

The county administrative organization consists of a board of county school trustees since 1915 when the commissioners' court lost control. These trustees are chosen in a manner similar to the election of the commissioners' court. They create new districts and allocate the county common school fund on the basis of the census enumeration. In addition each county has a superintendent of schools who may be elected, appointed by the county school trustees, or the county judge may be an ex officio superintendent in counties with less than 3,000 school-age children.

The county superintendent of schools has little control over the independent school districts, but he does have the duty of preparing the census report, ascertaining whether the common school teachers meet the state requirements, apportioning certain revenues, holding institutes for the teachers, and visiting schools.

Each common and independent school district is primarily under the control of its own board of trustees; hence, there are almost as many school board members as there are teachers. Counties contribute very little maintenance to the schools. The revenue from lands granted for this purpose by the state constitutes a minor source.

The lack of central control over census taking and attendance has caused the state per capita appropriation fund to be misapplied. Its administration has placed a premium on a high census enumeration and a low actual attendance. The minimum foundation program established in 1949 is designed to eliminate most of the evils of the old rural aid law.

***Highways.*** The highways of the county are under the control of the commissioners' court. Each of the four members of the court has supervision over the county roads in his precinct. He may act as the road superintendent or appoint another man. Frequently the several members of the court act independently, making purchases for their own areas, and maintaining their own machinery. This absurdly wasteful method is sometimes eleminated by a county unit plan under which the several commissioners cooperate in the purchase of materials and equipment and allocate use of the machinery throughout the county. The division of power reaches its peak in the counties where the revenues for highway purposes are distributed to the several commissioners

[15] For a comprehensive study of the educational system of Texas see *Texas Educational Survey Report*, 1925, 8 vols.

in proportion to the amount received from their respective precincts regardless of the need for the funds or the road mileage in the area. By and large, if the commissioners act as road supervisors they are more likely to be good road managers than commissioners.

County roads are established by a jury of five freeholders from the district in which the road is to be built. They are appointed by the commissioners' court. This obviously precludes the possibility of a comprehensive county plan.

As one of the oldest local services, highways receive more money than any other county function. The constitution permits a fifteen cent levy, and provides that the people may vote an additional fifteen cents. In addition the county receives the first $50,000 of the auto license fees collected in the county and one-half the remainder until the county total is $175,000. Also the county must apply the fees from negligible criminal actions to the road fund.

Either special districts or the county as a whole may, with the consent of the voters, issue bonds for highway purposes. Frequently an exceedingly large portion of the tax rate is consumed by payment of interest and principal on these bonds. When the bond limit was reached, the tendency was to obligate further the county by means of time warrants, which do not require popular approval. This practice reached such proportions that many counties found themselves very heavily obligated and unable to continue their road improvements.

Considering the exceedingly large sums of money expended for highway purposes, the methods employed in administering the function are extremely archaic. There can be little doubt that the people are receiving less for their money than should be the case in many instances, but the complexity of the problem and docile nature of the voters prevent them from becoming critical.

In recent years the responsibility of the counties to aid in road building has been reduced, though it must furnish the right-of-way for designated state highways. In addition the state is gradually assuming some of the bonds of the road districts voted for state highways.

***The Administration of Justice.*** Since the county is primarily an agent of the state in the administration of justice, the county court and the justice's court are discussed as integral divisions of the state judiciary. The complete picture of the judiciary could not be given without indicating the relations of these courts to each other and to the district courts in the judicial hierarchy. It is, however, for the sake of completeness necessary to indicate that administration of local justice is an

historical and important function of the county. The county and district attorneys are a part of the county system of justice.

The sheriff and his *posse comitatus* of deputies and constables are also agents of the state though generally regarded as county officers in enforcing law as administered by the courts. They are assisted in this matter by two definitely state agencies, the Texas Rangers and the highway patrol. Crime does not recognize county lines. Undoubtedly conditions will ultimately develop a real state police system with the sheriff and his aids incorporated in it.[16]

The county clerk, county attorney, district attorney, and district judges must be mentioned in this connection. The latter two are distinctly state officers, but their connection with the county is significant. The county is, in the last analysis, a unit for the administration of justice.

***Elections.*** The county serves as the administrative unit in the statewide election process. The commissioners' court is empowered to divide the country into the requisite number of election districts. It also selects the election judges for each of the voting precincts, the number being dependent upon the size of the district. The supervisors of elections chosen to watch the proceedings to assure their legality and honesty are chosen by the county executive committee of the several parties.

Except in the cases of distinctly municipal elections and the party primaries, the control of the elections in the county is in the hands of the county judge and commissioners' court. The county judge orders the election of county and precinct officers, and posts notices regarding the time when elections will occur. Before April first the tax collector of the county must furnish the commissioners' court with a list of the people who have paid their poll tax.

The county judge, clerk, and sheriff constitute a board to provide the supplies necessary for the conduct of the election, and they must file a report with the commissioners' court on the costs of the election. When the election is over the ballots are sent to the county clerk who keeps them one year. The returns of the election go to the county judge, and are opened in the presence of the commissioners' court. The judge then notifies the successful candidates for county offices, and transmits the results to the secretary of state for state offices. Disputed elections are tried in the district court nearest the place where the election took place.

Not only does the county pay for the supplies and the salaries of

[16] James, *op. cit.*, pp. 37–49.

the election workers, but it also pays the tax collector a fee of fifteen cents for each poll tax collected. The sheriff and election judges who serve and post notices receive the same fees as are paid for civil processes. The sheriff or constable receives not more than two dollars per precinct for delivering the supplies.

***Finance.*** There may be some doubt as to whether the financial activities of the county are a means to an end or an end in themselves. In at least two instances the latter seems to be true, in the administration of the state ad valorem tax and in the collection of the auto license fees. In the administration of the ad valorem tax the county acts for itself and for the state as well. The only essential difference between the state and county ad valorem tax is the state exemption of homesteads and the different rate. So the county can, when it makes its own assessment, simultaneously make the state assessment. The state formerly collected its own auto license fees, but the administration was finally given to the counties, which now receive the first funds therefrom and share the rest with the state. It is becoming increasingly evident in both cases that the state has given too much authority to the county without adequate supervision, and in the administration of both the ad valorem tax and auto license fee greater state control is certain.

To a lesser extent than in the municipalities the county is dependent upon its own local sources of revenue, but in a large measure the state aids are undeveloped. Only in regard to education and highways does the state contribute any appreciable sum to the counties. Because the schools are only nominally under county control it follows that actually the county is faced with the necessity of providing virtually all its own revenues except in regard to highways.

The major source of county revenue is the ad valorem tax. The levies against property in the county are made by the commissioners' court for various enumerated purposes as listed in the constitution and statutes. Of a total maximum levy of eighty cents per $100 valuation, twenty-five cents may be levied for general purposes, fifteen cents for roads and bridges, fifteen cents for jury, and twenty-five cents for permanent improvements. In common school districts with the consent of the voters the county may levy as much as one dollar for school purposes. An additional fifteen cents may be levied for roads and bridges for a fixed period with the consent of two-thirds of the property-owning tax payers. An additional levy for bond retirement and interest may also be made when voted. Several additional levies of doubtful constitutionality are now being levied in various counties. About half the

revenue of the county is derived from the ad valorem tax. The automobile license fees which the state permits the counties to retain when they collect them seem to constitute the second major source of county revenue. Because of the maximum limit on the possible sum which the county can receive from this source, its relative importance is greater in the smaller counties. It is currently argued by the municipalities that a portion of the fund should revert to them.

Serious consideration has been given to the fees of officers as a source of revenue. There is a constant conflict between the fee and salary method of remuneration, and where the fee system is in effect, there is considerable question regarding the method of distributing the fees. The Texas practice of permitting the amount in excess of the costs of the office to revert to the county is a doubtful solution, because it tends to increase the cost of the office and thus to defeat the intent of the law. The salary method of remuneration in force in Texas counties of more than 20,000 population provides that all fees shall go to the county.

Contrary to the attention paid to the remaining sources, they do not constitute an appreciable amount of revenue. The county may levy an occupational tax of fifty per cent of the state rate on certain well-defined occupations and businesses. A poll tax of twenty-five cents may be levied by the county, but because the only checks on its payment are the right to vote and the payment of property tax, it is not universally collected. Fines and forfeitures constitute a slight source of revenue, but this again is of little consequence. It generally amounts to less than the cost of collection.

One of the major criticisms of the county revenue system is the lack of connection between the source of revenue and the fund to which it is allocated. We have by no means arrived at the ideal solution for the allocation of moneys. Certain revenues should be allocated to functions identified with like purposes. Thus fines and forfeitures might be placed logically in the jury fund rather than in the general fund, and certain highway moneys might revert to that fund rather than to the general fund.

To the regular county revenues must be added the aid received from the state. In addition the salaries of several county officials are partially or wholly paid by the state.

The county is the primary unit of assessment of property for ad valorem tax purposes in Texas. In theory this is the ideal system, but unfortunately it is a colossal failure in practice. Tax experts for this

reason are advocating that the state assume this function. Unless local government yields to the program of efficiency it will lose its functions to state administration.

The chief weaknesses of the county system of assessing and collecting taxes in actual practice are: (1) failure to assess considerable property for reasons of inability, indifference, or politics; (2) absurdly low evaluation for political reasons; (3) inequalities in assessment; (4) inefficient reviewing of assessments by the commissioners' court, who are laymen and popularly elected; (5) personal influences too strong in both assessing and collecting due to the local character of the official; and (6) collecting considered more important than a proper assessment.

State supervision of these functions is badly needed and apparently is inevitable. An appointive state board or commission with power to review assessments and collections and to compel revision or to make a revision in assessments to eliminate inequalities is sorely needed. Practically all students of our system of taxation advocate state supervision in some form.[17]

Taxes are payable between October 1 and January 1, though a split system of payment was introduced early in the depression. After February 1 taxes become delinquent. The collector is expected to prepare rolls showing the status of delinquent property after checking the delinquent list for previous years, as considerable taxes remain delinquent for years.

The selling of property by the state for delinquent taxes is a cumbersome process. In Texas it is a judicial process fraught with procedural difficulties intended to protect the owner. The owner should be properly protected but he should also be forced to meet fairly and honestly the responsibilities of citizenship. Even after sales of property for taxes have been made, a minor procedural error may invalidate the sale.

***Cooperation of the County with the Department of Agriculture.*** Current trends in county government indicate a continuation of the flow of such old-line county functions as education, relief and public welfare, health, and road building to larger governmental units. At the same time, however, the extension of the influence of the federal government into the everyday lives of the people is making its mark on the local courthouse activities. The commissioners' courts in each county were authorized in 1941, for example, to set up a revolving fund to be used in cooperation with the United States Department of Agri-

[17] Murphy, *op. cit.*, pp. 92–138.

culture in the distribution of surplus commodities. Likewise, the same agencies were authorized to cooperate with the federal government in administering resettlement and rural rehabilitation projects.

***County Board of Development.*** The Forty-seventh Legislature created a county board of development for the purpose of promoting the growth and the development of the county. The commissioners' court of each county was authorized to appropriate, with the consent of the voters of the county, a sum not exceeding five cents per $100 valuation to be spent by the development board for this purpose.

Also, the determination of the proper compensation for county and precinct officers is fixed by legislative or commissioners' court rule on a straight salary basis. This has eliminated the practice of paying excessive salaries to these officers in our large counties. Salaries vary according to the amount of work done and the population of the county.

## Tort Liability of Counties

The rule in Texas is that counties are not liable for injuries resulting from the neglect of their officers or agents, unless such liability is imposed by statute.[18] The leading case of Heigel v. Wichita County [19] involved a suit for damages for personal injuries caused by a defective bridge. In applying that rule it was stated that the grounds for it were not uniform. Some courts argue that the county is an arm of the state and thus not suable. Other courts, however, argue that counties are quasi-corporations, created by the state for the purposes of government, and the powers conferred upon them are duties rather than privileges, while on the other hand cities are voluntary corporations and they are usually created for the private benefit of the citizens of the community.

This rule of nonliability is not unlimited, however. Where counties in their corporate capacities, as contradistinguished from their individual officers, commit a wrong in relation to property in which others are interested, they, like other corporations or individuals, may be held liable.[20] The county is liable for damage to property under the constitutional requirement that compensation must be made for the taking of property. The negligence of the county and its agents is not an issue

[18] *Heigel* v. *Wichita County,* 84 Tex. 392, 19 S. W. 562 (1892); *Harris County* v. *Gerhart,* 115 Tex. 449, 283 S. W. 139 (S. Ct. 1926); *Bryan* v. *Liberty County,* 299 S. W. 303 (Tex. Civ. App. 1927); *Angelina County* v. *Bond,* 16 S. W. (2d) 338 (Tex. Civ. App. 1929); *Dial* v. *Crosby County,* 96 S. W. (2d) 534 (Tex. Civ. App. 1936).

[19] 84 Tex. 392, 19 S. W. 562 (1892).

[20] *Comanche County* v. *Burks,* 166 S. W. (Tex. Civ. App. 1914).

in such a suit. But there is no taking of private property for which the county may be held liable if the injury has been caused by negligent construction.[21]

## Reform of County Government

The county has been called the "dead Indian," "the dark continent of American politics," and a "horse and buggy government." It is undoubtedly the most inefficient and irresponsible unit in the American system of government. It lacks sufficient autonomy to be responsible to the voters of the county, and lacks the proper state supervision to make it a responsible agent of the state. It should be responsible to the state or be a responsible unit of local self-government. However, it is not properly organized for either purpose.

***The Board-Manager Form of County Government.*** The county board or commissioners' court, which is a body popularly elected from districts, should be elected from the county at large. It should possess all the executive and legislative authority of the county. It should exercise this power with the aid of a county manager employed by the board on a basis of experience and ability, and subject to dismissal at any time for incompetence or irresponsibility. County administration should be divided into the proper number of departments after the fashion of city government, and the heads of these departments together with their subordinates should be appointed by the manager by means of a civil service or merit system. The employees of the county should be responsible to the manager who in turn is responsible to the board for the administration of the county. School matters should be under a separate board elected by the voters of the county and the county superintendent should be employed by this board. The administration of justice in the county should be a part of the work of a unified state judiciary.[22]

The advantages of such a system are manifold. They can be enumerated as follows:

1. It is thoroughly responsible. The board is responsible to the voters, the manager to the board, and the employees to the manager.

2. It not only fixes responsibility but it also provides adequate means for the exercise of this responsibility. The board can give its entire time to the direction and supervision of county administration. It is the policy forming or legislative body of the county and enforces its policy through the man-

[21] *Tex. Jur., Counties,* Par. 93.

[22] Caleb Perry Patterson, *American Government* (Rev. 1933), pp. 874–890.

ager or dismisses him. The manager is in a position to accept responsibility for his subordinates for he employs and dismisses them. His entire time is devoted to the direction and supervision of the employees in the execution of the policy of the board. All complaints can go directly to the board which can easily and quickly through the manager investigate and correct the matter.

3. It provides for experts for performance of the technical functions of county administration.

4. It substitutes businesslike management of county administration for political methods.

5. It simplifies the problem of county government for the voters. The short ballot is substituted for the long ballot. Only the members of the board are elected. This reduces the number to be voted for and hence makes it possible for the voter to inform himself about the candidates for membership on the board.

6. Its expert and responsible character would tend to diminish, if not to eliminate, the necessity for state supervision or actual assumption by the state of the functions of county administration.

7. It would aid, therefore, in the promotion of county home rule on some basis comparable to that of our cities, and thus would increase the possibilities of local self-government.

8. It would check state centralization and the development of state bureaucracy.

9. Its elimination of politics from personnel and finance would largely reduce the cost of county government and at the same time improve the character of the services.

***Unification of Counties.*** There are far too many counties. Modern transportation and communication have made many small counties known as the "horse and buggy" counties unnecessary. Texas could abolish at least half its counties with tremendous savings in courthouses, equipment, personnel, and supplies, and at the same time improve the character of county administration.

## County Home Rule

By an amendment to the constitution adopted August 26, 1933, it is provided that a county having a population of 62,000 may by a majority vote of its qualified voters adopt a home rule charter, and the legislature by an affirmative vote of two-thirds of the total membership of both houses may authorize a county with less than 62,000 population to adopt a home rule charter. In charter elections, the urban and rural voters must vote separately and the votes must be counted

separately. The adoption of a charter for home rule must be favored by a majority of each group of voters.

No charter may abridge the sovereignty of the state, affect its established policies, impair the homestead exemption, or "inconsonantly" affect the operation of the laws of the state relating to the judicial, tax, fiscal, education, police, highway, and health systems.[23]

Subject to these limitations home rule is granted to the county. There is complete freedom as to the form of government. The governing body must be elective for not longer than six-year terms. The county may assume the governmental or proprietary functions of a city and may contract with the principal city within its limits to perform some of its functions for not more than two years at any one time. This amendment provides the basis for an efficient system of county government. The problem now is definitely local in character and awaits only the action of an intelligent and informed citizenship.

***The Union of Counties and Cities.*** This amendment also provides for the partial or complete merger of a city and a county operating under home rule.[24] The provisions of the county charter are controlling in case of such a merger. It is not necessary to detail the process by which such mergers may be effected. Undoubtedly this is one of the most progressive features of the amendment. Many counties and cities could merge, improve their services, and considerably reduce the cost of government. Such services as health, police, tax assessing and collecting, school administration, streets and roads, could be combined and placed under unified administrative agencies.

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[23] *Texas Constitution,* Article IX, section 3 (2).
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# 21....

# *Municipal Government in Texas*

For the past century Texas has had a steady and uninterrupted growth in population. From the point of view of this chapter, the significant features of this growth have been, first, the increase of the urban population and second, the rise of big cities and metropolitan districts.

In 1900 only seventeen per cent of the total Texas population lived in urban communities. By 1940 approximately forty-five per cent of the by then substantially increased total state population were living in cities of over 25,000. Today about seventy-five per cent live in incorporated areas, fifty per cent in cities of 50,000 or more.

In 1900 San Antonio was the only city in Texas of over 50,000. There are now twenty-one such cities, the newest to join the over-50,000 class being Abilene, Midland, Odessa, Pasadena, and Tyler; during the 1960's there will be still more.

On the other hand, for several years rural area population has been dwindling. Between 1940 and 1950, 146 chiefly agricultural counties (almost three-fifths of Texas' 254 counties) lost population in spite of the general statewide population rise; about half the counties in the state were still losing during the 1950's. As more and more Texans moved from farms to towns and cities to take factory jobs, the industrial counties rapidly gained.

The processes of government hinge to a significant extent upon the size, the mobility, and the character of the population. For instance, where there are few people there is likely to be little business, either public or private. An influx of people to a given area may provide a labor force for new companies, and will certainly bring about the need for increased governmental services such as police, water supply, zoning, et cetera. And it is obvious that today's birth rate dictates tomorrow's school needs.

Nowhere is this relationship between governmental function and population trends more dramatically illustrated than in our cities.

## Legal Status and Creation of Municipal Corporations

***The Source of Municipal Powers.*** Legal theory holds that the city is a corporation—somewhat analogous to a private corporation—which has a continuity of existence and definite powers, and upon which duties may be imposed. It is of interest to us, therefore, to locate the source of these powers and duties. This source is the individual states of the Union. The Federal Constitution contains no reference to local government; hence the authority to create local governmental units, such as cities, is a power reserved to the states.

The relation of the city to the state has been judicially defined as follows:

> In this government of ours there is but one sovereign, and that is the state. . . . Counties, cities, towns, and all forms of municipal government are creatures of the state, created for its benefit, invested with such authority and privileges as the state in its wisdom saw fit to confer upon them, which may be expanded, contracted or withdrawn by the state, as it, in its wisdom, may see proper.[1]

Thus we see that the state creates city government partly to aid it in performing the functions of civil government, but more particularly to administer the purely local affairs of the community. City life has such an individuality of its own that it logically and naturally constitutes a proper basis for a separate unit of government. For the most part its institutions and problems are different from those of other areas in the state and therefore require special consideration and management. It is this uniqueness of city life that has enabled the city to demand and obtain a special legal status in our constitutional system.

What a Texas city may or may not do at any particular time is determined by several factors. The legislature may contract or liberalize its functions. Amendments to the state constitution may affect its powers, and judicial decisions may arise which throw a new light upon its exercise of powers.

The judicial doctrine relative to the powers of municipalities has been stated as follows:

> Being a creature of the state, a municipal corporation possesses only such powers as the state grants to it in *express* terms, or such as are *necessarily implied* from *express grants,* or such as are *inherent* or *indispensable* to its corporate existence. Such inherent powers are defined to be the right to sue

[1] *Trent* v. *Randolph* (1910), 130 S.W. 737.

and be sued, to grant, receive, and hold property in the corporate name, to have a seal, to make by-laws and ordinances for the government of the corporation, and to have succession.[2]

It is clear that the Court is attempting to state limitations in this quotation. What is expressed or impliedly expressed in a charter could in many instances be a matter of debate or of some doubt, but the court further says that when "the powers are doubtful, they are held not to exist." [3]

***Methods of Granting Municipal Powers.*** While under our constitutional system the powers of municipalities must be derived from the state, the method of their derivation has varied from time to time. In general, three distinct methods have been employed by the states. First, corporate powers have been granted to individual cities by special legislative act. This method is no longer used in a majority of the states. Second, corporate powers have been granted by general law. Under this scheme, one or more general laws are enacted by the legislature, and any eligible community—eligibility being most commonly based on population—may incorporate with all of the powers and privileges extended by the general law.

The third method was introduced in Missouri in 1875 and is known as constitutional home rule. In general, this method seeks to set out by means of a constitutional statement a field of local affairs over which the state legislature would have no control. The outstanding feature is the right of a city to frame, adopt, and amend its own charter. By such means, a community may choose a form of government and select, within the realm of local affairs, the powers of government. The principle of home rule has been incorporated into the constitutions of many states, including Texas.

The early municipal charters of Texas were brief, simple documents, granted by special legislative act. It was a common practice to provide for incorporation of a city by re-enacting the provisions of a previously granted charter. Although the first general law providing for incorporation of cities and towns was passed in 1858, it is doubtful if many communities took advantage of this act. In 1875 the legislature enacted a "model charter" and allowed all incorporated cities of 1,000 and over to substitute it, by a two-thirds vote of the aldermen, for their old charters. This act, much amended, remains in effect today.

[2] *Ball* v. *Texarkana Water Corp.* (1910), 127 S.W. 1096. The italics have been added by the author for emphasis.

[3] *City of Uvalde* v. *Uvalde Electric & Ice Co.*, (1921), 235 S.W. 625.

The constitution adopted in 1876 contained for the first time definite provisions concerning municipal corporations. It embodied various limitations on the action of the legislature in regard to cities, particularly concerning the passage of local laws. In addition, it provided that cities and towns having a population of 10,000 or less could be chartered only by general laws; other cities, however, could have their charters granted or amended by special act of the legislature. The constitution was amended in 1909 to provide that cities of 5,000 or less were to be restricted to the use of general laws.

In 1912 a home rule provision was added to the Texas constitution (Article XI, section 5). Under its provisions any city with a population of more than 5,000 may draft a charter, subject to the constitution and general laws. The procedure for the drafting, adoption, and amendment of charters is set forth in a legislative act of 1913.

As a result of the above enumerated developments, municipal powers in Texas today must be either granted by general law or secured within the framework of the home rule principle. In other words, special legislative charters for cities are no longer permissible. It is worth noting, however, that by use of population classification, the legislature may in effect enact a special law, for by restricting the population brackets sufficiently the law can be made applicable in fact to only one city.

***The Home Rule Cities.*** In Texas today there are nearly 800 active municipal corporations. About 112 of these are home rule cities although the number changes almost every year; the remainder operate under the general laws of the state. It is likely, however, that this number has since been enlarged and that there are at least three dozen eligible cities in the state which do not now have home rule charters.

The home rule amendment provides that "no charter or any ordinance passed under said charter shall contain any provision inconsistent with the Constitution of the State or of the general laws enacted by the Legislature of this State." There is, of course, quite a difference between holding that no charter provision may be enacted where a general law *can be made* applicable and the rule that a charter provision yields when a general law *has been made* applicable. That the latter is the established view of the courts is indicated by the following, often quoted statement:

> In a word, as long as the state does not, in its Constitution or by general statute, cover any field of the activity of the cities of this state, any given city is at liberty to act for itself. But, when the state itself steps in and makes a general law and applies such law to all cities of a certain class, then we

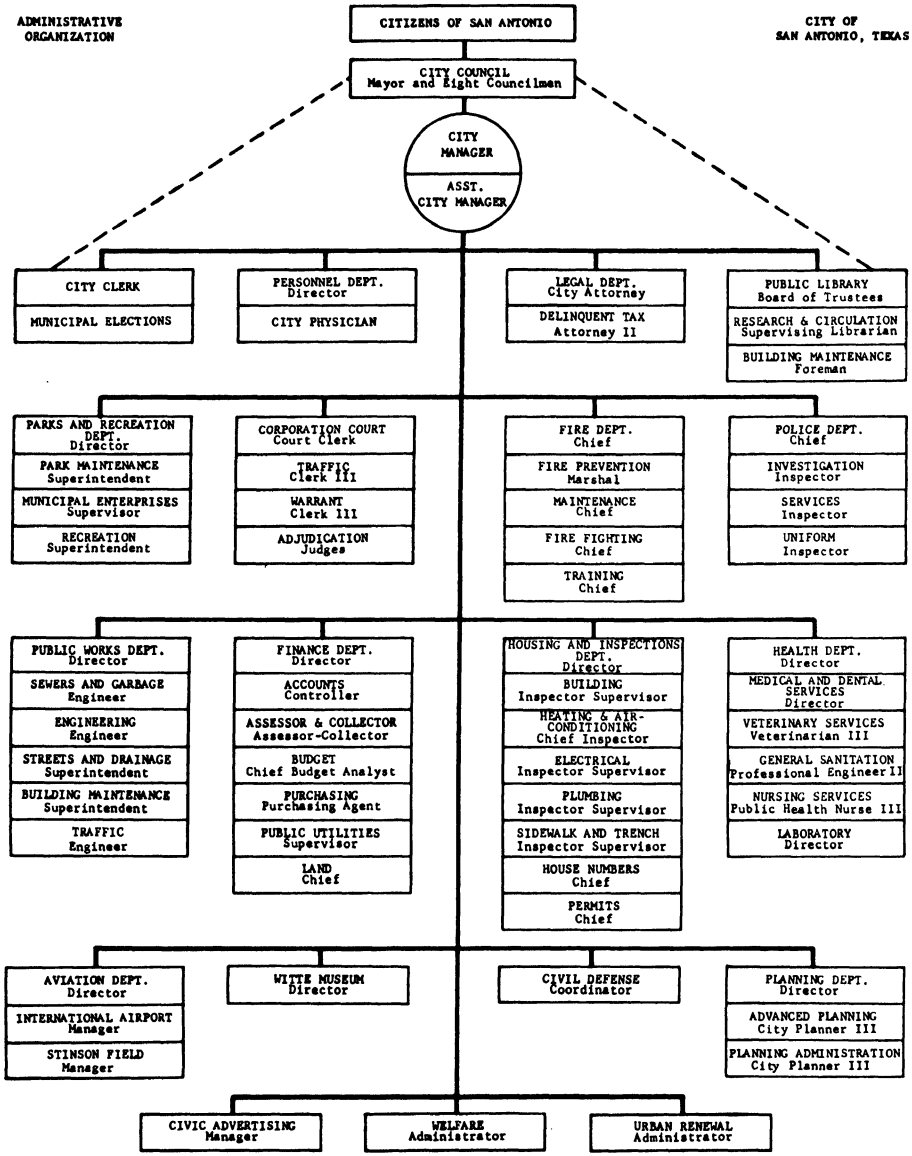


**Figure 65.** *City Government of San Antonio.*

submit that no city of the same class is authorized, under our Constitution, to enact contrary legislation. If this principle has not already been adopted as to the settled law of this state, then it should be so understood from this time forward.[4]

[4] *City of Beaumont* v. *Fall,* 291 S.W. 202 (1927).

There appears to be no limit to the scope of general legislation, insofar as municipal affairs are concerned. Any valid general law, irrespective of subject matter, binds the home rule city. In other words, there is not a distinct area of municipal affairs, as some state constitutions provide, which the legislature may not invade if it so desires.

There is a sizable body of state law which applies to home rule cities, and this is increased at practically every legislative session. The legislature has resorted to classification, commonly on the basis of population, in order to reach particular home rule cities or a particular group of cities. It is to be noted, however, that some of this legislation is sought by the cities. In view of the fact that home rule cities may do anything not already attended to in the constitution or general laws, it may seem surprising that the cities still seek legislative action by the state instead of acting locally. Several reasons are customarily given for this resort to the legislature, as follows: (1) it circumvents the limitation that charters may not be amended more often than every two years; (2) it costs less than a local election to put over a charter amendment; and (3) it satisfies the doubt of local officials as to their authority to act.

It seems clear, therefore, that the real meaning of home rule may be altered considerably with the passage of time, depending upon legislative action by general laws. Some observers have seen danger signals for the future in the several legislative acts relating to the salaries, hours of work, and the retirement of policemen and firemen. Reasoning from these examples of state action, it is argued that there is nothing of a local nature that the legislature may not some day control by general laws. It is a fact, as pointed out above, that since the courts are not directed by constitutional mandate to protect a zone of municipal affairs, the legislature may exercise its own judgment as to what should be acted upon by the state.

Despite the existence of numerous state statutes applying to home rule cities, the grant of home rule authority to municipalities has allowed considerable latitude with respect to both powers and forms of government, especially the latter. It often appears that the cities have more powers than they care to exercise, preferring state legislative action to appropriate local processes. At any rate, there can be little doubt of the popularity of home rule among Texas cities, and there is today more citizen action with regard to charters than has been in evidence for a number of years.

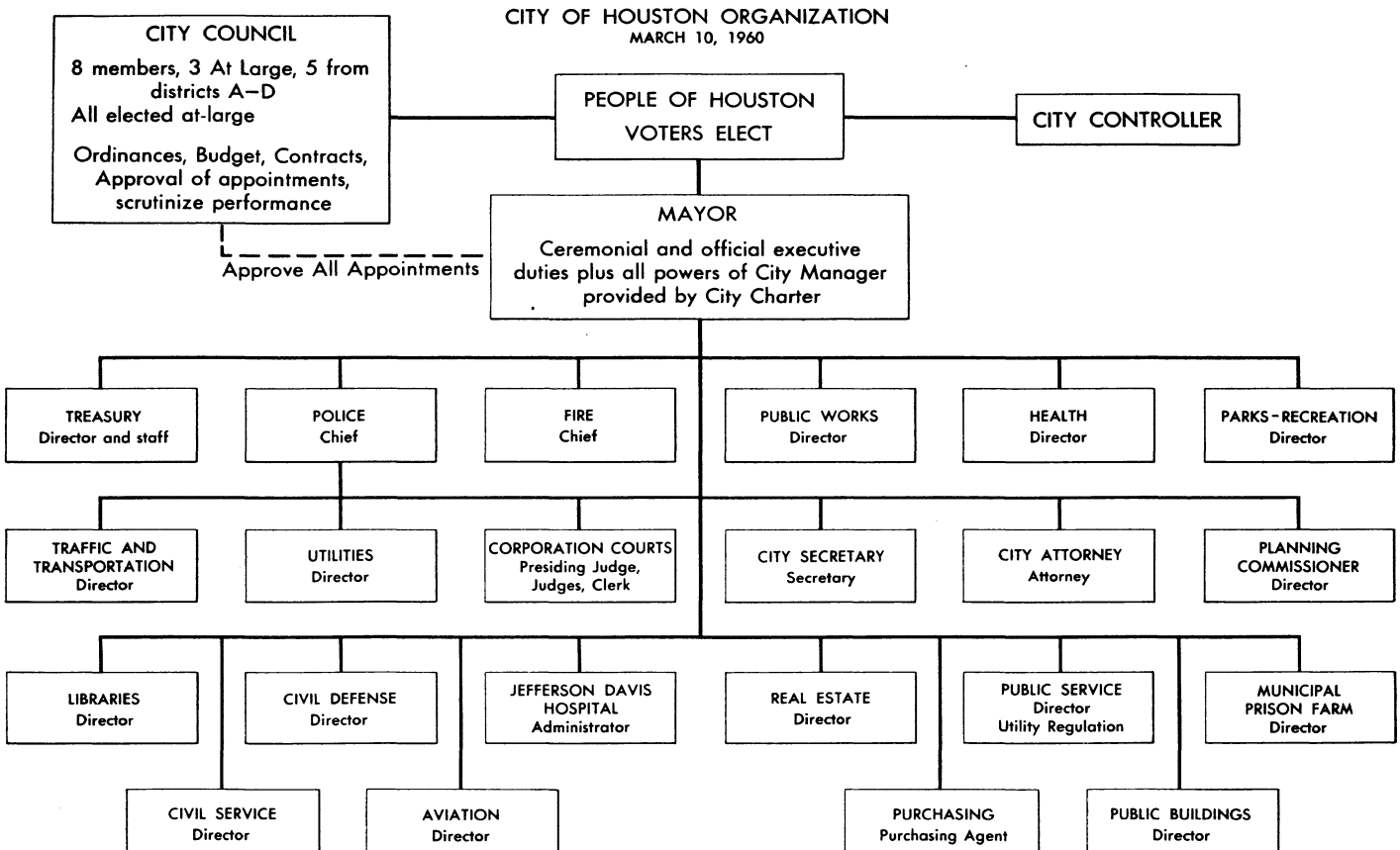


Figure 66. *City Government of Houston.*

## City Elections

The state courts have clearly indicated that elections in general law cities must be held subject to the state election laws.[5] There is some doubt as to the applicability of these state laws to the home rule cities. However, it is customary to include in home rule charters a statement framed along the following lines: "Except where otherwise provided herein, the general election laws of the State of Texas, insofar as applicable, shall control all elections, general and special, held by the city of ——." Some charters contain rather extensive provisions relating to elections, while others contain little or no such material.

The state election laws were apparently written with the needs of the state and county, rather than the municipality, in view. Hence, it is oftentimes difficult to interpret and apply the laws to city elections.

The regular annual or biennial election of municipal officers must be held on the first Tuesday in April. A primary election for nomination of candidates is not required by state law.

The statutory provisions for the organization of general law cities contain a list of the offices which must, or in some cases may, be filled by election. Although certain elective offices, such as that of councilman or commissioner, are common to all municipalities, the kind and number vary somewhat with the form of government and the general laws under which the community is incorporated. The home rule cities enumerate in their charters the elective offices, and the tendency is to restrict these to members of the governing body. As a matter of fact, the short ballot is characteristic of a large number of cities in the state.

The term of office for all elective municipal officers—in both general law and home rule cities—is two years, except in communities incorporated as towns or villages with the mayor-council form of government, where a one-year term has been established.

In general, any citizen of the United States, at least twenty-one years of age, who has resided in the state at least one year preceding the election and for a period of at least six months in the city or town in which he seeks to vote, and has paid a state and county poll tax if subject thereto, is a qualified voter. In addition, a resident of a city that

[5] *Austin* v. *City of Alice*, 193 S.W. (2d) 290 (1946). The state election laws are found in *Revised Civil Statutes of Texas* (1936).

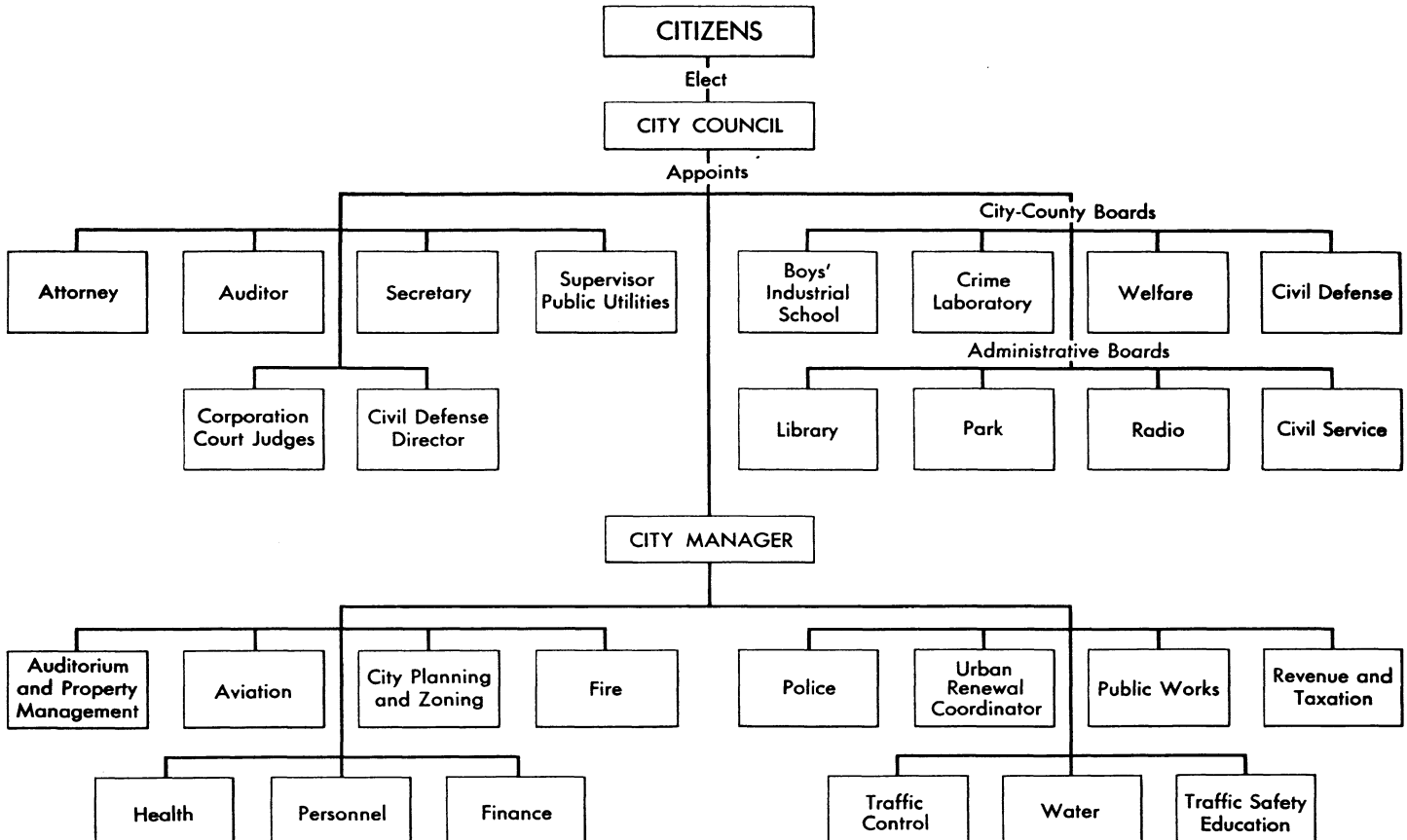


**Figure 67.** *City Government of Dallas.*

has levied a poll tax ordinance must have paid the city poll tax, as well as the state and county tax, in order to qualify as a voter in municipal elections.

The qualifications for candidates to elective municipal offices are not uniform, and hence it is not practicable to attempt a discussion of them here.

Candidates for positions to be filled at a city election may be nominated by (1) primary election (2) mass convention of the qualified voters of the party or by (3) personal application to the mayor. Party nominations are infrequent in municipal elections. Until recently, the prevailing method of nomination was by petition signed by a small required percentage of voters; however, the legislature in 1947 directed that independent candidates need not be nominated by petition but that personal declaration was sufficient. This method had been growing in favor among home rule cities before the legislative enactment of 1947.

The actual operation of municipal elections is much the same as any other election and is controlled in considerable detail by the state election laws. Special municipal elections—which may be called for such purposes as filling vacancies, changing the form of government, and the authorization of bonds—are similarly administered.

**Forms of Municipal Government**

The forms of American city government are commonly recognized as three in number, mayor-council, commission, and council-manager. The characteristics of each type have long been known and are generally accepted. However, it should be noted that seldom do we find a city with all of the characteristics of a particular form. Numerous variations appear, and it is oftentimes difficult to classify a given city as to its form of government. Nevertheless, the three familiar forms are useful patterns from which to project the general aspects of organization in city government.

***Texas Limitations on Incorporation and Forms.*** The legislature of Texas has established two classes of municipalities, *cities and towns* and *towns and villages.* Although it is difficult to distinguish them, these classes must be used in considering the forms of city government in Texas. Each general law city has one of the following types of government: (1) mayor-council; (2) commission; (3) council- or commission-manager. The first two are available to a community at the time of incorporation, the manager form only after incorporation.

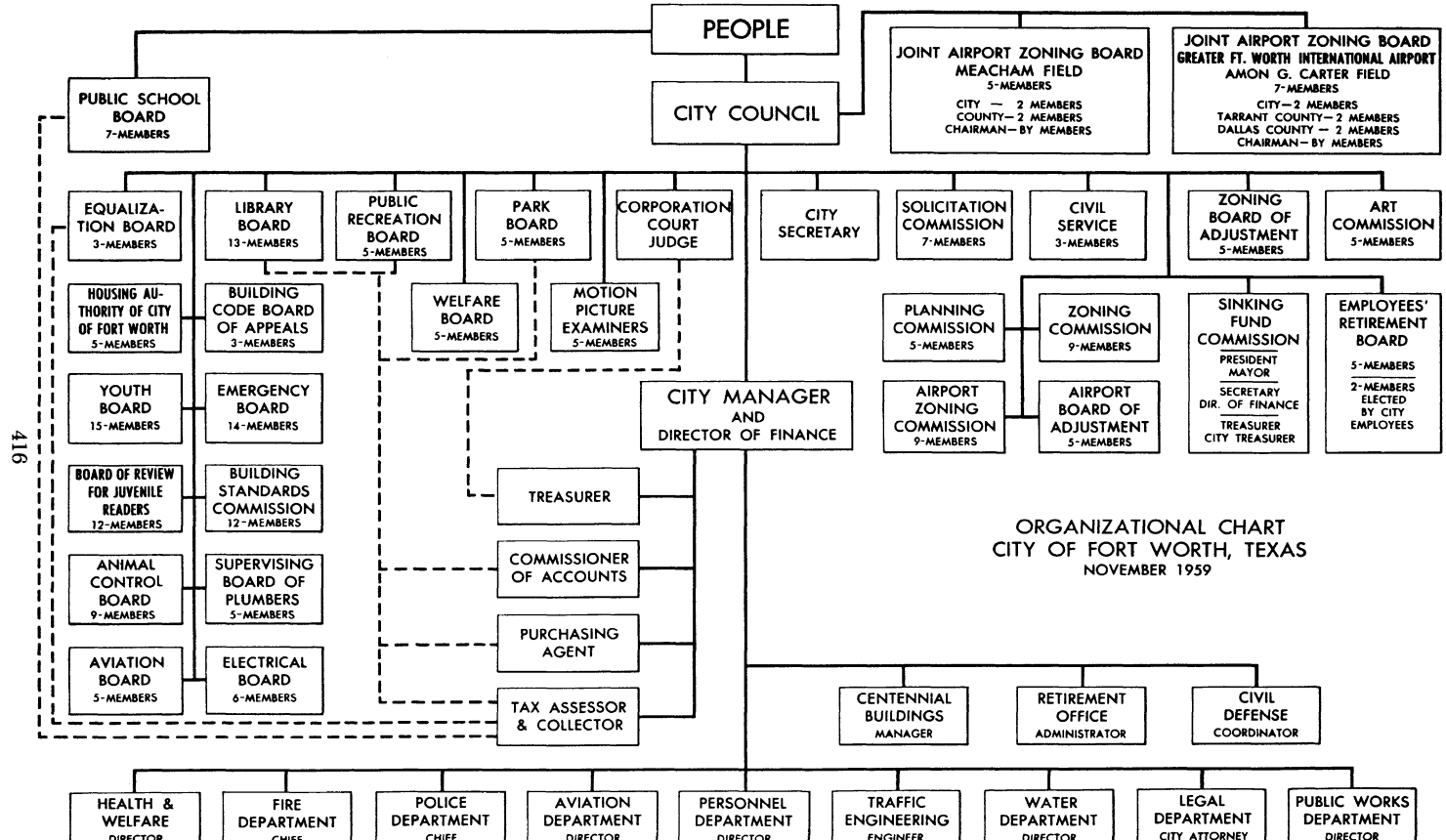


**Figure 68.** *City Government of Fort Worth.*

Home rule cities are not limited in their choice of forms, but may use any one of the basic types and vary it to suit local tastes.

Any city or town containing 600 or more inhabitants may incorporate under the mayor-council form of government. The same form, varied somewhat, is also available at time of incorporation to towns and villages, if the population is more than 200 and less than 10,000.

Any city or town with a population of over 500 and less than 5,000, and any town or village with more than 200 and less than 1,000 inhabitants may incorporate under the commission form of government. It is also possible for a community which has been incorporated under the mayor-council plan, and which comes within the limits of class and population stated in the previous sentence, to adopt the commission plan if the change is approved by a majority of those voting upon the proposition.

Prior to 1943 there was no explicit provision in the statutes for the adoption of council-manager government by cities organized under the general laws. In that year the legislature authorized any such city, town, or village, provided the population was less than 5,000 to adopt the council-manager form by vote of the local electorate.

As can be seen from the foregoing, the general law provisions for municipal organization are complex and illogical. It is virtually impossible to distinguish clearly the two classes of municipalities; they often enjoy similar powers and forms of government, and the population categories overlap considerably. A thoroughgoing revision of these laws is greatly needed.

***The Mayor-Council Form.*** This plan provides for an elected mayor and a varying number of aldermen or councilmen. The mayor, of course, is elected at large and the councilmen may be elected at large or from districts or wards into which the city is divided. In case of the latter, there are as many wards as there are councilmen. The plan can be and is varied to provide for as few or as many councilmen as desired. The question involved is one of concentration of power in the hands of a few or of division among a larger number. Possibly also the matter of harmony and expedition of action, as well as the size of the city, are factors. Sometimes certain groups, economic, social, or religious, may demand representation; or certain geographical areas may have to be considered in determining the character of the governing body. It is believed, however, that a small council of five to nine members is the best arrangement.

Whether the plan is characterized as a strong or weak mayor-council

form depends on whether the balance of power is granted to the mayor or to the councilmen. Here again all kinds of variations are made possible by drawing the line of authority between the mayor and councilmen at any number of points. Under the strong mayor plan, the mayor is usually made the chief administrative officer of the city and is also given a veto power over legislation. The weak mayor has little more actual authority than other members of the governing body, although the prestige of his position may carry considerable influence. From an administrative point of view, the weak mayor form is perhaps the least desirable type; and this weakness has contributed to widespread abandonment of the plan during the past fifty years.

In Texas the general law city or town has a legislative body consisting of a mayor elected at large and two aldermen from each ward into which the city is divided. If the city is not divided into wards, the council consists of a mayor and five aldermen elected at large. The statutes also provide for the election of a treasurer, an assessor-collector, a secretary, a city attorney, a marshal, and a city engineer. However, with the exception of the secretary and marshal, these officers may be dispensed with by ordinance and their duties conferred upon others. The mayor's position is not a particularly strong one, although his office does carry considerable prestige. The form might best be characterized as a weak mayor type verging on the strong mayor plan.

In towns and villages the elective officers are a mayor, five aldermen, and a marshal; the term of office is one year. The board of aldermen is authorized to appoint other necessary officers and employees and define their duties. In the smaller communities most of the routine administrative duties are made the responsibility of the city secretary's office. The mayor's authority is even more circumscribed than in the city or town.

***The Commission Form.*** Texas is popularly though erroneously credited with having originated the commission form of government in connection with the Galveston flood of 1900, at which time the mayor-council form failed to meet the demands of the crisis. A group of businessmen composing the Deepwater Commission applied for a new charter which the legislature granted in 1901.

The charter provided for a commission of five, three appointed by the governor and two elected at large by the voters of the city. Later all the commissioners became elective. The Galveston Plan with variations was rapidly adopted by Texas cities and others throughout the nation. Charters of this form of city government were granted by the

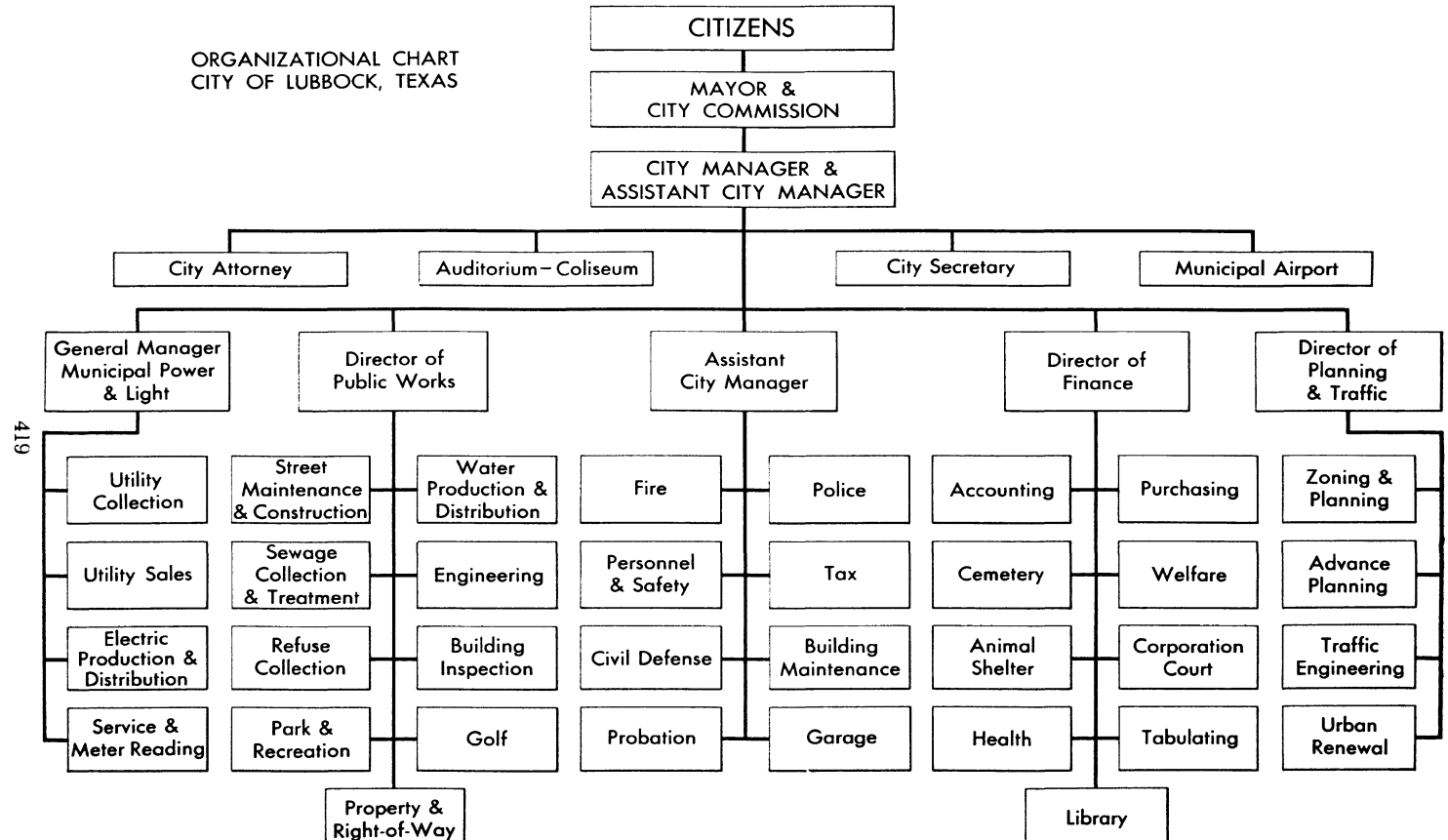


**Figure 69.** *City Government of Lubbock.*

legislature to Houston in 1905, to Dallas, Fort Worth, El Paso, Denison, and Greenville in 1907, and to Austin, Waco, Palestine, Corpus Christi, and Marshall in 1909; and in the same year a general law was passed permitting towns of more than 500 population to adopt this form of referendum. The commission form is still widely used in Texas.

The distinguishing feature of the commission form is the fusion of executive and legislative powers in the same body, thus abolishing the principle of separation of powers. The commission determines its own policy and then enforces it. This feature has been acclaimed as its chief merit, yet it is just as widely denounced as a major defect. Certainly the lack of organizational distinction between the policy forming function of government and the administrative function has caused a variety of difficulties to arise in the operation of the plan and has contributed to its decline in popularity.

In Texas the general laws provide for a commission composed of a mayor and two commissioners elected for two years. Only one administrative official—the city clerk, who is also the treasurer, assessor and collector—is provided for by statute. Such other administrative officers and employees as are needed are appointed by the commission. It appears to be the intent of the statutes that the board of commissioners is to perform the functions of legislation, appointment and removal of officers and employees, and general supervision of the administration. The law does not direct that the mayor and commissioners are to be elected to head specific administrative departments, as is sometimes done in home rule cities with commission charters.

***The Council-Manager Form.*** By 1913 the commission plan had reached the height of its popularity and begun to be superseded by the council-manager form. This plan has constantly been growing in popularity on the basis of experience, until about 700 cities throughout the country are now using it. The chief characteristics of the plan may be listed as follows: (1) a small city council elected at large; (2) the council is responsible for policies expressed in resolutions and ordinances; (3) a city manager is appointed by the council for an indefinite term and is removable at the pleasure of the council; (4) the manager is the chief administrative officer of the city, and he is responsible to the council for proper and efficient administration of all affairs of the city placed under his jurisdiction.

The advantages of the plan have been stated as follows: (1) it definitely separates policy formation from administration; (2) it unifies or

integrates administration into a single piece of administrative mechanism; (3) it fixes responsibility for policy upon the council and for administration upon the manager; (4) it professionalizes the service of the city; and (5) it makes the council as a unit responsible to the voters for the management of the affairs of the city. A criticism frequently voiced is that the plan is undemocratic in that the manager is not responsible to the people. This is countered with the statement that the plan is democratic because of its simplicity and directness and that the people have a relatively easy job of enforcing responsibility for both policies and administration through popular control of the council.

In Texas, the manager form is most popular with the home rule cities. Almost half of these cities now have the council-manager form of government. Only a few of the general law cities use the manager form. However, the passage of the 1943 act may speed up adoptions among this group.

## The Municipal Judiciary

In the foregoing discussion of the state judiciary, the municipal judiciary was omitted because the autonomy of the municipality makes its court largely a separate institution primarily devoted to the enforcement of city regulations. It has also been omitted from the discussion of municipal organization because it remains the same in both form and powers regardless of the form and powers of municipalities. There is but one municipal court, the corporation court, in all Texas municipalities.

***The Personnel of the Court.*** The city judge, known as a recorder, is chosen in accordance with the provisions of the charter in home rule cities. In general law cities the mayor is ex officio judge unless the council provides for a judge who is elected at the same time, in the same manner, and for the same two-year term as the mayor. Vacancies in this office are filled by the council.

Additional personnel include the city clerk, who is generally made ex officio clerk of the city court by ordinance of the council. However, provision may be made for a separate clerk to be elected at the same time and in the same manner as the city judge. The clerk keeps the minutes of the proceedings of the court, issues processes, and in general performs the functions of court clerks. In some of the large home rule cities deputy clerks, warrant officers, and bailiffs are attached to the

court. Sometimes when the city docket is crowded, the city clerk or a police officer may sit as judge. The city attorney has charge of all prosecutions before the court.

***The Jurisdiction of the Court.*** The municipal court is exclusively a criminal court. The justice's courts handle the civil jurisdiction arising in the corporate limits. The city court has jurisdiction of all cases involving violation of city ordinances, and it has concurrent jurisdiction with the justice's courts in all criminal cases within the city in which the offense is punishable by fine alone, provided the fine does not exceed 200 dollars. In some cities a traffic bureau has been established to handle traffic violations.

The court in the larger cities is in continuous session. In smaller cities the court sits on occasion. It follows the procedural rules of the justice's courts. Appeals may be taken to the county court.

## Municipal Finance

With the increasing cost of city government and the heavy indebtedness incurred in times past, Texas cities are needing additional revenues. For the most part they have remained dependent upon the sources of revenue of the "horse and buggy" era.

***Sources of Revenue.*** Revenue sources of cities and towns incorporated under the general laws of the state—and those of the home rule cities follow the same pattern—include the following: ad valorem property taxes; occupation taxes; poll tax; fines and penalties; special assessments; license fees and receipts incidental to the exercise of the police power and regulatory functions; street rental charges levied against utilities; income from municipally owned utilities.

The most important single source of revenue is the ad valorem property tax. Constitutional and statutory provisions limit this tax to two and one-half per cent in the home rule cities and to one and one-half per cent in general law cities, though, of course, neither class of cities need levy the full rate. Since this tax is based on a voluntary rendition, it becomes in final analysis a tax on real property. Texas cities are developing, however, comprehensive and scientific systems for evaluation of property and for checking rendition.

Texas cities may levy a tax on specified occupations limited to half the amount levied by the state on similar occupations. This is a small source of revenue but is easily collected. The income from fees, fines, and licenses amounts to little more than the cost of regulation. Texas

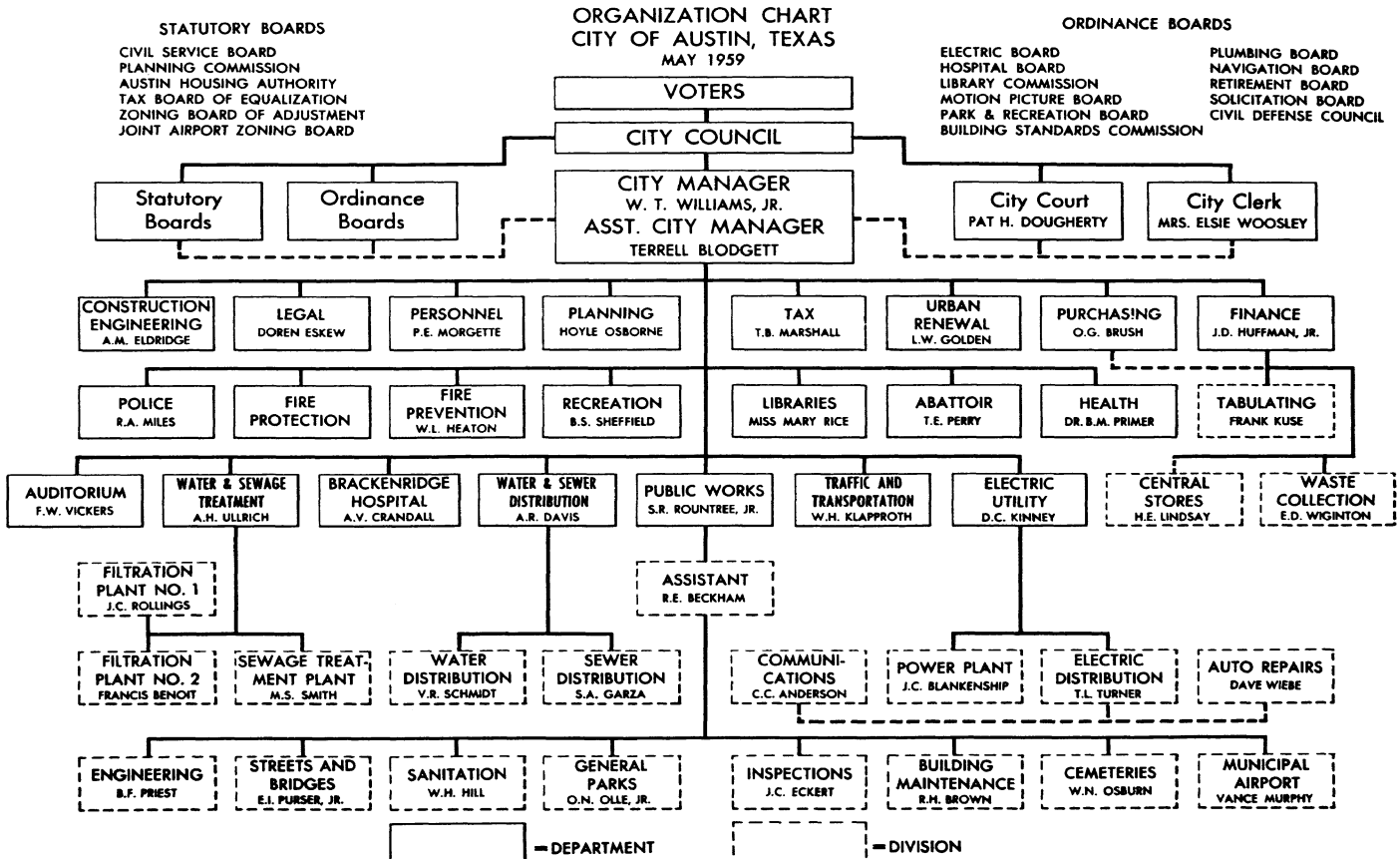


**Figure 70.** *City Government of Austin.*

cities do not participate in state locally-shared taxes or aids except in educational aids where the schools are controlled by the city.

Cities and towns incorporated under the general laws are authorized to establish and maintain water, light, gas, and sewer systems; cemeteries; docks and wharves; ball parks; auditoria; exposition buildings; fairgrounds; hospitals; markets; airports. The home rule cities in their charters generally make similar authorizations. The statutes lay down

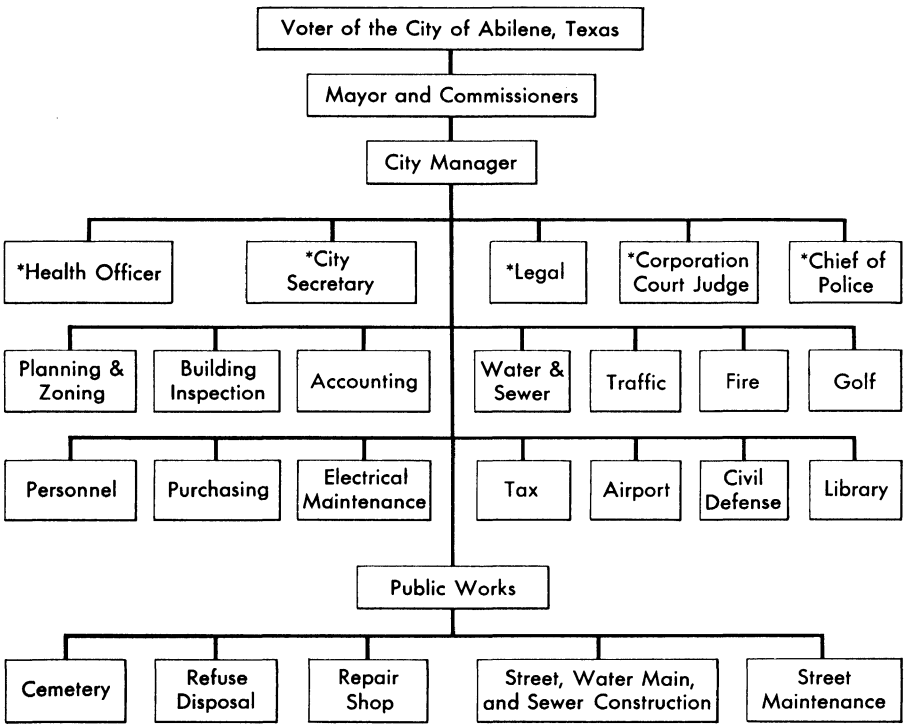


**Figure 71.** *City Government of Abilene.*

certain requirements for the use of utility income for operation and maintenance and the servicing of bonds or other plant indebtedness. The remaining revenues may be used by the municipality as it sees fit. In a number of cities, the transfers from the utility fund to the general revenue fund are of significant proportions.

The constitution and statutes determine what is taxable. The municipalities have no discretion in this matter, though their actual systems vary widely. Texas cities as a rule maintain their own machinery for assessing and collecting taxes, though the law permits the use of the county machinery.

***Financial Administration.*** Municipal finance involves not only sources of revenue and its expenditure but also an accurate and systematic form of accounting for both receipts and disbursements. Real progress has been made in this field. In 1931 the legislature enacted a uniform budget law which requires that every city annually prepare a budget, a copy of which shall be filed with the county clerk and the state comptroller. While the form of the budget is not fixed by the statute, its data must include revenues for the previous year, anticipated revenues for the ensuing year, and the items of anticipated expenditure. The mayor or the city manager is made the budget officer under this law. Since, however, no state administrative supervision or other enforcement measures are provided, compliance with the law has been lax. Nevertheless, in recent years there has been noticeable improvement in municipal budgeting.

Central purchasing offices are now found as a part of the financial administration of many Texas cities. About one-fourth of the cost of city government results from purchase of supplies, too frequently on the open market. The proper procedure is through a central office on a competitive basis, and according to standard specifications. Central purchasing is not required by state law, but is instituted on the basis of charter provision or by ordinance.

**Problems Resulting from Urbanization**

Among the persistent problems of urban society have been water supply and waste disposal, poor relief, crime and petty disorders, public health, and fire hazards. Our earliest communities in colonial America struggled with these problems, and the attack upon them has continued throughout the years. Vast strides have been made, however, and many communities take such things as fire protection, water supply and sewage disposal, and protection of life and property as a matter of course. Nevertheless, these and other services like them are continuing problems which must be met again and again as conditions change.

Although the problems of modern American cities do not differ greatly from those of their predecessor communities, the emphasis has shifted to such matters as planning and zoning, housing, recreation, and traffic, together with a much broader attack upon the problems of public health and welfare.

The impact of these problems upon Texas communities is no doubt apparent in varying degree to each individual in his home community. As a group, Texas cities are not laggardly in their attack upon these

matters in comparison to other cities throughout the country; yet they do not appear to be among the leaders. Individual citation may be made to some Texas cities for leadership in particular fields, but the general level of performance leaves much room for improvement during the coming years.

One important prerequisite to such improvement is the revision of complex and outmoded state legislation, which would extend to cities and towns sufficient authority to act on these matters. For example, haphazardly enacted state legislation relating to urban zoning and planning now provide only the most meager basis for community action. Certainly a restatement and extension of the planning and zoning laws would constitute an important contribution to continued development of local government. The same need is apparent in other fields.

There is every evidence that the years ahead will be critical ones for our towns and cities. Financial considerations will undoubtedly loom large in the discussions of municipal problems. In a broad sense, however, the particular problems which city government must contend with during the near future are only a part of the task of reorienting our communities into a peacetime economy. Broad attacks upon the major problems of urban life had no more than started when the demands of war intervened to impose a priority on the resources of the country. The threads of action must be picked up again and our weaving started anew.

**Intergovernmental Relations**

***Municipalities and the State.*** The weakest feature of municipal organization in Texas is the lack of efficient liaison between the state and the municipalities. By and large the state, through its legislature, imposes duties upon the municipality without providing machinery for either advising them in the administration of these functions or compelling their performance. For the most part such contacts as exist are advisory and permissive and, of course, relate to administrative matters. The legislative and judicial contacts are obviously compulsory upon the municipality, but the administrative functions lack certainty of enforcement.

The fiscal controls over the city are largely confined to requests for information. There is no state agency to advise or supervise municipal tax officials. Bond issues must be approved by the attorney general, but the emphasis on legal process makes this rather perfunctory. Bonds

must be registered with the comptroller, and an annual report and budget submitted to him, but this regulation is not enforced. Even if it were enforced, there is reason to doubt the value of certain data unless there is sufficient state administrative force to analyze, supervise, and standardize the data submitted.

The control over health is likewise ineffective and largely advisory in character. In utility rate regulation the state has little control. It is confined to a single type of utility, the gas companies. As to other utilities the municipality has complete control of the rates to be charged and the service to be rendered. Only when the state and the municipality have a direct, or even indirect, financial relationship, does the power of the state really make itself felt. For example, the insurance commission through its power to fix rates can compel prompt municipal action in water distribution systems, and elimination of hazards.

A number of state agencies, such as the department of public health, the department of public welfare, and the department of public safety, have developed rather extensive and valuable cooperative relationships with municipalities; the control element is for the most part lacking.

In general, the state-local administrative relationship in Texas has been characterized by: (1) state agency relations with individual local officers; (2) a large group of nonprofessional personnel at both levels; (3) a legal basis which "just grew"; (4) a spirit of separatism which makes for a cleavage between state and local levels and, perhaps to a less marked degree, between units and agencies at the same level.

***Federal-City Relationships.*** Until recently the controls of the federal government over municipalities were generally considered few and indirect, exercised through the state, except in the District of Columbia and in the territories. It has long been true, however, that certain federal controls and aids have been exercised in relation to municipalities. Obviously where there is a conflict between the municipal ordinances and the Federal Constitution or statutes, the former have had to give way. It is not infrequent that a municipal action is held to be contrary to due process or otherwise in violation of federal law. Navigable waters constitute a subject for exclusive federal control, thereby making it necessary for city officials to secure federal consent before erecting bridges, dams, harbor improvements, et cetera. Municipal power to tax is restricted by exemption of federal property from the ad valorem tax.

Not only has the municipality been restricted by federal action, but

it has long been aided by Washington. Money granted by the federal government to the states has filtered to the municipalities when they were willing to comply with federal requirements in regard to vocational education, health work, maternity aids, etc. The Bureaus of Labor Statistics, Census, Geological Survey, the Federal Power Commission, the Public Health Service, and many others have provided services to the cities.

Students of government predicted that federal-municipal relationships would multiply because of the fact that the federal government has a better view of municipal problems. Too frequently state legislation must affect only one city, whereas federal action could more easily be directed at cities generally. The extent to which this relationship has developed was hardly anticipated, and many people are today lamenting "government by telegraph" from Washington.

The depression of the early 1930's brought to municipalities increased demands for extension of certain activities; at the same time it all but destroyed the cities' sources of revenue. They had to look for capital aid, and since the states were in hardly better financial condition than the cities themselves, it fell to the federal government to step into the breach not only with funds for direct relief but also with grants and loans for public works and with allocation to municipalities of highway funds. In addition, federal agencies such as the Home Owners' Loan Corporation and the Federal Housing Authority, by encouraging building and thus broadening the tax base, and by compelling the payment of taxes, materially aided the cities in their hour of need.

Just as depression stimulated federal-city contacts, so did war. World War II and the Korean conflict brought about many contacts between federal-city agencies and officials and the development of new federal aid, particularly in the industrial urban areas. Although many of these programs were temporary, just as were several of the depression programs, the habit of federal-city relationships has, it seems, been well established. Many of the larger cities apparently feel that they should now have direct contacts with the federal government and should not be required to go through the state government. This type of thinking was shown in the debate in Congress over the recently enacted federal airport act. The large cities demanded direct relationships; the states insisted upon federal action through state government. The compromise which resulted placed the burden of decision upon the individual state legislatures. The cities at least avoided a direct congressional re-

quirement that they deal with the federal administration through the states. The development of federal-state-city and federal-city contacts in such fields as public health and welfare, housing, airports, highways and public works in general, will bear watching in the next decade.

***Intermunicipal Cooperation.*** Although the Texas municipality is in many ways the reflection of rugged individualism, a large amount of interunit cooperation has developed. In a measure this cooperation has resulted from the failure of the state to take active interest in the problems of municipal life, and also from the realization on the part of municipalities that only united action could prevent objectionable state legislation and promote a favorable public opinion. The need for advice and comparative data created this cooperation. Under the League of Texas Municipalities, established in 1913, about 450 of the Texas cities cooperate. Not only is there this general league of the cities, but there are several affiliates of a special nature such as the City Managers' Association, City Attorneys' Association, State Firemen's and Fire Marshals' Association, and Municipal Finance Officers' Association. There is also close cooperation between the league and the Bureau of Municipal Research of the University of Texas and the Texas Agricultural and Mechanical College. The league has two former city managers on its staff, and retains a leading law firm as its legal advisor. A voluminous annual correspondence is maintained between the league office and its member cities as well as with the national organizations of which the affiliates of the Texas league are members.

City-county relationships have developed rather slowly in Texas, although there is a variety of informal contacts between officers and employees of the two units. Perhaps the best examples of formal relationships are the development of city-county health units and city-county hospitals. Legislative authorization for cooperation in other fields, such as recreation and libraries, exists, and it is likely that formal contacts will be on the increase throughout Texas.

## Conclusion

Municipal government is one of the foremost challenges to the theory of democracy. No unit of government has developed so rapidly, except perhaps the federal government. Such rapid development brought about also an ever increasing web of complexity, which imposes a burden on the conscientious citizen to understand his government. Without understanding, democracy becomes a farce, and without education understanding is impossible. Municipal officials them-

selves have done much to enhance public relations and to stimulate a wholesome interest in their work, but much remains to be done to remove the prejudices and lethargy which prevent reasonable action on the part of municipalities. The people must either be trained for their work as voters or removed from ultimate control. Without these alternatives the costly trial-and-error system of the past must continue.

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# TEXT OF TEXAS STATE CONSTITUTION

## PREAMBLE

Humbly invoking the blessings of Almighty God, the people of the State of Texas do ordain and establish this Constitution.

## ARTICLE I.—BILL OF RIGHTS

That the general, great and essential principles of liberty and free government may be recognized and established, we declare:

Section 1. **Texas Free and Independent.**—Texas is a free and independent State, subject only to the Constitution of the United States, and the maintenance of our free institutions and the perpetuity of the Union depend upon the preservation of the right of local self-government, unimpaired to all the states.

Section 2. **All Political Power Is Inherent in the People.**—All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit. The faith of the people of Texas stands pledged to the preservation of a republican form of government, and, subject to this limitation only, they have at all times the inalienable right to alter, reform or abolish their government in such manner as they may think expedient.

Section 3. **All Free Men Have Equal Rights.**—All free men, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive separate public emoluments or privileges but in consideration of public services.

Section 4. **There Shall Be No Religious Test for Office.**—No religious test shall ever be required as a qualification to any office or public trust in this State; nor shall anyone be excluded from holding office on account of his religious sentiments, provided he acknowledge the existence of a Supreme Being.

Section 5. **How Oaths Shall Be Administered.**—No person shall be disqualified to give evidence in any of the courts of this State on account of his religious opinions, or for want of any religious belief, but all oaths or affirmations shall be administered in the mode most binding upon the conscience, and shall be taken subject to the pains and penalties of perjury.

Section 6. **Freedom in Religious Worship Guaranteed.**—All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences. No man shall be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent. No human authority ought, in any case whatever, to control or interfere with the rights of conscience in matters of religion, and no preference shall ever be given by law to any religious society or mode of worship. But it shall be the duty of the Legislature to pass such laws as may be necessary to protect equally every religious denomination in the peaceable enjoyment of its own mode of public worship.

Section 7. **No Appropriation for Sectarian Purposes.**—No money shall be appropriated or drawn from the Treasury for the benefit of any sect, or religious society, theological or religious seminary, nor shall property belonging to the State be appropriated for any such purposes.

Section 8. **Liberty of Speech and Press Guaranteed; Libel.**—Every person shall be at liberty to speak, write or publish his opinions, on any subject, being responsible for the abuse of that privilege; and no law shall ever be passed curtailing the liberty of speech or of the press. In prosecutions for the publication of papers, investigating the conduct of officers, or men in public capacity, or when the matter published is proper for public information, the truth

thereof may be given in evidence. And in all indictments for libels, the jury shall have the right to determine the law and the facts, under the direction of the court, as in other cases.

Section 9. **No Unreasonable Seizures and Searches Allowed.**—The people shall be secure in their persons, houses, papers and possessions from all unreasonable seizures or searches, and no warrant of search any place, or to seize any person or thing, shall issue without describing them as near as may be, nor without probable cause, supported by oath or affirmation.

Section 10. **Rights of Accused Persons in Criminal Prosecutions.**—In all criminal prosecutions the accused shall have a speedy public trial by an impartial jury. He shall have the right to demand the nature and cause of the accusation against him, and to have a copy thereof. He shall not be compelled to give evidence against himself and shall have the right of being heard by himself or counsel, or both; shall be confronted by the witnesses against him and shall have compulsory process for obtaining witnesses in his favor, except that when the witness resides out of the State and the offense charged is a violation of any of the antitrust laws of this State, the defendant and the State shall have the right to produce and have the evidence admitted by deposition, under such rules and laws as the Legislature may hereafter provide; and no person shall be held to answer for a criminal offense, unless on an indictment of a grand jury, except in cases in which the punishment is by fine or imprisonment, otherwise than in the penitentiary; in cases of impeachment and in cases arising in the army or navy, or in the militia, when in actual service in time of war or public danger.

(Note.—The foregoing is an amended section, the amendment consisting of the addition of that clause relating to depositions of witnesses resident outside of the State in antitrust suits. Submitted by Thirty-fifth Legislature (1917) and adopted at election on Nov. 5, 1918.)

Section 11. **Bail.**—All prisoners shall be bailable by sufficient sureties, unless for capital offenses, when the proof is evident; but this provision shall not be so construed as to prevent bail after indictment found upon examination of the evidence, in such manner as may be prescribed by law.

Section 12. **The Writ of Habeas Corpus.**—The writ of habeas corpus is a writ of right, and shall never be suspended. The Legislature shall enact laws to render the remedy speedy and effectual.

Section 13. **Excessive Bail and Fine and Unusual Punishment Prohibited; Courts Open.**—Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. All courts shall be open, and every person for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law.

Section 14. **No Person Shall Be Put Twice in Jeopardy.**—No person, for the offense, shall be twice put in jeopardy of life or liberty, nor shall a person be again put upon trial for the same offense after a verdict of not guilty in a court of competent jurisdiction.

Section 15. **Right of Trial by Jury.**—The right of trial by jury shall remain inviolate. The Legislature shall pass such laws as may be needed to regulate the same, and to maintain its purity and efficiency. Provided, that the Legislature may provide for the temporary commitment, for observation and/or treatment, of mentally ill persons not charged with a criminal offense, for a period of time not to exceed ninety (90) days, by order of the County Court without the necessity of a trial by jury.

(Note.—The original Section 15 of Article I was amended to add the last sentence. Submitted by the Forty-fourth Legislature (1935), adopted in an election Aug. 24, 1935.)

Section 16. **There Shall Be No Bill of Attainder or ex Post Facto Laws.**—No bill of attainder or ex post facto law, retroactive law, or any other law impairing the obligation of contracts, shall be made.

Section 17. **Privileges and Franchises: Eminent Domain.**—No person's property shall be taken, damaged or destroyed for or applied to public use without adequate compensation being made, unless by the consent of such person; and, when taken, except for the use of the State, such compensation shall be first made or secured by a deposit of money; and no irrevocable or uncontrollable grant of special privileges or immunities shall be made; but all privileges and franchises granted by the Legislature, or created under its authority, shall be subject to the control thereof.

Section 18. **No imprisonment for Debt.**

—No person shall ever be imprisoned for debt.

Section 19. **Due Course of Law.**—No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.

Section 20. **No Outlawry or Deportations.**—No citizen shall be outlawed, nor shall any person be transported out of the State for any offense committed within the same.

Section 21. **Corruption of Blood, Forfeiture; Suicide.**—No conviction shall work corruption of blood or forfeiture of estate, and the estates of those who destroy their own lives shall descend or vest as in the case of natural death.

Section 22. **Treason.**—Treason against the State shall consist only in levying war against it, or adhering to its enemies, giving them aid and comfort; and no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on confession in open court.

Section 23. **Right to Bear Arms.**—Every citizen shall have the right to keep and bear arms in the lawful defense of himself or the State; but the Legislature shall have power, by law, to regulate the wearing of arms, with a view to prevent crime.

Section 24. **Military Subordinate to Civil Authority.**—The military shall at all times be subordinate to the civil authority.

Section 25. **Quartering Soldiers.**—No soldier shall in time of peace be quartered in the house of any citizen without the consent of the owner, nor in time of war but in a manner prescribed by law.

Section 26. **Perpetuities; Monopolies; Primogeniture; Entailments.**—Perpetuities and monopolies are contrary to the genius of a free government, and shall never be allowed, nor shall the law of primogeniture or entailments ever be in force in this State.

Section 27. **Right of Petition Guaranteed.**—The citizens shall have the right, in a peaceable manner, to assemble together for their common good and apply to those invested with the powers of government for redress of grievances or other purposes, by petition, address or remonstrance.

Section 28. **Power to Suspend Laws.**—No power of suspending laws in this State shall be exercised except by the Legislature.

Section 29. **"Bill of Rights" Inviolate.**—To guard against transgressions of the high powers herein delegated, we declare that everything in this "Bill of Rights" is excepted out of the general powers of government, and shall forever remain inviolate, and all laws contrary thereto, or to the following provisions, shall be void.

## ARTICLE II.—THE POWERS OF GOVERNMENT

Section 1. **Departments of Government to Be Kept Distinct.**—The powers of the government of the State of Texas shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: Those which are legislative to one, those which are executive to another, and those which are judicial to another; and no person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted.

## ARTICLE III.—LEGISLATIVE DEPARTMENT

Section 1. **The Legislature: House and Senate.**—The legislative power of this State shall be vested in a Senate and House of Representatives, which together shall be styled "The Legislature of the State of Texas."

Section 2. **Number of Members Limited.**—The Senate shall consist of thirty-one members, and shall never be increased above this number. The House of Representatives shall consist of ninety-three members until the first apportionment after the adoption of this Constitution, when or at any apportionment thereafter the number of Representatives may be increased by the Legislature, upon the ratio of not more than one Representative for every 15,000 inhabitants: provided, the number of Representatives shall never exceed 150.

Section 3. **Election of Senators; New Apportionment.**—The Senators shall be chosen by the qualified electors for the term of four years; but a new Senate shall be chosen after every apportionment, and the Senators elected after each apportionment shall be divided by lot into two classes, The seats of the Senators of the first class shall be vacated at the expiration of the first two years, and those of the second class at the expiration of four years, so that

one half of the Senators shall be chosen biennially thereafter.

Section 4. **Election of Representatives; Term of Office.**—The members of the House of Representatives shall be chosen by the qualified electors, and their term of office shall be two years from the day of their election.

Section 5. **Time of Meeting; Method of Procedure.**—The Legislature shall meet every two years at such time as may be provided by law and at other times when convened by the Governor. When convened in regular session, the first thirty days thereof shall be devoted to the introduction of bills and resolutions, acting upon emergency appropriations, passing upon the confirmation of the recess appointees of the Governor and such emergency matters as may be submitted by the Governor in special messages to the Legislature; provided, that during the succeeding thirty days of the regular session of the Legislature the various committees of each house shall hold hearings to consider all bills and resolutions and other matters then pending; and such emergency matters as may be submitted by the Governor; provided, further, that during the following sixty days the Legislature shall act upon such bills and resolutions as may be then pending and upon such emergency matters as may be submitted by the Governor in special messages to the Legislature; provided, however, either house may otherwise determine its order of business by an affirmative vote of four fifths of its membership.

(Note.—Section 5 of Article III has been amended once, to provide for a 120-day session. It was submitted together with the amendment to Section 24 of Article III. Submitted by the Forty-first Legislature (1929); ratified Nov. 4, 1930.)

Section 6. **Qualifications of Senators.**—No person shall be a Senator unless he be a citizen of the United States, and, at the time of his election, a qualified elector of this State, and shall have been a resident of this State five years next preceding his election, and the last year thereof a resident of the district for which he shall be chosen, and shall have attained the age of twenty-six years.

Section 7. **Qualification of Representatives.**—No person shall be a Representative unless he be a citizen of the United States, and, at the time of his election, a qualified elector of this State, and shall have been a resident of this State two years next preceding his election, the last year thereof a resident of the district for which he shall be chosen, and shall have attained the age of twenty-one years.

Section 8. **Each House to Judge Qualifications of Its Own Members.**—Each house shall be the judge of the qualifications and election of its own members; but contested elections shall be determined in such manner as shall be provided by law.

Section 9. **President Pro Tem of the Senate; Speaker of the House; Officers.**—The Senate shall, at the beginning and close of each session, and at such other times as may be necessary, elect one of its members president pro tempore, who shall perform the duties of the Lieutenant Governor in any case of absence or disability of that officer and whenever the said office of Lieutenant Governor shall be vacant. The House of Representatives shall, when it first assembles, organize temporarily, and thereupon proceed to the election of a Speaker from its own members. And each house shall choose its other officers.

Section 10. **Quorum.**—Two thirds of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day and compel the attendance of absent members, in such manner and under such penalties as each house may provide.

Section 11. **Rules: Power to Punish and Expel.**—Each house may determine the rules of its own proceedings, punish members for disorderly conduct, and, with the consent of two thirds, expel a member, but not a second time for the same offense.

Section 12. **Journal: Yeas and Nays.**—Each house shall keep a journal of its proceedings, and publish the same; and the yeas and nays of the members of either house on any question shall at the desire of any three members present, be entered on the journals.

Section 13. **Vacancies, How Filled.**—When vacancies occur in either house, the Governor, or the person exercising the power of the Governor, shall issue writs of election to fill such vacancies; and should the Governor fail to issue a writ of election to fill any such vacancy within twenty days after it occurs, the returning officer of the district in which such vacancy may

have happened shall be authorized to order an election for that purpose.

Section 14. **Members of Legislature Privileged From Arrest.**—Senators and Representatives shall, except in cases of treason, felony or breach of the peace, be privileged from arrest during the session of the Legislature, and in going to or returning from the same, allowing one day for every twenty miles such member may reside from the place at which the Legislature is convened.

Section 15. **Each House May Punish Disorderly Conduct.**—Each house may punish, by imprisonment, during its sessions, any person not a member for disrespectful or disorderly conduct in its presence, or for obstructing any of its proceedings; provided, such imprisonment shall not, at any one time, exceed forty-eight hours.

Section 16. **Sessions to Be Open.**—The sessions of each house shall be open, except the Senate when in executive session.

Section 17. **Adjournments.**—Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that where the Legislature may be sitting.

Section 18. **Ineligibility of Members to Certain Offices; Not to Be Interested in Contracts.**—No Senator or Representative shall, during the term for which he may be elected, be eligible to any civil office of profit under this State which shall have been created, or the emoluments of which may have been increased during such term; no member of either house shall, during the term for which he is elected, be eligible to any office or place, the appointment to which may be made, in whole or in part, by either branch of the Legislature, and no member of either house shall vote for any other member for any office whatever which may be filled by a vote of the Legislature, except in such cases as are in this Constitution provided. Nor shall any member of the Legislature be interested, either directly or indirectly, in any contract with the state, or any county thereof, authorized by any law passed during the term for which he shall have been elected.

Section 19. **What Officers Ineligible to Membership in Legislature.**—No judge of any court, Secretary of State, Attorney General, clerk of any court of record, or any person holding a lucrative office under the United States, or this State, or any foreign government, shall, during the term for which he is elected or appointed, be eligible to the Legislature.

Section 20. **Receivers or Disbursers of Public Funds Not Eligible to Membership in the Legislature Until Discharge Received.**—No person who at any time may have been a collector of taxes or who may have been otherwise entrusted with public money, shall be eligible to the Legislature, or to any office of profit or trust under the State Government, until he shall have obtained a discharge for the amount of such collections, or for all public moneys with which he may have been entrusted.

Section 21. **Freedom of Debate.**—No member shall be questioned in any other place for words spoken in debate in either house.

Section 22. **Personal Interest in Measure or Bill.**—A member who has a personal or private interest in any measure or bill, proposed or pending before the Legislature, shall disclose the fact to the house of which he is a member, and shall not vote thereon.

Section 23. **Removal Vacates Office.**—If any Senator or Representative remove his residence from the district or county for which he was elected, his office shall thereby become vacant, and the vacancy shall be filled as provided in Section 13 of this article.

Section 23-a. **John Tarleton Contract Validated.**—The Legislature is authorized to appropriate so much money as may be necessary, not to exceed seventy-five thousand ($75,000) dollars, to pay claims incurred by John Tarleton Agriculture College for the construction of a building on the campus of such college pursuant to deficiency authorization by the Government of Texas on Aug. 31, 1937.

(Note.—Section 23-a of Article III is an added amendment to provide for payment of a contractor whose contract had been annulled. Submitted by Forty-ninth Legislature (1945) and ratified in election Nov. 5, 1946.)

Section 24. **Mileage and Per Diem.**—Members of the Legislature shall receive from the Public Treasury a per diem of not exceeding Twenty-five ($25.00) Dollars per day for the first 120 days only of each session of the Legislature.

In addition to the per diem the members of each house shall be entitled to mileage in going to and returning from the seat of government, which mileage shall not ex-

ceed $2.50 for every twenty-five miles, the distance to be computed by the nearest and most direct route of travel, from a table of distances prepared by the Comptroller to each county seat now or hereafter to be established; no member to be entitled to mileage for any extra session that may be called within one day after the adjournment of a regular or called session.

(Note.—Section 24 of Article III has been amended twice, first raising the per diem and decreasing the mileage. It was submitted with the amendment of Section 5 of Article III. Submitted by Forty-first Legislature (1929); ratified Nov. 4, 1930. Further amended to raise per diem to $25 for first 120 days only. Submitted by Fifty-third Legislature (1953) and adopted in election Nov. 2, 1954.)

Section 25. **Senatorial Districts, How Apportioned.**—The State shall be divided into senatorial districts of contiguous territory according to the number of qualified electors, as nearly as may be, and each district shall be entitled to elect one Senator; and no single county shall be entitled to more than one Senator.

Section 26. **Representative Districts, How Apportioned.**—The members of the House of Representatives shall be apportioned among the several counties, according to the number of population in each, as nearly as may be, on a ratio obtained by dividing the population of the State, as ascertained by the most recent United States census, by the number of members of which the House is composed; provided, that whenever a single county has sufficient population to be entitled to a Representative, such county shall be formed into a separate representative district, and when two or more counties are required to make up the ratio of representation, such counties shall be contiguous to each other; and when any one county has more than sufficient population to be entitled to one or more Representatives, such Representative or Representatives shall be apportioned to such county, and for any surplus of population it may be joined in a representative district with any other contiguous county or counties.

Section 26-a. **Redistricting According to Population.**—Provided, however, that no county shall be entitled to or have under any apportionment more than seven (7) Representatives unless the population of such county shall exceed seven hundred thousand (700,000) people as ascertained by the most recent United States census, in which event such county shall be entitled to one additional Representative for each one hundred thousand (100,000) population in excess of seven hundred thousand (700,000) population as shown by the latest United States census; nor shall any district be created which would permit any county to have more than seven (7) Representatives except under the conditions set forth above.

(Note.—Section 26-a of Article III is an added amendment, to place limitation on representation of counties with large population. Adopted in election Nov. 3, 1936.)

Section 27. **Election of Members.**—Elections for Senators and Representatives shall be general throughout the State, and shall be regulated by law.

Section 28. **Reapportionment After Each Census.**—The Legislature shall, at its first regular session after the publication of each United States decennial census, apportion the State into senatorial and representative districts, agreeable to the provisions of Sections 25, 26 and 26-a of this Article. In the event the Legislature shall at any such first regular session following the publication of a United States decennial census, fail to make such apportionment, same shall be done by the Legislative Redistricting Board of Texas, which is hereby created, and shall be composed of five (5) members, as follows: The Lieutenant Governor, the Speaker of the House of Representatives, the Attorney General, the Comptroller of Public Accounts and the Commissioner of the General Land Office, a majority of whom shall constitute a quorum. Said board shall assemble in the City of Austin within ninety (90) days after the final adjuornment of such regular session. The board shall, within sixty (60) days after assembling, apportion the State into senatorial and representative districts, or into senatorial or representative districts, as the failure of action of such Legislature may make necessary. Such apportionment shall be in writing and signed by three (3) or more of the members of the board duly acknowledged as the act and deed of such board, and, when so executed and filed with the Secretary of State, shall have force and effect of law. Such apportionment shall become effective at the next succeeding statewide general election. The Supreme Court of Texas shall have jurisdiction to

compel such commission to perform its duties in accordance with the provisions of this section by writ of mandamus or other extraordinary writs conformable to the usages of law. The Legislature shall provide necessary funds for clerical and technical aid and for other expenses incidental to the work of the board, and the Lieutenant Governor and the Speaker of the House of Representatives shall be entitled to receive per diem and travel expense during the board's session in the same manner and amount as they would receive while attending a special session of the Legislature. This amendment shall become effective Jan. 1, 1951.

(Note.—The foregoing Section 28 of Article III was amended to provide for the Legislative Redistricting Board of Texas, this action being taken because of failure of past Legislatures to obey the mandate in the original Section 28 to redistrict the state after each decennial census. Submitted by Fiftieth Legislature (1947) and adopted Nov. 2, 1948.)

### Proceedings

Section 29. **Enacting Clause.**—The enacting clause of all laws shall be: "Be it enacted by the Legislature of the State of Texas."

Section 30. **Laws to Be Passed by Bill: Amendments.**—No law shall be passed, except by bill, and no bill shall be so amended in its passage through either house as to change its original purpose.

Section 31. **Bills May Originate in Either House and May Be Amended or Rejected by the Other House.**—Bills may originate in either house, and when passed by such house may be amended, altered or rejected by the other.

Section 32. **Bills to Be Read on Three Several Days: Suspension of Rule.**—No bills shall have the force of a law until it has been read on three several days in each house, and free discussion allowed thereon; but in cases of imperative public necessity (which necessity shall be stated in a preamble or in the body of the bill) four fifths of the house in which the bill may be pending may suspend this rule, the yeas and nays being taken on the question of suspension and entered upon the journals.

Section 33. **Bills for Raising Revenue.**—All bills for raising revenue shall originate in the House of Representatives, but the Senate may amend or reject them as other bills.

Section 34. **Bill or Resolution Defeated, Not to Be Considered Again.**—After a bill has been considered and defeated by either house of the Legislature, no bill containing the same substance shall be passed into a law during the same session. After a resolution has been acted on and defeated, no resolution containing the same substance shall be considered at the same session.

Section 35. **Bills to Contain but One Subject, Which Must Be Expressed in Title.**—No bill (except general appropriation bills, which may embrace the various subjects and accounts for and on account of which moneys are appropriated) shall contain more than one subject, which shall be expressed in its title. But if any subject shall be embraced in an act which shall not be expressed in the title such act shall be void only as to so much thereof as shall not be so expressed.

Section 36. **Reviving or Amending Laws.**—No law shall be revived or amended by reference to its title; but in such case the act revived, or the section or sections amended, shall be re-enacted and published at length.

Section 37. **Reference to Committees.**—No bill shall be considered unless it has been first referred to a committee and reported thereon, and no bill shall be passed which has not been presented and referred to and reported from a committee at least three days before the final adjournment of the Legislature.

Section 38. **Signing Bills.**—The presiding officer of each house shall, in the presence of the house over which he presides, sign all bills and joint resolutions passed by the Legislature, after their titles have been publicly read before signing, and the fact of signing shall be entered on the journals.

Section 39. **When Laws Take Effect.**—No law passed by the Legislature, except the general appropriation act, shall take effect or go into force until ninety days after the adjournment of the session at which it was enacted, unless in case of an emergency, which emergency must be expressed in a preamble or in the body of the act, the Legislature shall, by a vote of two thirds of all the members elected to each house, otherwise direct; said vote to be taken by yeas and nays, and entered upon the journals.

Section 40. **Business and Duration of Special Sessions.**—When the Legislature

shall be convened in special session, there shall be no legislation upon subjects other than those designated in the proclamation of the Governor calling such session, or presented to them by the Governor; and no such session shall be of longer duration than thirty days.

Section 41. **Elections: Votes, How Taken.**—In all elections by the Senate and House of Representatives, jointly or separately, the vote shall be given viva voce, except in the election of their officers.

**Requirements and Limitations**

Section 42. **To Pass Necessary Laws.**—The Legislature shall pass such laws as may be necessary to carry into effect the provisions of this Constitution.

Section 43. **Revision and Publication of Laws.**—The first session of the Legislature under this Constitution shall provide for revising, digesting and publishing the laws, civil and criminal; and a like revision, digest and publication may be made every ten years thereafter; provided, that in the adoption of and giving effect to any such digest or revision the Legislature shall not be limited by Sections 35 and 36 of this article.

Section 44. **Compensation of Officers: Payment of Claims.**—The Legislature shall provide by law for the compensation of all officers, servants, agents and public contractors, not provided for in this Constitution, but shall not grant extra compensation to any officer, agent, servant or public contractors, after such public service shall have been performed or contract entered into for the performance of the same; nor grant, by appropriation or otherwise, any amount of money out of the Treasury of the State, to any individual, on a claim, real or pretended, when the same shall not have been provided for by pre-existing law; nor employ anyone in the name of the State, unless authorized by pre-existing law.

Section 45. **Change of Venue.**—The power to change the venue in civil and criminal cases shall be vested in the courts, to be exercised in such manner as shall be provided by law; and the Legislature shall pass laws for that purpose.

Section 46. **Legislature Shall Enact Vagrant Laws.**—The Legislature shall, at its first session after the adoption of the Constitution, enact effective vagrant laws.

Section 47. **Lotteries Shall Be Prohibited.**—The Legislature shall pass laws prohibiting the establishment of lotteries and gift enterprises in this State, as well as the sale of tickets in lotteries, gift enterprises or other evasions involving the lottery principle, established or existing in other states.

Section 48. **Power to Levy Taxes Limited.**—The Legislature shall not have the right to levy taxes or impose burdens upon the people except to raise revenue sufficient for the economical administration of the government, in which may be included the following purposes:

The payment of all interest upon the bonded debt of this State.

The erection and repairs of public buildings.

The benefit of the sinking fund, which shall not be more than 2 per centum of the public debt; and for the payment of the present floating debt of the State, including matured bonds, for the payment of which the sinking fund is inadequate.

The support of public schools, in which shall be included colleges and universities established by the State, and the maintenance and support of the Agricultural and Mechanical College of Texas.

The payment of the cost of assessing and collecting the revenue; and the payment of all officers, agents and employees of the State Government, and all incidental expenses connected therewith.

The support of the Blind Asylum, the Deaf and Dumb Asylum and the Insane Asylum, the State Cemetery and the public grounds of the State.

The enforcement of quarantine regulations on the coast of Texas.

The protection of the frontier.

Section 48-a. **Teachers' Retirement Fund.**—In addition to the powers given to the Legislature, under Section 48 of Article III, it shall have the right to levy taxes to provide a retirement fund for persons employed in public schools, colleges and universities, supported wholly or partly by the State; provided that the amount contributed by the State to such retirement fund shall equal the amount paid for the same purpose from the income of each such person, and shall not exceed at any time 5 per centum of the compensation paid to each such person by the State, and/or school districts, and shall in no one year exceed the sum of one hundred eighty ($180) dollars for any such person, pro-

vided no person shall be eligible for a pension under this amendment who has not taught twenty years in the State of Texas, but shall be entitled to a refund of the moneys paid into the fund.

All funds provided from the compensation of said persons, or by the State of Texas, for such retirement fund, as are received by the Treasury of the State of Texas, shall be invested in bonds of the United States, the State of Texas, or counties or cities of this State, or in bonds issued by any agency of the United States Government, the payment of the principal of and interest on which is guaranteed by the United States; provided that a sufficient amount of said funds shall be kept on hand to meet the immediate payment of the amounts that may become due each year under such retirement plan as may be provided by law; and provided that the recipients of such retirement fund shall not be eligible for any other pension retirement funds or direct aid from the State of Texas, unless such retirement fund, contributed by the State, is released to the State of Texas as a condition to receiving such other pension aid.

(Note.—The foregoing Section 48-a of Article III was added as an amendment to provide a teachers' retirement fund. Adopted in an election Nov. 3, 1936.)

Section 48-d. The Legislature shall have the power to provide for the establishment and creation of rural fire-prevention districts and to authorize a tax on the ad valorem property situated in said districts not to exceed three (3c) cents on the one hundred ($100) dollars valuation for the support thereof; provided that no tax shall be levied in support of said districts until approved by vote of the people residing therein.

(Note.—The foregoing Section 48-d of Article III was submitted as an amendment by the Fifty-first Legislature (1949) and ratified in an election Nov. 8, 1949. The absence of Section 48-b and 48-c is explained by the fact that such sections were proposed as amendments but failed to carry.)

Section 49. **Purpose for Which Debts May Be Created.**—No debt shall be created by or on behalf of the State, except to supply casual deficiencies of revenue, repel invasion, suppress insurrection, defend the State in war or pay existing debt; and the debt created to supply deficiencies in the revenue shall never exceed in the aggregate at any one time $200,000.

Section 49-a. **Limiting Appropriations to Anticipated Revenue; Comptroller's Certification Required; Issuance of Certain General Revenue Bonds Authorized.**—It shall be the duty of the Comptroller of Public Accounts in advance of each regular session of the Legislature to prepare and submit to the Governor and to the Legislature upon its convening a statement under oath showing fully the financial condition of the State Treasury at the close of the last fiscal period and an estimate of the probable receipts and disbursements for the then current fiscal year. There shall also be contained in said statement an itemized estimate of the anticipated revenue based on the laws then in effect that will be received by and for the State from all sources showing the fund accounts to be credited during the succeeding biennium and said statement shall contain such other information as may be required by law. Supplemental statements shall be submitted at any special session of the Legislature and at such other times as may be necessary to show probable changes.

From and after Jan. 1, 1945, save in the case of emergency and imperative public necessity and with a four-fifths vote of the total membership of each house, no appropriation in excess of the cash and anticipated revenue of the funds from which such appropriation is to be made shall be valid. From and after Jan. 1, 1945, no bill containing an appropriation shall be considered as passed or be sent to the Governor for consideration until and unless the Comptroller of Public Accounts endorses his certificate thereon showing that the amount appropriated is within the amount estimated to be available in the affected funds. When the Comptroller finds an appropriation bill exceeds the estimated revenue he shall endorse such finding thereon and return to the house in which same originated. Such information shall be immediately made known to both the House of Representatives and the Senate, and the necessary steps shall be taken to bring such appropriation to within the revenue, either by providing additional revenue or reducing the appropriation.

For the purpose of financing the outstanding obligations of the general revenue fund of the State and placing its current

accounts on a cash basis the Legislature of the State of Texas is hereby authorized to provide for the issuance, sale and retirement of serial bonds equal in principal to the total outstanding, valid and approved obligations owing by said fund on Sept. 1, 1943, provided such bonds shall not draw interest in excess of 2 per cent per annum and shall mature within twenty years from date.

(Note.—The foregoing Section 49-a of Article III is an amendment added to provide for comptroller's estimates of receipts and disbursements and limit legislative appropriations, as stated. Adopted in an election Nov. 3, 1942.)

Section 49-b. **Veterans' Land Board; Bonds Authorized for Creation of Veterans' Land Fund; Purchase of Land by State and Sales to Veterans.**—There is hereby created a board to be known as the Veterans' Land Board, which shall be composed of the Governor, the Attorney General and the Commissioner of the General Land Office. The Veterans' Land Board may issue not to exceed one hundred million dollars ($100,000,000) in bonds or obligations of the State of Texas for the purpose of creating a fund to be known as the Veterans' Land Fund. Such bonds shall be executed by said Board as an obligation of the State of Texas, in such form, denominations, and upon the terms as are now prescribed by Senate Bill No. 29, Chapter 318 of the Acts of the Fifty-first Legislature (provided, that when the limitation of twenty-five million dollars ($25,000,000) is used in said Senate Bill No. 29, the same shall hereafter be construed as one hundred million dollars ($100,000,000)), or as said act may be hereafter amended, or by other laws that the Legislature may hereafter enact; provided, however, that said bonds shall bear a rate of interest not to exceed three per cent (3%) per annum, and that the same shall be sold for not less than par value and accrued interest.

In the sale of any such bonds a preferential right of purchase shall be given to the administrators of the various teacher retirement funds, the permanent university funds and the permanent school funds; such bonds to be issued only as needed, in the opinion of the Veterans' Land Board.

The veterans' land fund shall be used by the board for the sole purpose of purchasing lands suitable for the purposes hereinafter stated, situated in this State (a) owned by the United States, or any governmental agency thereof; (b) owned by the Texas Prison System, or any other governmental agency of the State of Texas, or (c) owned by any person, firm or corporation.

All lands thus purchased shall be acquired at the lowest price obtainable, be paid for in cash, and shall be a part of the veterans' land fund.

The lands of the veterans' land fund shall be sold by the State to Texas veterans of the present war or wars, commonly known as World War II, and to Texas veterans of service in the armed forces of the United States of America subsequent to 1945, as may be included within this program by legislative act, in such quantities, and on such terms, and at such prices and rates of interest, and under such rules and regulations as are now provided by law, or as may hereafter be provided by law.

All moneys received and which have been received and which have not been used for repurchase of land as provided herein by the Veterans' Land Board from the sale of lands and for interest on deferred payments shall be credited to the veterans' land fund for use in purchasing additional lands to be sold to Texas veterans of World War II and to Texas veterans of service in the armed forces of the United States of America subsequent to 1945, as may be included within this program by legislative act, in like manner as provided for the sale of lands purchased with the proceeds from the sales of the bonds, provided for herein, for a period ending Dec. 1, 1959; provided, however, that so much of such moneys as may be necessary during the period ending Dec. 1, 1959, to pay principal of and interest on the bonds heretofore issued and on bonds hereafter issued by the Veterans' Land Board shall be set aside for that purpose. After Dec. 1, 1959, all moneys received by the Veterans' Land Board from the sale of the lands and interest on deferred payments, or so much thereof as may be necessary, shall be set aside for the retirement of said bonds and to pay interest thereon, and any of such moneys not so needed shall not later than the maturity date of the last maturing bond or bonds be deposited to the credit of the General revenue fund to be appropriated to such purposes as may be

prescribed by law. All bonds issued hereunder shall, after approval by the Attorney General of Texas, registration by the Comptroller of the State of Texas, and delivery to the purchasers, be incontestable and shall constitute obligations of the state under the Constitution of Texas. Of the total one hundred million dollars ($100,000,000) of bonds herein authorized the sum of twenty-five million dollars ($25,000,000) has heretofore been issued; said bonds are hereby in all respects validated and declared to be obligations of the State of Texas. This amendment shall become effective upon its adoption.

(Note.—The foregoing Section 49-b of Article III has been twice amended: First, for the stated purpose of aiding war veterans in land purchases. Submitted by Forty-ninth Legislature (1945), and ratified in a special election Nov. 7, 1946. (It was by error that the date was set as Nov. 7 instead of Nov. 5, which was the general election date.) Second, it was amended to increase the authorized bond issue from $25,000,000 to $100,000,000 and to make minor changes. Submitted by the Fifty-second Legislature (1951), and ratified in an election Nov. 13, 1951.)

Section 50. **Credit of State Not to Be Pledged.**—The Legislature shall have no power to give or to lend or to authorize the giving or lending of the credit of the State in aid of, or to any person, association or corporation, whether municipal or other, or to pledge the credit of the State in any manner whatsoever, for the payment of the liabilities, present or prospective, of any individual, association of individuals, municipal or other corporation whatsoever.

Section 50-a. The Legislature shall create a State Medical Education Board to be composed of not more than six (6) members whose qualifications, duties and terms of office shall be prescribed by law. The Legislature shall also establish a State Medical Education Fund and make adequate appropriations therefor to be used by the State Medical Education Board to provide grants, loans or scholarships to students desiring to study medicine and agreeing to practice in the rural areas of this State, upon such terms and conditions as shall be prescribed by law. The term "rural areas" as used in this section shall be defined by law.

(Note.—The foregoing Section 50-a of Article III, an amendment, was added for the stated purpose of providing scholarships and to set up a State Medical Education Board. Submitted by the Fifty-second Legislature and adopted in an election Nov. 4, 1952.)

Section 51. **Tax Levy Authorized for Confederate Soldiers and Sailors and Their Widows.**—The Legislature shall have no power to make any grant or authorize the making of any grant of public moneys to any individual, association of individuals, municipal or other corporations whatsoever; provided, however, the Legislature may grant aid to indigent and disabled Confederate soldiers and sailors under such regulations and limitations as may be deemed by the Legislature as expedient, and to their widows in indigent circumstances under such regulations and limitations as may be deemed by the Legislature as expedient; to indigent and disabled soldiers, who, under special laws of the State of Texas, during the War Between the States, served in organizations for the protection of the frontier against Indian raids or Mexican marauders, and to indigent and disabled soldiers of the militia who were in active service during the War Between the States, and to the widows of such soldiers who are in indigent circumstances, and who are or may be eligible to receive aid under such regulations and limitations as may be deemed by the Legislature as expedient; and also grant for the establishment and maintenance of a home for said soldiers and sailors, their wives and widows and women who aided in the Confederacy, under such regulations and limitations as may be provided for by law; provided, the Legislature may provide for husband and wife to remain together in the home. There is hereby levied in addition to all other taxes heretofore permitted by the Constitution of Texas, a State ad valorem tax on property of *seven ($0.07) cents on the one hundred ($100) dollars valuation for the purpose of creating a special fund for the payment of pensions for services in the Confederate Army and Navy, frontier organizations and the militia of the State of Texas, and for the widows of such soldiers serving in said armies, navies, organizations or militia; provided that the Legislature may reduce the tax rate herein levied, and provided, further, that the provisions of this section shall not be construed so as to pre-

* See No. (8) in note below this section, also Section 17, Article VII, cutting this tax to 2c, and note thereon.

vent the grant of aid in cases of public calamity.

(Note.—The foregoing Section 51 of Article III, in its present form, is the result of much amendment. The original Section 51, which prohibited all grants of public money to individuals, associations, etc., with the single exception of cases of "public calamity," has been amended eight times, as follows: (1) Establishing Confederate Home. Submitted by Twenty-third Legislature (1893) and ratified at election, Nov. 6, 1894, and proclaimed adopted Dec. 21, 1894. (2) Providing for pensions for Confederate veterans from appropriations not to exceed $250,000 annually. Submitted by Twenty-fifth Legislature (1897) and adopted at election, Nov. 1, 1898, and proclaimed Dec. 22, 1898. (3) Raising amount that might be appropriated for Confederate pensions from $250,000 to $500,000 annually. Submitted by Twenty-eighth Legislature (1903), adopted in election, Nov. 8, 1904, and proclaimed Dec. 29, 1904. (4) Increasing authorized maximum appropriations for Confederate Home from $100,000 to $150,000 annually. Submitted by Thirty-first Legislature (1909), adopted in election, Nov. 8, 1910, and declared adopted Dec. 31, 1910. (5) Authorizing 5c ad valorem tax for Confederate pension fund—also omitting "public calamity" clause. Submitted by Thirty-second Legislature (1911), adopted Nov. 5, 1912, and proclaimed Dec. 30, 1912. (6) Authorizing 7c ad valorem tax for Confederate pension fund —also reinstating "public calamity" clause. Submitted by Thirty-eighth Legislature (1923) and adopted Nov. 4, 1924. (7) Eliminating specific restrictions upon grants of aid to Confederate soldiers, sailors and others with respect to date of removal to Texas, etc.; and conferring such authority upon the Legislature. Submitted by Fortieth Legislature (1927); ratified Nov. 6, 1928; proclaimed Feb. 6, 1929. (8) Cutting tax from 7c to 2c by addition of Section 17 to Article VII. (See note on that section.))

Section 51-a. **Assistance to Needy Aged, Needy Blind and Needy Children; Limitation on Expenditures for Same.**—The Legislature shall have the power, by general laws, to provide, subject to limitations and restrictions herein contained, and such other limitation, restrictions and regulations as may by the Legislature be deemed expedient for assistance to, and for the payment of assistance to:

(1) Needy aged persons who are actual bona fide citizens of Texas and who are over the age of sixty-five (65) years; provided that no such assistance shall be paid to any inmate of any State supported institution, while such inmate, or to any person who shall not have actually resided in Texas for at least five (5) years during the nine (9) years immediately preceding the application for such assistance and continuously for one (1) year immediately preceding such application; provided that the maximum payment per month from State funds shall not be more than twenty dollars ($20) per month.

(2) Needy blind persons who are actual bona fide citizens of Texas and are over the age of twenty-one (21) years; provided that no such assistance shall be paid to any inmate of any State supported institution, while such inmate, or to any person who shall not have actually resided in Texas at least five (5) years during the nine (9) years immediately preceding the application for such assistance and continuously for one (1) year immediately preceding such application.

(3) Needy children who are actual bona fide citizens of Texas and are under the age of sixteen (16) years; provided that no such assistance shall be paid on account of any child over one (1) year old who has not continuously resided in Texas for one (1) year immediately preceding the application for such assistance, or on account of any child under the age of one (1) year whose mother has not continuously resided in Texas for one (1) year immediately preceding such application.

The Legislature shall have the authority to accept from the Federal Government of the United States such financial aid for the assistance of the needy aged, needy blind, and needy children as such government may offer not inconsistent with restrictions herein set forth; provided, however, that the amount of such assistance out of State funds to each person assisted shall never exceed the amount so expended out of federal funds; and, provided further, that the total amount of money to be expended out of State funds for such assistance to the needy aged, needy blind, and needy children shall never exceed the sum of forty-two million dollars ($42,000,000) per year.

Should the Legislature enact enabling laws and provide an additional appropriation hereto in anticipation of the adoption of this amendment, such acts shall not be invalid by reason of their anticipatory character.

The Legislature shall enact appropriate laws to make lists of the recipients of aid hereunder available for inspection.

Subsection 51-a-1. The Legislature shall have the power to provide by General Laws and to make payment for same, under such limitations and restrictions as may be

deemed by the Legislature expedient, for direct or vendor payments for medical care on behalf of needy recipients of Old Age Assistance, Aid to the Blind, or Aid to Dependent Children as provided for in Section 51-a of Article III and on behalf of needy recipients of Aid to the Permanently and Totally Disabled as provided for in Section 51-b of Article III of the Constitution of the State of Texas. The payments for such medical care on behalf of such recipients shall be in addition to the direct assistance to such recipients, and shall be in such amounts as provided by the Legislature; provided, however, that the amounts paid out of State funds for such purposes shall never exceed the amounts paid out of Federal funds for such purposes.

The Legislature shall have the authority to accept from the Federal Government of the United States, such financial aid on behalf of the needy aged, needy blind, needy children, and needy permanently and totally disabled persons as such Government may offer not inconsistent with restrictions herein set forth.

Section 51-b. **State Building Commission Created.**—

(a) The State Building Commission is hereby created. Its membership shall consist of the Governor, the Attorney General and the Chairman of the Board of Control. The Legislature may provide by law for some other state official to be a member of this commission in lieu of the Chairman of the Board of Control, and in the event said State official has not already been confirmed by the Senate as such State official he shall be so confirmed as a member of the State Building Commission in the same manner that other State officials are confirmed.

(b) The State Building Fund is hereby created. On or before the first day of January following the adoption of this amendment, and each year thereafter, the Comptroller of Public Accounts shall certify to the State Treasurer that amount of money necessary to pay Confederate pensions for the ensuing calendar year as provided by the Constitution and laws of this State. Thereupon each year the State Treasurer shall transfer forthwith from the Confederate Pension Fund to the State Building Fund all money except that needed to pay the Confederate pensions as certified by the Comptroller. This provision is self-enacting. The State Building Fund shall be expended by the Commission upon appropriation by the Legislature for the uses and purposes set forth in subdivision (c) hereof.

(c) Under such terms and conditions as are now or may be hereafter provided by law, the Commission may acquire necessary real and personal property, salvage and dispose of property unsuitable for State purposes, modernize, remodel, build and equip buildings for State purposes, and negotiate and make contracts necessary to carry out and effectuate the purposes herein mentioned.

The first major structure erected from the State Building Fund shall be known and designated as a memorial to the Texans who served in the Armed Forces of the Confederate States of America, and shall be devoted to the use and occupancy of the Supreme Court and such other courts and State agencies as may be provided by law. The second major structure erected from the State Building Fund shall be a State office building and shall be used by whatever State agencies as may be provided by law.

Under such terms and conditions as are now or may hereafter be provided by law, the State Building Commission may expend not exceeding five (5%) per cent of the moneys available to it in any one year, for the purpose of erecting memorials to the Texans who served in the Armed Forces of the Confederate States of America. Said memorials may be upon battlefields or other suitable places within or without the boundaries of this State. The authorization for expenditures for memorials herein mentioned shall cease as of Dec. 31, 1965.

Under such terms and conditions as are now or may hereafter be permitted by law, the State Building Commission may expend not exceeding thirty thousand ($30,000) dollars in the aggregate for the purpose of erecting memorials to the Texans who served in the Armed Forces of the Republic in the Texas War for Independence. Said memorials may be erected upon battlefields, in cemeteries, or other suitable places within or without the boundaries of this State. The authorization for expenditures for memorials herein mentioned shall cease as of Dec. 31, 1965.

(d) The State ad valorem tax on property of two (2c) cents on the one hundred ($100) dollars valuation now levied under

Section 51 of Article III of the Constitution as amended by Section 17 of Article VII (adopted in 1947) is hereby specifically levied for the purposes of continuing the payment of Confederate pensions as provided under Article III, Section 51, and for the establishment and continued maintenance of the State Building Fund hereby created.

(e) Should the Fifty-third Legislature enact a law or laws in anticipation of the adoption of this amendment, such shall not be invalid by reason of their anticipatory character.

(Note.—The foregoing Section 51-b of Article III, an amendment, was added for the stated purpose of establishing a State Building Commission and fund and transferring funds from the Confederate Pension Fund to the new State Building Fund created by this amendment. Submitted by the Fifty-third Legislature (1953) and adopted in an election Nov. 2, 1954.)

Section 51-e. **City and Town Pension System.**—Each incorporated city and town in this State shall have the power and authority to provide a system of retirement and disability pensions for its appointive officers and employees who have become disabled as a direct and proximate result of the performance of their duties, or have passed their sixty-fifth birthday, or have been employed by such city or town for more than twenty-five (25) years and have passed their sixtieth birthday, when and if, but only when and if such system has been approved at an election by the qualified voters of such city or town entitled to vote on the question of issuance of tax-supported bonds; provided, that no city or town shall contribute more than the equivalent of seven and one half (7½%) per centum of salaries and wages of the officers and employees entitled to participate in its pension system, and that said officers and employees shall contribute a like amount; and this amendment shall not reduce the authority nor duty of any city or town otherwise existing.

(Note.—The foregoing Section 51-e of Article III, an amendment, was added for the stated purpose of providing retirement pay for municipal employees. Submitted by Forty-eighth Legislature and adopted in an election Nov. 7, 1944.)

Section 51-f. **Local Pension Plans.**—The Legislature of this State shall have the authority to provide for a system of retirement and disability pensions for appointive officers and employees of cities and towns to operate state-wide or by districts under such a plan and program as the Legislature shall direct and shall provide that participation therein by cities and towns shall be voluntary; provided, that the Legislature shall never make an appropriation to pay any of the cost of any system authorized by this section.

(Note.—The foregoing Section 51-f of Article III, an amendment, was added to amplify Section 51-e and set stated restrictions. Submitted by Forty-eighth Legislature and adopted in an election Nov. 7, 1944.)

Section 51-g. **Social Security Coverage for Municipal Employees.**—The Legislature shall have the power to pass such laws as may be necessary to enable the State to enter into agreements with the Federal Government to obtain for proprietary employees of its political subdivisions coverage under the old-age and survivors insurance provisions of Title II of the Federal Social Security Act as amended. The Legislature shall have the power to make appropriations and authorize all obligations necessary to the establishment of such Social Security coverage program.

(Note.—The foregoing Section 51-g of Article III, an amendment, was added for the stated purpose of extending Social Security coverage to municipal employees. Submitted by the Fifty-third Legislature (1953) and adopted in an election Nov. 2, 1954.)

Section 52. **Counties, Cities, Etc., Not Authorized to Grant Money or Become Stockholders; Exceptions.**—The Legislature shall have no power to authorize any county, city, town or other political corporation or subdivision of the State to lend its credit or to grant public money or thing of value in aid of, or to any individual, association or corporation whatsoever, or to become a stockholder in such corporation, association or company; provided, however, that under legislative provision any county, any political subdivision of a county, any number of adjoining counties or any political subdivision of the State or any defined district now or hereafter to be described and defined within the State of Texas, and which may or may not include towns, villages or municipal corporations, upon a vote of a two-thirds majority of the resident property taxpayers voting thereon who are qualified electors of such district or territory to be affected thereby, in addition to all other debts, may issue bonds or otherwise lend its credit in any

amount not to exceed one fourth of the assessed valuation of the real property of such district or territory, except that the total bonded indebtedness of any city or town shall never exceed the limits imposed by other provisions of this Constitution, and levy and collect such taxes to pay the interest thereon and provide a sinking fund for the redemption thereof, as the Legislature may authorize, and in such manner as it may authorize the same, for the following purposes, to wit:

(a) The improvement of rivers, creeks and streams to prevent overflows and to permit of navigation thereof or irrigation thereof, or in aid of such purposes.

(b) The construction and maintenance of pools, lakes, reservoirs, dams, canals and waterways for the purpose of irrigation, drainage or navigation, or in aid thereof.

(c) The construction, maintenance and operation of macadamized, graveled or paved roads and turnpikes or in aid thereof.

(Note.—The foregoing Section 52 of Article III is an amended section, the amendment authorizing formation of districts for issuance of bonds for leveeing, drainage, irrigation, highway construction and other public improvements. Submitted by Twenty-eighth Legislature (1903), adopted in election, Nov. 8, 1904, and proclaimed Dec. 29, 1904.)

*Section 52-b. **Legislature Prohibited to Lend Credit of State in Building or Maintaining Toll Roads and Turnpikes.**—The Legislature shall have no power or authority to in any manner lend the credit of the State or grant any public money to, or assume any indebtedness, present or future, bonded or otherwise, of any individual, person, firm, partnership, association, corporation, public corporation, public agency, or political subdivision of the State, or anyone else, which is now or hereafter authorized to construct, maintain or operate toll roads and turnpikes within this State.

(Note.—The foregoing Section 52-b of Article III, an amendment, was added for the stated purpose of prohibiting Legislature from lending credit of State in building or maintaining toll roads and turnpikes. Submitted by the Fifty-third Legislature (1953) and adopted in an election Nov. 2, 1954.)

Section 52-d. **Harris County Road Districts.**—Upon the vote of a majority of the resident qualified electors owning rendered taxable property therein so authorizing, a county or road district may collect an annual tax for a period not exceeding five (5) years to create a fund for constructing lasting and permanent roads and bridges or both. No contract involving the expenditure of any of such fund shall be valid unless, when it is made, money shall be on hand in such fund.

At such election, the Commissioners Court shall submit for adoption a road plan and designate the amount of special tax to be levied; the number of years said tax is to be levied; the location, description and character of the roads and bridges; and the estimated cost thereof. The funds raised by such taxes shall not be used for purposes other than those specified in the plan submitted to the voters. Elections may be held from time to time to extend or discontinue said plan or to increase or diminish said tax. The Legislature shall enact laws prescribing the procedure hereunder.

The provisions of this section shall apply only to Harris County and road districts therein.

(Note.—The foregoing Section 52-d of Article III, an amendment, was added for the stated purpose of giving special local tax powers to Harris County. Adopted in an election Aug. 23, 1937.)

Section 53. **Extra Compensation by Municipal Corporations.**—The Legislature shall have no power to grant or to authorize any county or municipal authority to grant any extra compensation, fee or allowance to a public officer, agent, servant or contractor, after service has been rendered or a contract has been entered into and performed in whole or in part; nor pay, nor authorize the payment of any claim created against any county or municipality of the State under any agreement or contract made without authority of law.

Section 54. **Liens on Railroads.**—The Legislature shall have no power to release

* Note that Sections 52-a and 52-c are omitted. Such sections never existed. The Fifty-third Legislature (1953) submitted an amendment to be numbered 52-b, and same was adopted in an election Nov. 2, 1954. Obviously, the designation, "Section 52-d," in Senate Joint Resolution No. 16 of the Forty-fifth Legislature resulted from confusion of a new section number with the sequence of paragraphs "a, b and c" under section 52 immediately above. Some published texts of the State Constitution give this as "Paragraph d," under Section 52, as it might properly have been designated, but SJR No. 16 of the Fifty-third Legislature definitely gave it as a separate "Section 52-d." Since Section 52-b was added in 1954, Sections 52-a and 52-c are still missing.

or alienate any lien held by the State upon any railroad, or in anywise change the tenor or meaning or pass any act explanatory thereof; but the same shall be enforced in accordance with the original terms upon which it was acquired.

Section 55. **Power of Legislature to Release Debt.**—The Legislature shall have no power to release or extinguish, or to authorize the releasing or extinguishing, in whole or in part, the indebtedness, liability or obligation of any corporation or individual, to this State or to any county or defined subdivision thereof, or other municipal corporation therein, except delinquent taxes which have been due for a period of at least ten years.

(Note.—The foregoing Section 55 of Article III is an amendment of an original section, the amendment having been adopted to include the clause "except delinquent taxes which have been due for a period of at least ten years." Submitted by the Forty-second Legislature (1931) and adopted in an election Nov. 8, 1932. Proclaimed Jan. 9. 1933.)

Section 56. **Special Laws; Limitations.**—The Legislature shall not, expect as otherwise provided in this Constitution, pass any local or special law authorizing:

The creation, extension or impairing of liens;

Regulating the affairs of counties, cities, towns, wards or school districts;

Changing the names of persons or places;

Changing the venue in civil or criminal cases;

Authorizing the laying out, opening, altering or maintaining of roads, highways, streets or alleys;

Relating to ferries or bridges, or incorporating ferry or bridge companies, except for the erection of bridges crossing streams which form boundaries between this and any other State;

Vacating roads, town plats, streets or alleys;

Relating to cemeteries, graveyards or public grounds not of the State;

Authorizing the adoption or legitimation of children;

Locating or changing county seats;

Incorporating cities, towns or villages, or changing their charter;

For the opening and conducting of elections or fixing or changing the places of voting;

Granting divorces;

Creating offices, or prescribing the powers and duties of officers in counties, cities, towns, election or school districts;

Changing the law of descent or succession;

Regulating the practice of jurisdiction of, or changing the rules of evidence in any judicial proceeding or inquiry before courts, justices of the peace, sheriffs, commissioners, arbitrators or other tribunals, or providing or changing methods for the collection of debts or the enforcing of judgments or prescribing the effect of judicial sales of real estate;

Regulating the fees or extending the powers and duties of aldermen, justices of the peace, magistrates or constables;

Regulating the management of public schools, the building or repairing of schoolhouses, and the raising of money for such purposes;

Fixing the rate of interest;

Affecting the estates of minors or persons under disability;

Remitting fines, penalties and forfeitures and refunding moneys legally paid into the Treasury;

Exempting property from taxation;

Regulating labor, trade, mining and manufacturing;

Declaring any named person of age;

Extending the time for the assessment or collection of taxes, or otherwise relieving any assessor or collector of taxes from the due performance of his official duties or his securities from liability;

Giving effect to informal or invalid wills or deeds;

Summoning or impaneling grand or petit juries;

For limitation of civil or criminal actions;

For incorporating railroads or other works of internal improvements;

And in all other cases where a general law can be made applicable no local or special law shall be enacted; provided, that nothing herein contained shall be construed to prohibit the Legislature from passing special laws for the preservation of the game and fish of this State in certain localities.

Section 57. **Notice of Local or Special Laws.**—No local or special law shall be passed unless notice of the intention to apply therefor shall have been published in the locality where the matter or thing to be affected may be situated, which notice

shall state the substance of the contemplated law, and shall be published at least thirty days prior to the introduction into the Legislature of such bill and in the manner to be provided by law. The evidence of such notice having been published shall be exhibited in the Legislature before such act shall be passed.

Section 58. **Sessions to Be Held at Austin, Seat of Government.**—The Legislature shall hold its sessions at the City of Austin, which is hereby declared to be the seat of government.

Section 59. **Workmen's Compensation for State Employees.**—The Legislature shall have power to pass such laws as may be necessary to provide for workmen's compensation insurance for such State employees, as in its judgment is necessary or required; and to provide for the payment of all costs, charges and premiums on such policies of insurance; providing, the state shall never be required to purchase insurance for any employee.

(Note.—The foregoing Section 59 of Article III, an amendment, was added for the stated purpose of providing for workmen's compensation for state employees. Adopted in an election, Nov. 3, 1936.)

Section 60. **Workmen's Compensation Insurance for County Employees.**—The Legislature shall have the power to pass such laws as may be necessary to enable all counties of this State to provide Workmen's Compensation insurance, including the right to provide its own insurance risk, for all county employees as in its judgment is necessary or required; and the Legislature shall provide suitable laws for the administration of such insurance in the counties of this State and for the payment of the costs, charges and premiums on such policies of insurance and the benefits to be paid thereunder.

(Note.—An added amendment, for purpose stated therein. Submitted by the Fiftieth Legislature (1947) and adopted in election, Nov. 2, 1948.)

Section 61. The Legislature shall have the power to enact laws to enable cities, towns and villages of this state to provide Workmen's Compensation Insurance, including the right to provide their own insurance risk for all employees; and the Legislature shall provide suitable laws for the administration of such insurance in the said municipalities and for payment of the costs, charges, and premiums on policies of insurance and the benefits to be paid thereunder.

(Note.—The foregoing Section 61 of Article III, an amendment, was added for the stated purpose of providing workmen's compensation insurance for municipal employees. Submitted by the Fifty-second Legislature and adopted in an election Nov. 4, 1952.)

Section 61-a. **Salary of Governor, Attorney General, Comptroller of Public Accounts, Treasurer, Commissioner of General Land Office and Secretary of State.**—The Legislature shall not fix the salary of the Governor, Attorney General, Comptroller of Public Accounts, the Treasurer, Commissioner of the General Land Office or Secretary of State at a sum less than that fixed for such officials in the Constitution on Jan. 1, 1953.

(Note.—The foregoing Section 61-a of Article III, an amendment, was added to fix the salaries of the aforementioned officials. Submitted by the Fifty-third Legislature (1953) and adopted in an election Nov. 2, 1954. As submitted in SJR5, this amendment was designated merely as "Section 61" duplicating the number of an existing section. To distinguish between the two, it is here designated as "Section 61-a.")

## ARTICLE IV.—EXECUTIVE DEPARTMENT

Section 1. **Officers of Executive Department.**—The executive department of the State shall consist of a Governor, who shall be the chief executive officer of the State; a Lieutenant Governor, Secretary of State, Comptroller of Public Accounts, Treasurer, Commissioner of the General Land Office and Attorney General.

Section 2. **Election of Executive Officers.**—All the above officers of the executive department (except Secretary of State) shall be elected by the qualified voters of the State at the time and places of election for members of the Legislature.

Section 3. **Election Results; Ties; Contests.**—The returns of every election for said executive officers, until otherwise provided by law, shall be made out, sealed up and transmitted by the returning officers prescribed by law, to the seat of government, directed to the Secretary of State, who shall deliver the same to the Speaker of the House of Representatives as soon as the Speaker shall be chosen, and the said Speaker shall, during the first week of the session of the Legislature, open and publish them in the presence of both houses of the

Legislature. The person voted for at said election having the highest number of votes for each of said offices, respectively, and being constitutionally eligible, shall be declared by the Speaker, under sanction of the Legislature, to be elected to said office. But if two or more persons shall have the highest and an equal number of votes for either of said offices, one of them shall be immediately chosen to such office by a joint vote of both houses of the Legislature. Contested elections for either of said offices shall be determined by both houses of the Legislature in joint session.

Section 3-a. **Gubernatorial Succession.**—If, at the time the Legislature shall canvass the election returns for the offices of Governor and Lieutenant Governor, the person receiving the highest number of votes for the office of Governor, as declared by the Speaker, has died, then the person having the highest number of votes for the office of Lieutenant Governor shall act as Governor until after the next general election. It is further provided that in the event the person with the highest number of votes for the office of Governor, as declared by the Speaker, shall become disabled, or fail to qualify, then the Lieutenant Governor shall act as Governor until a person has qualified for the office of Governor, or until after the next general election. Any succession to the governorship not otherwise provided for in this Constitution may be provided for by law; provided, however, that any person succeeding to the office of Governor shall be qualified as otherwise provided in this Constitution, and shall, during the entire term to which he may succeed, be under all the restrictions and inhibitions imposed in this Constitution on the Governor.

(Note.—An added amendment, for the purpose stated therein. Submitted by the Fiftieth Legislature (1947) and adopted in election, Nov. 2, 1948.)

Section 4. **Governor, When Installed; Term; Qualifications.**—The Governor shall be installed on the first Tuesday after the organization of the Legislature, or as soon thereafter as practicable, and shall hold his office for the term of two years, or until his successor shall be duly installed. He shall be at least 30 years of age, a citizen of the United States, and shall have resided in this State at least five years immediately preceding his election.

Section 5. **Governor's Salary and Mansion.**—The Governor shall, at stated times, receive as compensation for his services an annual salary in an amount to be fixed by the Legislature, and shall have the use and occupation of the Governor's Mansion, fixtures and furniture.

(Note.—The foregoing Section 5 of Article IV was first amended to raise Governor's salary from $4,000 to $12,000. Adopted in an election Nov. 3, 1936. Further amended to give Legislature authority to fix salary. Submitted by Fifty-third Legislature (1953) and adopted in election Nov. 2, 1954.)

Section 6. **Governor to Hold No Other Office, Etc.**—During the time he holds the office of Governor he shall not hold any other office, civil, military or corporate; nor shall he practice any profession or receive compensation, reward, fee or the promise thereof for the same; nor receive any salary, reward or compensation or the promise thereof from any person or corporation for any service rendered or performed during the time he is Governor or to be thereafter rendered or performed.

Section 7. **Commander in Chief; May Call Out Militia.**—He shall be commander in chief of the military forces of the State, except when they are called into actual service of the United States. He shall have power to call forth the militia to execute the laws of the State, to suppress insurrections, repeal invasions and protect the frontier from hostile incursions by Indians or other predatory bands.

Section 8. **Governor May Convene Legislature.**—The Governor may, on extraordinary occasions, convene the Legislature at the seat of government or at a different place in case that should be in possession of the public enemy, or in case of the prevalence of disease thereat. His proclamation therefor shall state specifically the purpose for which the Legislature is convened.

Section 9. **Governor's Message; to Account for Moneys; Present Estimates, Etc.**—The Governor shall, at the commencement of each session of the Legislature, and at the close of his terms of office, give to the Legislature information, by message, of the condition of the State; and he shall recommend to the Legislature such measures as he may deem expedient. He shall account to the Legislature for all public moneys received and paid out by him from any funds subject to his order, with

vouchers; and shall accompany his message with a statement of the same. And at the commencement of each regular session he shall present estimates of the amount of money required to be raised by taxation for all purposes.

Section 10. **Governor Shall Cause the Laws to Be Executed; Intercourse with Other States.**—He shall cause the laws to be faithfully executed and shall conduct, in person, or in such manner as shall be prescribed by law, all intercourse and business of the State with other States and with the United States.

Section 11. **Board of Pardons and Paroles; Advisory Authority to Governor in Granting Reprieves, Paroles, Pardons, Etc.**—There is hereby created a Board of Pardons and Paroles, to be composed of three members, who shall have been resident citizens of the State of Texas for a period of not less than two years immediately preceding such appointment, each of whom shall hold office for a term of six years; provided, that of the members of the first board appointed, one shall serve for two years, one for four years and one for six years from the first day of February, 1937, and they shall cast lots for their respective terms. One member of said board shall be appointed by the Governor, one member by the Chief Justice of the Supreme Court of the State of Texas and one member by the presiding Justice of the Court of Criminal Appeals; the appointments of all members of said board shall be made with the advice and consent of two thirds of the Senate present. Each vacancy shall be filled by the respective appointing power that theretofore made the appointment to such position, and the appointive powers shall have the authority to make recess appointments until the convening of the Senate.

In all criminal cases, except treason and impeachment, the Governor shall have power, after conviction, on the written signed recommendation and advice of the Board of Pardons and Paroles or a majority thereof, to grant reprieves, commutations of punishment and pardons; and under such rules as the Legislature may prescribe, and upon the written recommendation and advice of a majority of the Board of Pardons and Paroles, he shall have the power to remit fines and forfeitures. The Governor shall have the power to grant one reprieve in any capital case for a period not to exceed thirty (30) days, and he shall have the power to revoke paroles and conditional pardons. With the advice and consent of the Legislature, he may grant reprieves, communations of punishment and pardons in cases of treason.

The Legislature shall have power to regulate procedure before the Board of Pardons and Paroles and shall require it to keep record of its actions and the reasons therefor, and shall have authority to enact parole laws.

(Note.—The foregoing Section 11 of Article IV was amended from the original to establish the stated procedure for granting pardons and paroles, which was originally vested exclusively in the Governor's office. Submitted by Forty-fourth Legislature (1935) and adopted in an election Nov. 3, 1936.)

Section 11-a. **Suspension of Sentences; Probation.**—The courts of the State of Texas having original jurisdiction of criminal actions shall have the power, after conviction, to suspend the imposition or execution of sentence and to place the defendant upon probation and to reimpose such sentence, under such conditions as the Legislature may prescribe.

(Note.—The foregoing Section 11-a of Article IV, an amendment, was added for the stated purpose of providing suspended sentences. Submitted by Forty-fourth Legislature (1935) and adopted in an election Aug. 24, 1935.)

Section 12. **Governor to Fill Vacancies in State and District Offices.**—All vacancies in State or district offices, except members of the Legislature, shall be filled, unless otherwise provided by law, by appointment of the Governor, which appointment, if made during its session, shall be with the advice and consent of two thirds of the Senate present. If made during the recess of the Senate, the said appointee, or some other person to fill such vacancy, shall be nominated to the Senate during the first ten days of its session. If rejected said office shall immediately become vacant, and the Governor shall, without delay, make further nominations until a confirmation takes place. But should there be no confirmation during the session of the Senate, the Governor shall not thereafter appoint any person to fill such vacancy who has been rejected by the Senate, but may appoint some other person to fill the vacancy until the next session of the Senate or until the regular election to said

office, should it sooner occur. Appointments to vacancies in offices elective by the people shall only continue until the first general election thereafter.

Section 13. **Where Governor Shall Reside.**—During the session of the Legislature the Governor shall reside where its sessions are held and at all other times at the seat of government, except when, by act of the Legislature, he may be required or authorized to reside elsewhere.

Section 14. **Approval of Bills; Veto Bill Not Returned to Become a Law.**—Every bill which shall have passed both houses of the Legislature shall be presented to the Governor for his approval. If he approve, he shall sign it; but if he disapprove it, he shall return it with his objections to the house in which it originated, which house shall enter the objections at large upon its journal, and proceed to reconsider it. If, after such reconsideration, two thirds of the members present agree to pass the bill, it shall be sent, with the objections, to the other house, by which likewise it shall be reconsidered; and if approved by two thirds of the members of that house, it shall become a law; but in such cases the votes of both houses shall be determined by yeas and nays; and the names of the members voting for and against the bill shall be entered on the journal of each house, respectively. If any bill shall not be returned by the Governor with his objections within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Legislature, by its adjournment, prevent its return, in which case it shall be a law, unless he shall file the same, with his objections, in the office of the Secretary of State and give notice thereof by public proclamation within twenty days after such adjournment. If any bill presented to the Governor contains several items of appropriation he may object to one or more of such items, and approve the other portion of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the items to which he objects, and no item so objected to shall take effect. If the Legislature be in session he shall transmit to the house in which the bill originated a copy of such statement, and the items objected to shall be separately considered. If, on reconsideration, one or more of such items be approved by two thirds of the members present, of each house, the same shall be part of the law, notwithstanding the objection of the Governor. If any such bill containing several items of appropriation not having been presented to the Governor ten days (Sundays excepted) prior to adjournment, be in the hands of the Governor at the time of adjournment, he shall have twenty days from such adjournment within which to file objections to any items thereof and make proclamation of the same, and such item or items shall not take effect.

Section 15. **What to Be Presented for Approval.**—Every order, resolution or vote to which the concurrence of both houses of the Legislature may be necessary except on questions of adjournment shall be presented to the Governor, and before it shall take effect shall be approved by him; or, being disapproved, shall be repassed by both houses, and all the rules, provisions and limitations shall apply thereto as prescribed in the last preceding section in the case of a bill.

Section 16. **Lieutenant Governor; Election; Term; Powers and Duties.**—There shall also be a Lieutenant Governor, who shall be chosen at every election for Governor by the same electors, in the same manner, continue in office for the same time and possess the same qualifications. The electors shall distinguish for whom they vote as Governor and for whom as Lieutenant Governor. The Lieutenant Governor shall, by virtue of his office, be President of the Senate and shall have, when in committee of the whole, a right to debate, and vote on all questions; and when the Senate is equally divided, to give the casting vote. In case of the death, resignation, removal from office, inability or refusal of the Governor to serve, or of his impeachment or absence from the State, the Lieutenant Governor shall exercise the powers and authority appertaining to the office of Governor until another be chosen at the periodical election, and be duly qualified; or until the Governor, impeached, absent or disabled, shall be acquitted, return or his disability be removed.

Section 17. **Vacancy in Office; Compensation.**—If, during the vacancy in the office of Governor, the Lieutenant Governor should die, resign, refuse to serve or be removed from office or be unable to serve;

or if he shall be impeached or absent from the State, the President of the Senate, for the time being, shall, in like manner, administer the government until he shall be superseded by a Governor or Lieutenant Governor. The Lieutenant Governor shall, while he acts as President of the Senate, receive for his services the same compensation and mileage which shall be allowed to the members of the Senate, and no more; and during the time he administers the government as Governor, he shall receive in like manner the same compensation which the Governor would have received had he been employed in the duties of his office, and no more. The President, for the time being, of the Senate, shall, during the time he administers the government, receive in like manner the same compensation which the Governor would have received had he been employed in the duties of his office.

Section 18. **Succession to Governorship.**—The Lieutenant Governor, or President of the Senate, succeeding to the office of Governor shall, during the entire terms to which he may succeed, be under all the restrictions and inhibitions imposed in this Constitution on the Governor.

Section 19. **Seal of State; Secretary of State to Keep, Etc.**—There shall be a seal of the State which shall be kept by the Secretary of State and used by him officially under the direction of the Governor. The seal of the State shall be a star of five points, encircled by olive and live oak branches, and the words "The State of Texas."

Section 20. **Commissions to Be Signed and Sealed.**—All commissions shall be in the name and by the authority of the State of Texas, sealed with the State seal, signed by the Governor, and attested by the Secretary of State.

Section 21. **Secretary of State; Terms; Duties; Compensation.**—There shall be a Secretary of State, who shall be appointed by the Governor, by and with the advice and consent of the Senate, and who shall continue in office during the term of service of the Governor. He shall authenticate the publication of the laws and keep a fair register of all official acts and proceedings of the Governor, and shall, when required, lay the same and all papers, minutes and vouchers relative thereto, before the Legislature or either house thereof, and shall perform such other duties as may be required of him by law. He shall receive for his services an annual salary in an amount to be fixed by the Legislature.

(Note.—The foregoing Section 21 of Article IV was first amended from the original to raise the salary of the Secretary of State from $2,000 to $6,000 a year. Amendment adopted in an election Nov. 3, 1936. Further amended to give Legislature authority to fix salary. Submitted by Fifty-third Legislature (1953) and adopted in election Nov. 2, 1954.)

Section 22. **Attorney General; Term; Duties; Residence; Salary.**—The Attorney General shall hold his office for two years and until his successor is duly qualified. He shall represent the State in all suits and pleas in the Supreme Court of the State in which the State may be a party, and shall especially inquire into the charter rights of all private corporations, and from time to time in the name of the State, take such action in the courts as may be proper and necessary to prevent any private corporation from exercising any power or demanding or collecting any species of taxes, tolls, freight or wharfage not authorized by law. He shall, whenever sufficient cause exists, seek a judicial forfeiture of such charters, unless otherwise expressly directed by law, and give legal advice in writing to the Governor and other executive officers, when requested by them, and perform such other duties as may be required by law. He shall reside at the seat of government during his continuance in office. He shall receive for his services an annual salary in an amount to be fixed by the Legislature.

(Note.—The foregoing Section 22 of Article IV was amended from the original to raise the Attorney General's fixed salary from $2,000 to $10,000 a year and to eliminate provisions for fees not to exceed $2,000 a year. Amendment adopted in an election No. 3, 1936. Further amended to give Legislature authority to fix salary. Submitted by Fifty-third Legislature (1953) and adopted in election Nov. 2, 1954.)

Section 23. **Comptroller; Treasurer, and Commissioner of the General Land Office; Terms; Salaries; Residence; Fees.**—The Comptroller of Public Accounts, the Treasurer and the Commissioner of the General Land Office shall each hold office for the term of two years and until his successor is qualified; receive an annual salary in an amount to be fixed by Legislature; reside at the capital of the State during his continuance in office, and perform such duties

as are or may be required by law. They and the Secretary of State shall not receive to their own use any fees, costs or perquisites of office. All fees that may be payable by law for any service performed by any officer specified in this section, or in his office, shall be paid, when received, into the State Treasury.

(Note.—The foregoing Section 23 of Article IV was first amended from the original to raise salaries of three state officials mentioned from $2,500 each to $6,000 each annually. Amendment adopted in an election Nov. 3, 1936. Further amended to give Legislature authority to fix salary. Submitted by Fifty-third Legislature (1953) and adopted in election Nov. 2, 1954.)

Section 24. **Officers to Account to the Governor; Duty of Governor; False Reports.**—An account shall be kept by the officers of the executive department and by all officers and managers of State institutions of all moneys and choses in action received and disbursed or otherwise disposed of by them, severally, from all sources, and for every service performed; and a semiannual report thereof shall be made to the Governor, under oath. The Governor may, at any time, require information in writing from any and all of said officers or managers upon any subject relating to the duties, conditions, management and expenses of their respective offices and institutions, which information shall be required by the Governor under oath, and the Governor may also inspect their books, accounts, vouchers and public funds; and any officer or manager who, at any time shall willfully make a false report or give false information, shall be guilty of perjury and so adjudged and punished accordingly and removed from office.

Section 25. **Laws for Investigation of Breaches of Trust.**—The Legislature shall pass efficient laws facilitating the investigation of breaches of trust and duty by all custodians of public funds and providing for their suspensions from office on reasonable cause shown, and for the appointment of temporary incumbents of their offices during such suspension.

Section 26. **Notaries Public.**—(a) The Secretary of State shall appoint a convenient number of notaries public for each county, who shall perform such duties as now are or may be prescribed by law. The qualifications of notaries public shall be prescribed by law.

(b) Nothing herein shall affect the terms of office of notaries public who have qualified for the present term prior to the taking effect of this amendment.

(c) Should the Legislature enact an enabling law hereto in anticipation of the adoption of this amendment, such law shall not be invalid by reason of its anticipatory character.

(Note.—The foregoing Section 26 of Article IV was amended from the original to give the Secretary of State the authority, formerly held by the Governor, to appoint notaries public, and to include the stated contents of paragraphs (b) and (c). Submitted by Forty-sixth Legislature (1939), and adopted in an election Nov. 5, 1940.)

## ARTICLE V.—JUDICIAL DEPARTMENT

Section 1. **The Several Courts; Criminal Courts.**—The judicial power of this State shall be vested in one Supreme Court, in Courts of Civil Appeals, in a Court of Criminal Appeals, in District Courts, in County Courts, in Commissioners' Courts, in courts of Justices of the Peace and in such other courts as may be provided by law.

The Criminal District Court of Galveston and Harris Counties shall continue with the district jurisdiction and organization now existing by law until otherwise provided by law.

The Legislature may establish such other courts as it may deem necessary and prescribe the jurisdiction and organization thereof and may conform the jurisdiction of the district and other inferior courts thereto.

(Note.—The foregoing Section 1 of Article V is an amended section, being a general revision of the original, to provide for "Courts of Civil Appeals" and a "Court of Criminal Appeals" in place of the old "Court of Appeals," making minor changes. Submitted by Twenty-second Legislature (1891), ratified at an election Aug. 11, 1891, and declared adopted Sept. 22, 1891.)

Section 1-a. **Retirement and Compensation of Judges.**—The Legislature shall provide for the retirement and compensation of Judges and Commissioners of the Appellate Courts and Judges of the District and Criminal Courts on account of length of service, age or disability, and for their reassignment to active duty where and when needed.

(Note.—An added amendment, for the purpose stated therein. Submitted by the Fiftieth Legislature (1947) and adopted in election, Nov. 2, 1948.)

Section 2. **Supreme Court; Quorum; Qualifications; Election; Salary; Vacancy.** —The Supreme Court shall consist of a Chief Justice and eight Associate Justices, any five of whom shall constitute a quorum, and the concurrence of five shall be necessary to a decision of a case, provided, that when the business of the court may require, the court may sit in sections as designated by the court to hear argument of causes and to consider applications of writs of error or other preliminary matters. No person shall be eligible to the office of Chief Justice or Associate Justice of the Supreme Court unless he be, at the time of his election, a citizen of the United States and of this State and unless he shall have attained the age of thirty-five years and shall have been a practicing lawyer or a lawyer and judge of a court of record together at least ten years. Said Justices shall be elected (three of them each two years) by the qualified voters of the State at a general election; shall hold their offices six years or until their successors are elected and qualified; and shall each receive such compensation as shall be provided by law. In case of a vacancy in the office of any Justice of the Supreme Court, the Governor shall fill the vacancy until the next general election for State officers, and at such general election the vacancy for the unexpired term shall be filled by election by the qualified voters of the State. The Justices of the Supreme Court who may be in office at the time this amendment takes effect shall continue in office until the expiration of their terms of office under the present Constitution and until their successors are elected and qualified. The Judges of the Commission of Appeals who may be in office at the time this amendment takes effect shall become Associate Justices of the Supreme Court and each shall continue in office as such Associate Justice of the Supreme Court until January 1st next preceding the expiration of the term to which he has been appointed and until his successor shall be elected and qualified.

(Note.—The foregoing Section 2 of Article V has been twice amended: (1) To raise salaries and make minor adjustments, by amendment submitted by the Twenty-second Legislature, ratified in an election Aug. 11, 1891, and declared adopted Sept. 22, 1891; and (2) to raise the number of justices on the Supreme Court from three to nine and make other adjustments, by amendment submitted by the Forty-ninth Legislature and adopted in an election Aug. 25, 1945.)

Section 3. **Jurisdiction; Terms of Court.** —The Supreme Court shall have appellate jurisdiction only except as herein specified, which shall be coextensive with the limits of the State. Its appellate jurisdiction shall extend to questions of law arising in cases of which the Courts of Civil Appeals have appellate jurisdiction under such restrictions and regulations as the Legislature may prescribe. Until otherwise provided by law, the appellate jurisdiction of the Supreme Court shall extend to questions of law arising in the cases of the Courts of Civil Appeals in which the Judges of any Court of Civil Appeals may disagree, or where the several Courts of Civil Appeals may hold differently on the same question of law or where a statute of the State is held void. The Supreme Court and the Justices thereof shall have power to issue writs of habeas corpus, as may be prescribed by law; and under such regulations as may be prescribed by law, the said courts and the Justices thereof may issue the writs of mandamus, procedendo, certiorari and such other writs as may be necessary to enforce its jurisdiction. The Legislature may confer original jurisdiction on the Supreme Court to issue writs of quo warranto and mandamus in such cases as may be specified, except as against the Governor of the State.

The Supreme Court shall also have power, upon affidavit or otherwise as by the court may be determined, to ascertain such matters of fact as may be necessary to the proper exercise of its jurisdiction. The Supreme Court shall appoint a clerk, who shall give bond in such manner as is now or may hereafter be required by law, and he may hold his office for four years and shall be subject to removal by said court for good cause entered of record on the minutes of said court, who shall receive such compensation as the Legislature may provide.

(Note.—The foregoing Section 3 Article V has been twice amended, as follows: (1) To readjust jurisdiction of the Supreme Court to that of the Courts of Civil Appeals which were established by amendment of the same date, and also to consolidate the original Section 4, providing for a clerk of the court, with Section 3, by amendment submitted by the Twenty-second Legislature (1891), ratified Aug. 11, 1891, and proclaimed Sept 22, 1891; and (2) to eliminate provisions that the Supreme Court "sit from first Monday in

October of each year until the last Saturday in June of the next year," by amendment submitted as part of the amendment which added Section 3-a. See note of that section.)

Section 3-a. **Time of Sitting.**—The Supreme Court may sit at any time during the year at the seat of government for the transaction of business and each term thereof shall begin and end with each calendar year.

(Note.—The foregoing Section 3-a of Article V was added to make the time of sitting of the Supreme Court discretionary with that court. It was substituted for a provision formerly incorporated in Section 3. (See note on Section 3.) Submitted by Forty-first Legislature (1929), ratified in an election Nov. 4, 1930, and proclaimed Dec 17, 1930.)

Section 3-b. **Direct Appeal.**—The Legislature shall have the power to provide by law, for an appeal direct to the Supreme Court of this State from an order of any trial court granting or denying an interlocutory or permanent injunction on the grounds of the constitutionality or unconstitutionality of any statute of this State, or on the validity or invalidity of any administrative order issued by any state agency under any statute of this State.

(Note.—The foregoing Section 3-b of Article V was added for the stated purpose of providing for direct appeals. Submitted by Forty-sixth Legislature and adopted in an election Nov. 5, 1940.)

Section 4. **Court of Criminal Appeals.**—The Court of Criminal Appeals shall consist of three Judges, any two of whom shall constitute a quorum, and the concurrence of two Judges shall be necessary to a decision of said court. Said Judges shall have the same qualifications and receive the same salary as the Judges of the Supreme Court. They shall be elected by the qualified voters of the State at a general election and shall hold their offices for a term of six years. In case of a vacancy in the office of a Judge of the Court of Criminal Appeals the Governor shall fill such vacancy by appointment for the unexpired term.

The Judges of the Court of Appeals who may be in office at the time when this amendment takes effect shall continue in office until the expiration of their terms of office under the present Constitution and laws as Judges of the Court of Criminal Appeals.

(Note.—The foregoing Section 4 of Article V is an amendment, superseding in part, the original Section 5 which provided for the old "Court of Civil Appeals." The original Section 4 provided for the appointment of Supreme Court clerks, and was absorbed in the amended Section 3. Submitted by Twenty-second Legislature (1891), ratified Aug. 11, 1891, and adopted Sept. 22, 1891).

Section 5. **Jurisdiction; Powers; Term; Clerk, Etc.**—The Court of Criminal Appeals shall have appellate jurisdiction coextensive with the limits of the State in all criminal cases of whatever grade, with such exceptions and under such regulations as may be prescribed by law.

The Court of Criminal Appeals and the Judges thereof shall have the power to issue writs of habeas corpus and, under such regulations as may be prescribed by law, issue such writs as may be necessary to enforce its own jurisdiction. The Court of Criminal Appeals shall have power upon affidavit or otherwise to ascertain such matters of fact as may be necessary to the exercise of its jurisdiction. The Court of Criminal Appeals shall sit for the transaction of business from the first Monday in October to the last Saturday in June in each year, at the State capital and two other places (or the capital city) if the Legislature shall hereafter so provide. The Court of Criminal Appeals shall appoint a clerk for each place at which it may sit, and each clerk shall give bond in such manner as is now or may hereafter be required by law, and who shall hold his office for four years, unless sooner removed by the court for good cause entered of record on the minutes of said court.

(Note.—The foregoing Section 5 of Article V is an amendment, superseding primarily the original Section 6, which defined jurisdiction, powers, etc., of the old "Court of Appeals." (See also note on Section 6, below.) Submitted by Twenty-second Legislature (1891), ratified at an election Aug. 11, 1891, and declared adopted Sept. 22, 1891.)

Section 6. **Supreme Judicial Districts; Courts of Civil Appeals; Jurisdiction; Term; Justices; Election; Salary; Clerk.**—The Legislature shall, as soon as practicable after the adoption of this amendment, divide the State into not less than two nor more than three supreme judicial districts, and thereafter into such additional districts as the increase of population and business may require, and shall establish a Court of Civil Appeals in each of said districts, which shall consist of a Chief Justice and two Associate Justices, who shall have the qualifications as herein prescribed for Jus-

tices of the Supreme Court. Said Court of Civil Appeals shall have appellate jurisdiction coextensive with the limits of their respective districts, which shall extend to all civil cases of which the District Courts or County Courts have original or appellate jurisdiction under such restrictions and regulations as may be prescribed by law. Provided, that the decisions of said court shall be conclusive on all questions of fact brought before them on appeal or error.

Each of said Courts of Civil Appeals shall hold its sessions at a place in its district to be designated by the Legislature and at such time as may be prescribed by law. Said justices shall be elected by the qualified voters of their respective districts at a general election for a term of six years and shall receive for their services the sum of $3,500 per annum until otherwise provided by law. Said courts shall have such other jurisdiction, original and appellate, as may be prescribed by law. Each Court of Civil Appeals shall appoint a clerk in the same manner as the clerk of the Supreme Court, which clerk shall receive such compensations as may be fixed by law.

Until the organization of the Courts of Civil Appeals and Criminal Appeals, as herein provided for, the jurisdiction, power and organization and location of the Supreme Court, the Court of Appeals and the Commission of Appeals shall continue as they were before the adoption of this amendment.

All civil cases which may be pending in the Court of Appeals shall, as soon as practicable after the organization of the Courts of Civil Appeals, be certified to and the records thereof transmitted to the proper Court of Civil Appeals to be decided by said courts. At the first session of the Supreme Court, the Court of Criminal Appeals and such of the Courts of Civil Appeals which may be hereafter created under this article, after the first election of the judges of such courts, under this amendment, the terms of office of the judges of each court shall be divided into three classes and the Justices thereof shall draw for the different classes. Those who shall draw class No. 1 shall hold their offices two years, those drawing class No. 2 shall hold their offices for four years, and those who may draw class No. 3 shall hold their offices for six years from the date of their election and until their successors are elected and qualified, and thereafter each of the said judges shall hold his office for six years, as provided in this Constitution.

(Note.—The foregoing Section 6 of Article V, establishing the Courts of Civil Appeals, is an amendment superseding parts of the original Sections 5 and 6, which provided for the old "Court of Appeals," and defined its jurisdiction, powers, etc Submitted by Twenty-second Legislature (1891), ratified at an election Aug. 11, 1891, and declared adopted Sept. 22, 1891.)

Section 7. **Judicial Districts; Judges; Their Qualifications; Residence; Term of Office; Salary; Terms of Court.**—The State shall be divided into as many judicial districts as may now or hereafter be provided by law, which may be increased or diminished by law. For each district there shall be elected by the qualified voters thereof, at a General Election, a Judge, who shall be a citizen of the United States and of this State, who shall be licensed to practice law in this State and shall have been a practicing lawyer or a Judge of a Court in this State, or both combined, for four (4) years next preceding his election, who shall have resided in the district in which he was elected for two (2) years next preceding his election, who shall reside in his district during his term of office, who shall hold his office for the period of four (4) years, and shall receive for his services an annual salary to be fixed by the Legislature. The Court shall conduct its proceedings at the County Seat of the county in which the case is pending, except as otherwise provided by law. He shall hold the regular terms of his Court at the County Seat of each County in his district at least twice in each year in such manner as may be prescribed by law. The Legislature shall have power by General and Special Laws to make such provisions concerning the terms or sessions of each Court as it may deem necessary.

The Legislature shall also provide for the holding of District Court when the Judge thereof is absent, or is from any cause disabled or disqualified from presiding.

The District Judges who may be in office when this Amendment takes effect shall hold their offices until their respective terms shall expire under their present election or appointment.

(Note.—The foregoing Section 7 of Article V has been twice amended: (1) Effecting a general

revision of the original Section 7 to eliminate specification that judge must be "twenty-five years of age" and making minor changes. Submitted by Twenty-second Legislature (1891) and ratified in election Aug. 11, 1891. (2) Providing that the District Court shall conduct its proceedings in the county seat of the county in which the case is pending "except as otherwise provided by law." Submitted by Fifty-first Legislature (1949) and adopted in election Nov. 8, 1949.)

Section 8. **Jurisdiction and Powers of the District Courts.**—The District Court shall have original jurisdiction of all criminal cases of the grade of felony; in all suits in behalf of the State to recover penalties, forfeitures and escheats; of all cases of divorce; of all misdemeanors involving official disconduct; of all suits to recover damages for slander or defamation of character; of all suits for trial of title of land and for the enforcement of liens thereon; of all suits for the trial of the right of property levied upon by virtue of any writ of execution, sequestration or attachment when the property levied on shall be equal to or exceed in value $500; of all suits, complaints or pleas whatever, without regard to any distinction between law and equity, when the matter in controversy shall be valued at or amount to $500, exclusive of interest; of contested elections; and said court and the judges thereof shall have power to issue writs of habeas corpus, mandamus, injunction and certiorari, and all writs necessary to enforce their jurisdiction.

The District Court shall have appellate jurisdiction and general control in probate matters over the County Court established in each county for appointing guardians, granting letters testamentary and of administration, probating wills, for settling the accounts of executors, administrators, guardians, and for the transaction of all business appertaining to estates; and original jurisdiction and general control over executors, administrators, guardians and minors, under such regulations as may be prescribed by law. The District Court shall have appellate jurisdiction and general supervisory control over the County Commissioners' Court with such exceptions and under such regulations as may be prescribed by law; and shall have general original jurisdiction over all causes of action whatever for which a remedy or jurisdiction is not provided by law or this Constitution, and such other jurisdiction, original and appellate, as may be provided by law.

(Note.—The foregoing Section 8 of Article V is an amendment of the original Section 8, including the words "of contested elections" in the first paragraph and adding the last sentence in the last paragraph. Submitted by Twenty-second Legislature (1891), ratified at an election Aug. 11, 1891, and declared adopted Sept. 22, 1891.)

Section 9. **Clerk of the District Court; Term of Office; How Removed; How Vacancy Is Filled.**—There shall be a Clerk for the District Court of each county, who shall be elected by the qualified voters for the state and county officers, and who shall hold his office for four years, subject to removal by information, or by indictment of a grand jury and conviction by a petit jury. In case of vacancy the judge of a District Court shall have the power to appoint a Clerk, who shall hold until the office can be filled by election.

(Note.—The foregoing Section 9 of Article V has been amended to change the term of office from two to four years. Submitted by Fifty-third Legislature (1953) and adopted in election Nov. 2, 1954.)

Section 10. **Jury Trial; by Whom Fee Is to Be Paid.**—In the trial of all causes in the District Courts, the plaintiff or defendant shall, upon application made in open court, have the right of trial by jury; but no jury shall be impaneled in any civil case unless demanded by a party to the case, and a jury fee be paid by the party demanding a jury, for such sum and with such exceptions as may be prescribed by the Legislature.

Section 11. **Disqualification of Judges; Special Judges; Exchange of Districts; Vacancies.**—No Judge shall sit in any case wherein he may be interested, or where either of the parties may be connected with him either by affinity or consanguinity, within such a degree as may be prescribed by law, or when he shall have been counsel in the case. When the Supreme Court, the Court of Criminal Appeals, the Court of Civil Appeals, or any member of either, shall be thus disqualified to hear and determine any case or cases in said court, the same shall be certified to the Governor of the State, who shall immediately commission the requisite number of persons, learned in the law, for the trial and determination of such cause or causes. When a Judge of the District Court is disqualified by any of the causes above stated,

the parties may, by consent, appoint a proper person to try said case; or, upon their failing to do so, a competent person may be appointed to try the same in the county where it is pending in such manner as may be prescribed by law.

And the District Judges may exchange districts or hold courts for each other when they may deem it expedient, and shall do so when required by law. This disqualification of Judges of inferior tribunals shall be remedied, and vacancies in their offices filled, as may be prescribed by law.

(Note.—The foregoing Section 11 of Article V is an amended section, having been amended to use correct references to courts as established in amended Sections 1, 3, 4, 5 and 6. Submitted by Twenty-second Legislature (1891), ratified at an election Aug. 11, 1891, and declared adopted Sept. 22, 1891.)

Section 12. **Judges Conservators of Peace; Style of Writs; Prosecution by State.**—All Judges of Courts of this State, by virtue of their office *(shall) be conservators of the peace throughout the State. The style of all writs and process shall be "The State of Texas." All prosecutions shall be carried on in the name and by the authority of the State of Texas, and shall conclude "against the peace and dignity of the state."

(Note.—The foregoing Section 12 of Article V has been amended from the original to substitute "Courts of the State" for enumeration of kinds of courts contained in original section and applying to courts before general revision of judiciary in 1891. Submitted by Twenty-second Legislature (1891), ratified at an election Aug. 11, 1891, and declared adopted Sept. 22, 1891.)

Section 13. **Jurors, Grand and Petit; Number Required to Return Verdict.**—Grand and petit juries in the District Courts shall be composed of twelve men; but nine members of a grand jury shall be a quorum to transact business and present bills. In trials of civil cases and in trials of criminal cases below the grade of felony in the District Courts, nine members of the jury concurring may render a verdict, but when the verdict shall be rendered by less than the whole number, it shall be signed by every member of the jury concurring in it. When, pending the trial of any case, one or more jurors, not exceeding three, may die, or be disabled from sitting, the remainder of the jury shall have the power to render the verdict; provided, that the Legislature may change or modify the rule authorizing less than the whole number of the jury to render a verdict.

Section 14. **Districts Fixed by Ordinance.**—The judicial districts in this State and the time of holding the courts therein are fixed by ordinance forming part of this Constitution until otherwise provided by law.

Section 15. **County Court; Election; Term of Office of County Judges; Fees.**—There shall be established in each county in this State, a County Court, which shall be a court of record; and there shall be elected in each county by the qualified voters a County Judge, who shall be well informed in the law of the state, shall be a conservator of the peace, and shall hold his office for four years and until his successor shall be elected and qualified. He shall receive as compensation for his services such fees and perquisites as may be prescribed by law.

(Note.—The foregoing Section 15 of Article V has been amended to change the term of office from two to four years. Submitted by Fifty-third Legislature (1953) and adopted in election Nov. 2, 1954.)

Section 16. **Jurisdiction of County Court; Appeals; Probate Jurisdiction; May Issue Writs; Judge Disqualified, When.**—The County Courts shall have original jurisdiction of all misdemeanors of which exclusive original jurisdiction is not given to the Justices' Courts as the same is now or may hereafter be prescribed by law, and when the fine to be imposed shall exceed $200; and they shall have exclusive jurisdiction in all civil cases when the matter in controversy shall exceed in value $200 and not exceed $500, exclusive of interest; and concurrent jurisdiction with the District Court when the matter in controversy shall exceed $500 and not exceed $1,000, exclusive of interest, but shall not have jurisdiction of suits for recovery of land. They shall have appellate jurisdiction in cases, civil and criminal, of which Justices' Courts have original jurisdiction, but of such civil cases only when the judgment of the court appealed from shall exceed $20, exclusive of costs, under such regulations as may be prescribed by law. In all appeals from Justices' Courts

* The word, "shall," was omitted, apparently by error, from the resolution proposing this amended section.

there shall be a trial de novo in the County Court, and appeals may be prosecuted from the final judgment rendered in such cases by the County Court, as well as all cases, civil and criminal, of which the County Court has exclusive or concurrent or original jurisdiction of civil appeals in civil cases to the Court of Civil Appeals, and in such criminal cases to the Court of Criminal Appeals, with such exceptions and under such regulations as may be prescribed by law.

The County Court shall have the general jurisdiction of a Probate Court; they shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards; grant letters testamentary and of administration; settle accounts of executors; transact all business appertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the settlement, partition and distribution of estates of deceased persons; and to apprentice minors as provided by law; and the County Court or Judge thereof shall have power to issue writs of injunction, mandamus, and all writs necessary to the enforcement of the jurisdiction of said court, and to issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the County Court, or any other court or tribunal inferior to said court. The County Court shall not have criminal jurisdiction in any county where there is a Criminal District Court unless expressly conferred by law; and in such counties appeals from Justices' Courts and other inferior courts and tribunals in criminal cases shall be to the Criminal District Court, under such regulations as may be prescribed by law, and in all such cases an appeal shall lie from such District Court to the Court of Criminal Appeals. When the Judge of the County Court is disqualified in any case pending in the County Court the parties interested may by consent appoint a proper person to try said case, or upon their failing to do so, a competent person may be appointed to try the same in the county where it is pending in such manner as may be prescribed by law.

(Note.—The foregoing Section 16 of Article V is an amendment from the original to make changes relating to appeals to the county court, relating to disqualification of the judge, and minor changes. Submitted by the Twenty-second Legislature (1891), ratified at an election Aug. 11, 1891, and declared adopted Sept. 22, 1891.)

Section 17. **Terms of County Court for Criminal Business; Prosecutions Commenced by Information; Grand Jury to Inquire into Misdemeanors; Quashing of Grand Jury Indictments; Jury.**—The County Court shall hold a term for civil business at least once in every two months, and shall dispose of probate business, either in term time or vacation, as may be provided by law, and said court shall hold a term for criminal business once in every month, as may be provided by law. Prosecutions may be commenced in said court by information filed by the County Attorney, or by affidavit, as may be provided by law. Grand juries impaneled in the District Courts shall inquire into misdemeanors, and all indictments therefor returned into the District Courts shall forthwith be certified to the County Courts, or other inferior courts having jurisdiction to try them, for trial; and if such indictment be quashed in the county, or other inferior court, the person charged shall not be discharged if there is probable cause of guilt, but may be held by such court or magistrate to answer an information or affidavit. A jury in the County Court shall consist of six men; but no jury shall be impaneled to try a civil case, unless demanded by one of the parties, who shall pay such jury fee therefor in advance as may be prescribed by law, unless he makes affidavit that he is unable to pay the same.

Section 18. **Terms of Justices of the Peace; County Commissioners and Commissioners' Court.**—Each organized county in the State, now or hereafter existing, shall be divided from time to time, for the convenience of the people, into precincts, not less than four and not more than eight. Divisions shall be made by the Commissioners' Court provided for by this Constitution. In each such precinct there shall be elected one Justice of the Peace and one Constable, each of whom shall hold his office for four years, and until his successor shall be elected and qualified; provided, that in any precinct in which there may be a city of 8,000 or more inhabitants, there shall be elected two Justices of the Peace. Each county shall in like manner be divided into four Commissioners' precincts, in each of which there shall be elected by the qualified voters therof one County Commissioner, who shall hold his office for four years and until his successor shall be elected and qualified. The County Com-

missioners so chosen, with the County Judge as presiding officer, shall compose the County Commissioners' Court, which shall exercise such powers and jurisdiction over all county business as is conferred by this Constitution and the laws of the state, or as may be hereafter prescribed.

(Note.—The foregoing Section 18 of Article V has been amended to change the term of office from two to four years. Submitted by Fifty-third Legislature (1953) and adopted in election Nov. 2, 1954.)

Section 19. **Criminal Jurisdiction of Justices of the Peace; Appeals; Justices of the Peace ex-Officio Notaries.**—Justices of the Peace shall have jurisdiction in criminal matters of all cases where the penalty or fine to be imposed by law may not be more than for $200, and in civil matters of all cases where the amount in controversy is $200 or less, exclusive of interest, of which exclusive original jurisdiction is not given to the District or County Courts; and such other jurisdiction, criminal and civil, as may be provided by law, under such regulations as may be prescribed by law; and appeals to the County Courts shall be allowed in all cases decided in Justices' Courts where the judgment is for more than $20, exclusive of costs, and in all criminal cases, under such regulations as may be prescribed by law. And the Justices of the Peace shall be ex-officio notaries public; and they shall hold their courts at such times and places as may be provided by law.

Section 20. **County Clerk; Election; Term; Duties; Vacancies.**—There shall be elected for each county, by the qualified voters, a County Clerk, who shall hold his office for four years, who shall be clerk of the County and Commissioners' Courts and recorder of the county, whose duties, perquisites and fees of office shall be prescribed by the Legislature, and a vacancy in whose office shall be filled by the Commissioners' Court until the next general election; provided, that in counties having a population of less than 8,000 persons there may be an election of a single clerk, who shall perform the duties of District and County Clerks.

(Note.—The foregoing Section 20 of Article V has been amended to change the term of office from two to four years. Submitted by Fifty-third Legislature (1953) and adopted in election Nov. 2, 1954.)

Section 21. **County and District Attorneys; Duties; Vacancies; Fees.**—A County Attorney, for counties in which there is not a resident Criminal District Attorney, shall be elected by the qualified voters of each county, who shall be commissioned by the Governor and hold his office for the term of four years. In case of vacancy the Commissioners' Court of the county shall have power to appoint a County Attorney until the next general election. The County Attorneys shall represent the State in all cases in the District and inferior courts in their respective counties; but if any county shall be included in a district in which there shall be a District Attorney, the respective duties of District Attorneys and County Attorneys shall, in such counties, be regulated by the Legislature. The Legislature may provide for the election of District Attorneys in such districts as may be deemed necessary, and make provisions for the compensation of District Attorneys and County Attorneys. District Attorneys shall hold office for a term of four years, and until their successors have qualified.

(Note—The foregoing Section 21 of Article V has been amended to change the term of office from two to four years; also leaves solely to Legislature provision for annual salary to be paid by State to District and County Attorneys. Submitted by Fifty-third Legislature (1953) and adopted in election Nov. 2, 1954.)

Section 22. **Jurisdiction of Courts May Be Changed by Legislature.**—The Legislature shall have power, by local or general law, to increase, diminish or change the civil and criminal jurisdiction of County Courts; and in cases of any such change of jurisdiction the Legislature shall also conform the jurisdiction of the other courts to such change.

Section 23. **Sheriff; Term of Office; Vacancy.**—There shall be elected by the qualified voters of each county a Sheriff, who shall hold his office for the term of four years, whose duties and perquisites and fees of office shall be prescribed by the Legislature, and vacancies in whose office shall be filled by the Commissioners' Court until the next general election.

(Note.—The foregoing Section 23 of Article V has been amended to change the term of office from two to four years. Submitted by Fifty-third Legislature (1953) and adopted in election Nov. 2, 1954.)

Section 24. **Certain Officers Removed by District Courts for Drunkenness, In-**

**competency, Official Misconduct, Etc.**—County Judges, County Attorneys, Clerks of the District and County Courts, Justices of the Peace, Constables and other county officers may be removed by the Judges of the District Courts for incompetency, official misconduct, habitual drunkenness or other causes defined by law, upon the cause therefor being set forth in writing, and the finding of its truth by a jury.

Section 25. **Supreme Court to Regulate Practice.**—The Supreme Court shall have power to make and establish rules of procedure not inconsistent with the laws of the State for the government of said court and the other courts of this State, to expedite the dispatch of business therein.

(Note.—The foregoing Section 25 of Article V was amended from the original to add the phrase "not inconsistent with the laws of the State." Submitted by Twenty-second Legislature (1891), ratified at an election Aug. 11, 1891, and declared adopted Sept. 22, 1891.)

Section 26. **No Appeal in Criminal Cases by the State.**—The State shall have no right of appeal in criminal cases.

Section 27. **Transfer of Cases by the Legislature.**—The Legislature shall, at its first session, provide for the transfer of all business, civil and criminal, pending in District Courts, over which jurisdiction is given by this Constitution to the County Courts or other inferior courts, to such county or inferior courts, and for the trial or disposition of all such causes by such county or other inferior courts.

Section 28. **Vacancies in Offices of Judges of Superior Courts to Be Filled by the Governor.**—Vacancies in the office of the Judges of the Supreme Court, the Court of Criminal Appeals, the Court of Civil Appeals and District Courts shall be filled by the Governor until the next succeeding general election, and vacancies in the office of County Judge and Justices of the Peace shall be filled by the Commissioners' Court until the next succeeding general election.

Section 29. **Terms of County Courts; Probate Business; Prosecutions.**—The County Court shall hold at least four terms for both civil and criminal business annually, as may be provided by the Legislature, or by the Commissioners' Court of the county under authority of law, and such other terms each year as may be fixed by the Commissioners' Court; provided, the Commissioners' Court of any county having fixed the times and number of terms of the County Court shall not change the same again until the expiration of one year. Said court shall dispose of probate business either in term time or vacation, under such regulations as may be prescribed by law. Prosecutions may be commenced in said courts in such manner as is or may be provided by law, and a jury therein shall consist of six men. Until otherwise provided, the terms of the County Court shall be held on the first Mondays in February, May, August and November, and may remain in session three weeks.

(Note.—Section 29 of Article V, an amendment, was added for stated purpose of prescribing county court terms. Submitted by Eighteenth Legislature (1883), ratified in an election Aug. 14, 1883, and proclaimed adopted Sept. 25, 1883.)

Section 30. **County Judges and Criminal District Attorneys; Terms.**—The Judges of all courts of county-wide jurisdiction heretofore or hereafter created by the Legislature of this State, and all Criminal District Attorneys now or hereafter authorized by the laws of this State, shall be elected for a term of four years, and shall serve until their successors have qualified.

(Note.—Section 30 of Article V, an amendment, was added for purpose of prescribing term of office of County Judges and Criminal District Attorneys. Submitted by Fifty-third Legislature (1953) and adopted in election Nov. 2, 1954.)

## ARTICLE VI.—SUFFRAGE

Section 1. **Persons Who Cannot Vote.**—The following classes of persons shall not be allowed to vote in this State, to wit:

First: Persons under twenty-one (21) years of age.

Second: Idiots and lunatics.

Third: All paupers supported by any county.

Fourth: All persons convicted of any felony, subject to such exceptions as the Legislature may make.

(Note.—The foregoing Section 1 of Article VI has been twice amended from the original to give privilege of ballot to officers and enlisted men of National Guard, National Guard Reserves, Officers Reserve Corps, Organized Reserves and retired officers and enlisted men of Army, Navy and Marine Corps. Submitted by Forty-second Legislature (1931) and adopted in an election Nov. 8, 1932. Froclaimed Jan. 9, 1933. It was further amended by HJR 10 submitted by Fifty-third Legislature (1953) and adopted in an election Nov. 2, 1954, to remove restrictions against

members of the Armed Forces. This amendment also repealed Section 2-a of Article VI which provided for poll tax exemption for war veterans. See also note under Section 2.)

Section 2. **Poll Tax Payment Required of Voters.**—Every person subject to none of the foregoing disqualifications, who shall have attained the age of 21 years and who shall be a citizen of the United States and who shall have resided in this State one year next preceding an election and the last six months within the district or county in which such person offers to vote, shall be deemed a qualified elector; and provided, further, that any voter who is subject to pay a poll tax under the laws of the State of Texas shall have paid said tax before offering to vote at any election in this State and hold a receipt showing that said poll tax was paid before the first day of February next preceding such election. Or if said voter shall have lost or misplaced said tax receipt, he or she, as the case may be, shall be entitled to vote upon making affidavit before any officer authorized to administer oaths that such tax receipt has been lost. Such affidavit shall be made in writing and left with the judge of the election. The husband may pay the poll tax of his wife and receive the receipt therefor. In like manner the wife may pay the poll tax of her husband and receive the receipt therefor. The Legislature may authorize absentee voting. And this provision of the Constitution shall be self-enacting without the necessity of further legislation. Any member of the Armed Forces of the United States or component branches thereof, or in the military service of the United States, may vote only in the county in which he or she resided at the time of entering such service so long as he or she is a member of the Armed Forces.

(Note.—The foregoing Section 2 of Article VI has been amended four times, as follows: (1) To include provision that declaration of foreigner must be filed at least six months before election to enable him to vote in such election. Submitted by Twenty-fourth Legislature (1895), ratified in an election Nov. 3, 1896, and declared adopted Dec. 18, 1896. (2) To make poll tax receipt certificate of registration for voting. Submitted by Twenty-seventh Legislature (1901), ratified in an election Nov. 4, 1902, and declared adopted Dec. 26, 1902. (3) To limit suffrage to citizens; allowing husband or wife to pay poll tax for other; authorizing absentee voting. Submitted by Thirty-seventh Legislature (1921) and ratified at election July 23, 1921. (4) To extend suffrage to members of the Armed Forces of the United States. Submitted by Fifty-third Legislature (1953) and adopted in an election Nov. 2, 1954.)

Section 3. **Electors in Towns and Cities; Only Property Taxpayers to Vote in Certain Instances.**—All qualified electors of the State, as herein described, who shall have resided for six months immediately preceding an election within the limits of any city or corporate town, shall have the right to vote for Mayor and all other elective officers; but in all elections to determine expenditure of money or assumption of debt, only those shall be qualified to vote who pay taxes on property in said city or incorporated town; provided, that no poll tax for the payment of debts thus incurred shall be levied upon the persons debarred from voting in relation thereto.

Section 3-a. **Only Those Who Have Rendered Property for Taxation May Vote in Bond Elections.**—When an election is held by any county, or any number of counties, or any political subdivision of the State, or any political subdivision of a county, or any defined district now or hereafter to be described and defined within the State and which may or may not include towns, villages or municipal corporations, or any city, town or village, for the purpose of issuing bonds or otherwise lending credit, or expending money or assuming any debt, only qualified electors who own taxable property in the State, county, political subdivision, district, city, town or village where such election is held, and who have duly rendered the same for taxation, shall be qualified to vote and all electors shall vote in the election precinct of their residence.

(Note.—The foregoing Section 3-a of Article VI, an amendment, was added for the purpose of limiting voters participating in bond elections to those who have rendered property for taxation. Submitted by the Forty-second Legislature (1931) and adopted in an election Nov. 8, 1932; proclaimed Jan. 9, 1933.)

Section 4. **Election by Ballot; Registration in Cities of 10,000 Inhabitants or More.**—In all elections by the people the vote shall be by ballot, and the Legislature shall provide for the numbering of tickets and make such other regulations as may be necessary to detect and punish fraud and preserve the purity of the ballot box; and the Legislature may provide by law for the registration of all voters in all cities containing a population of ten thousand inhabitants or more.

(Note.—The foregoing Section 4 of Article VI is an amended section, the provision for the registration of voters in cities of 10,000 or more population having been added. The original section provided that "No law shall ever be enacted requiring a registration of the voters of this State." Submitted by Twenty-second Legislature (1891), ratified in an election Aug. 11, 1891, and declared adopted Sept. 22, 1891.)

Section 5. **Voters Privileged from Arrest.**—Voters shall, in all cases except treason, felony or breach of the peace, be privileged from arrest during their attendance at elections and in going to and returning therefrom.

## ARTICLE VII.—EDUCATION—THE PUBLIC FREE SCHOOLS

Section 1. **Public Schools to Be Established.**—A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.

Section 2. **Provisions Governing the Levy and Collection of Taxes for the Support of the Public Free Schools.**—All funds, lands and other property heretofore set apart and appropriated for the support of public schools, all the alternate sections of land reserved by the State out of grants heretofore made or that may hereafter be made to railroads or other corporations, of any nature whatsoever, one half of the public domain of the State, and all sums of money that may come to the State from the sale of any portion of the same shall constitute a perpetual public school fund.

Section 3. **School Taxes.**—One fourth of the revenue derived from the State occupation taxes and a poll tax of one ($1.00) dollar on every inhabitant of this State, between the ages of 21 and 60 years, shall be set apart annually for the benefit of the public free schools; and in addition thereto, there shall be levied and collected an annual ad valorem State tax of such an amount not to exceed 35c on the one hundred ($100.00) dollars valuation, as, with the available school fund arising from all other sources, will be sufficient to maintain and support the public schools of this State for a period of not less than six months in each year, and it shall be the duty of the State Board of Education to set aside a sufficient amount out of the said tax to provide free textbooks for the use of children attending the public free schools of this State; provided, however, that should the limit of taxation herein named be insufficient the deficit may be met by appropriation from the general funds of the State, and the Legislature may also provide for the formation of school districts by general laws, and all such school districts may embrace parts of two or more counties. And the Legislature shall be authorized to pass laws for the assessment and collection of taxes in all said districts and for the management and control of the public school or schools of such districts, whether such districts are composed of territory wholly within a county or in parts of two or more counties. And the Legislature may authorize an additional ad valorem tax to be levied and collected within all school districts heretofore formed or hereafter formed, for the further maintenance of public free schools, and for the erection and equipment of school buildings therein; provided, that a majority of the qualified property taxpaying voters of the district voting at an election to be held for that purpose shall vote such tax not to exceed in any one year $1 on the $100 valuation of the property subject to taxation in such district, but the limitation upon the amount of school district tax herein authorized shall not apply to incorporated cities or towns constituting separate and independent school districts, nor to independent or common school districts created by general or special law.

(Note.—The foregoing Section 3 of Article VII is an amended section, having been altered six times: (1) To authorize a State ad valorem school tax of not more than 20c, and further to authorize creation by Legislature of school districts for local taxation not to exceed 20c. Submitted by Eighteenth Legislature (1883), ratified in election Aug. 14, 1883, and declared adopted Sept. 25, 1883. (2) To authorize maximum tax in school districts of 50c. Submitted by Thirtieth Legislature (1907), ratified in an election Nov. 3, 1908, and declared adopted Feb. 2, 1909. (3) To authorize intercounty school districts and authorizing Legislature to pass laws for management and control of districts. Submitted by Thirty-first Legislature (1909), ratified in an election Aug. 3, 1909. See Section 3-a below and note. (4) To increase maximum tax for State school purposes from 20c to 35c and provide for free textbooks. Submitted by Thirty-fifth Legislature (1917) and adopted at election of Nov. 5, 1918. (5) To remove 50c limit on school district tax submitted by Thirty-sixth Legislature (1919) and adopted at election of Nov. 2, 1920. (6) To eliminate the provision authorizing the Legislature to create

districts by special law. Submitted by Thirty-ninth Legislature (1925) and ratified in an election Nov. 2, 1926, and proclaimed Jan. 20, 1927.)

Section 3-a. **County Line Districts; Validation; Bonds; Taxation.**—Every school district heretofore formed, whether formed under the general law or by special act, and whether the territory embraced within its boundaries lies wholly within a single county or partly in two or more counties, is hereby declared to be, and from its formation to have been, a valid and lawful district.

All bonds heretofore issued by any such districts, which have been approved by the Attorney General and registered by the Comptroller are hereby declared to be, and at the time of their issuance to have been, issued in conformity with the Constitution and laws of this State, and any and all such bonds are hereby in all things validated and declared to be valid and binding obligations upon the district or districts issuing the same.

Each such district is hereby authorized to, and shall, annually levy and collect an ad valorem tax sufficient to pay the interest on all such bonds, and to provide a sinking fund sufficient to redeem the same at maturity, not to exceed such a rate as may be provided by law under other provisions of this Constitution.

And all trustees heretofore elected in districts made up of more than one county are hereby declared to have been duly elected, and shall be and are hereby named as trustees of their respective districts, with power to levy the taxes herein authorized until their successors shall be duly elected and qualified as is or may be provided by law.

(Note.—The foregoing Section 3-a of Article VII, an amendment, was added to validate county-line districts which had been declared void by court decision. Submitted by Thirty-first Legislature (1909), ratified in an election Aug. 3, 1909, and declared adopted Sept. 24, 1909.)

Section 4. **Sale of School Lands; No Release to Purchasers; the Investment of Proceeds.**—The lands herein set apart to the public free school fund shall be sold under such regulations, at such times and on such terms as may be prescribed by law; and the Legislature shall not have power to grant any relief to purchasers thereof. The Comptroller shall invest the proceeds of such sales, and of those heretofore made, as may be directed by the Board of Education herein provided for, in the bonds of the United States, the State of Texas, or counties in said State, or in such other securities and under such restrictions as may be prescribed by law; and the State shall be responsible for all investments.

(Note.—The foregoing Section 4 of Article VII is an amended section, the amendment authorizing investment of money from sale of State public school lands in securities other than State and United States bonds, as was required by the original section. The amendment also added the clause making the State responsible for such investments. Submitted by Eighteenth Legislature (1883), ratified in an election Aug. 14, 1883, and declared adopted Sept. 25, 1883.)

Section 5. **Permanent School Fund; Interest; Alienation; Sectarian Schools.**—The principal of all bonds and other funds, and the principal arising from the sale of the lands hereinbefore set apart to said school fund, shall be the permanent school fund, and all the interest derivable therefrom and the taxes herein authorized and levied shall be the available school fund, to which the Legislature may add not exceeding 1 per cent annually of the total value of the permanent school fund; such value to be ascertained by the Board of Education until otherwise provided by law; and the available school fund shall be applied annually to the support of the public free schools. And no law shall ever be enacted appropriating any part of the permanent or available school fund to any other purpose whatever; nor shall the same or any part thereof ever be appropriated to or used for the support of any sectarian school; and the available school fund herein provided shall be distributed to the several counties according to their scholastic population and applied in such manner as may be provided by law.

(Note.—The foregoing Section 5 of Article VII is an amended section, the provision that "Legislature may add not exceeding 1 per cent annually of the total value of the permanent school fund" having been added. Submitted by Twenty-second Legislature (1891), ratified in an election Aug. 11, 1891, and declared adopted Sept. 22, 1891.)

Section 6. **County School Lands; Limitations; Settlers; Proceeds.**—All lands heretofore or hereafter granted to the several counties of this State for educational purposes are of right the property of said counties respectively to which they were granted, and title thereto is vested in said

counties, and no adverse possession or limitation shall ever be available against the title of any county. Each county may sell or dispose of its lands in whole or in part, in manner to be provided by the Commissioners' Court of the county. Actual settlers residing on said land shall be protected in the prior right of purchasing the same to the extent of their settlement, not to exceed 160 acres, at the price fixed by said court, which price shall not include the value of existing improvements made thereon by such settlers. Said lands, and the proceeds thereof, when sold, shall be held by said counties alone as a trust for the benefit of public schools therein; said proceeds to be invested in bonds of the United States, the State of Texas, or counties in said State, or in such other securities and under such restrictions as may be prescribed by law; and the counties shall be responsible for all investments, the interest thereon and other revenue, except the principal, shall be available fund.

(Note.—The foregoing Section 6 of Article VII is an amended section, the amendment authorizing the investment of money from sale of county public school lands in securities other than State and United States bonds (as was required in the original section), and making counties responsible for such investments. Submitted by the Eighteenth Legislature (1883), ratified in an election Aug. 14, 1883, and declared adopted Sept. 25, 1883.)

Section 6-a. **Taxation of County School Lands.**—All agriculture or grazing school land mentioned in Section 6 of this article owned by any county shall be subject to taxation except for State purposes to the same extent as lands privately owned.

(Note.—The foregoing Section 6-a of Article VII, an amendment, was added for the stated purpose of providing taxation of lands mentioned in Section 6. Submitted by Thirty-ninth Legislature (1925), ratified in an election Nov. 2, 1926, and proclaimed Jan. 20, 1927.)

Section 7. **Schools for White and Colored.**—Separate schools shall be provided for the white and colored children, and impartial provision shall be made for both.

Section 8. **Board of Education; Terms and Duties.**—The Legislature shall provide by law for a State Board of Education, whose members shall be appointed or elected in such manner and by such authority and shall serve for such terms as the Legislature shall prescribe not to exceed six years. The said board shall perform such duties as may be prescribed by law.

(Note.—The foregoing Section 8 of Article VII is an amended section, reconstituting the State Board of Education. The original text provided for a Board of Education consisting of Governor, Comptroller and Secretary of State, serving ex officio. Submitted by Fortieth Legislature (1927); ratified Nov. 6, 1928; proclaimed Feb. 6, 1929.)

### Asylums

Section 9. **Lands of Asylums; Sale.**—All lands heretofore granted for the benefit of the lunatic, blind, deaf and dumb, and orphan asylums, together with such donations as may have been or may hereafter be made to either of them, respectively, as indicated in the several grants, are hereby set apart to provide a permanent fund for the support, maintenance and improvement of said asylums. And the Legislature may provide for the sale of the lands and the investment of the proceeds in the manner as provided for the sale and investment of school lands in Section 4 of this article.

### University

Section 10. **University Lands and Funds.**—The Legislature shall, as soon as practicable, establish, organize and provide for the maintenance, support and direction of a university of the first class, to be located by a vote of the people of this State and styled "The University of Texas," for the promotion of literature and the arts and sciences, including an agricultural, and mechanical department.

Section 11. **University Funds; How Invested.**—In order to enable the Legislature to perform the duties set forth in the foregoing section, it is hereby declared all lands and other property heretofore set apart and appropriated for the establishment and maintenance of the University of Texas, together with all the proceeds of sales of the same, heretofore made or hereafter to be made, and all grants, donations and appropriations that may hereafter be made by the State of Texas, or from any other source, except donations limited to specific purposes, shall constitute and become a permanent university fund. And the same as realized and received into the treasury of the State (together with such sums belonging to the fund, as may now be in the treasury) shall be invested in bonds of the United States, the State of Texas, or counties of said State, or in school

bonds of municipalities, or in bonds of any city of this State or in bonds issued under and by virtue of the Federal Farm Loan Act approved by the President of the United States July 17, 1916, and amendments thereto; and the interest accruing thereon shall be subject to appropriation by the Legislature to accomplish the purpose declared in the foregoing section; provided, that the one tenth of the alternate sections of the lands granted to railroads reserved by the State, which were set apart and appropriated to the establishment of the University of Texas by an act of the Legislature of Feb. 11, 1858, entitled "An act to establish the University of Texas" shall not be included in, or constitute a part of, the permanent university fund.

(Note.—The foregoing Section 11 of Article VII has been twice amended as follows: (1) Adding a clause giving the Board of Regents of the University of Texas latitude in expending part of the permanent fund for buildings. Submitted by the Forty-first Legislature (1929); ratified Nov. 4, 1930. (2) Eliminating this latitude allowed the Board of Regents and restoring the original provisions of the Constitution which limited investments to bonds of the United States, State or civil subdivisions. This last amendment added also the clause "except donations limited to specific purposes." Submitted by Forty-second Legislature (1931); adopted Nov. 8, 1932. Proclaimed Jan. 9, 1933.)

Section 12. **Lands to Be Sold; No Relief of Purchasers.**—The land herein set apart to the university fund shall be sold under such regulations, at such times and on such terms as may be provided by law, and the Legislature shall provide for the prompt collection, at maturity, of all debts due on account of university lands heretofore sold, or that may hereafter be sold, and shall in neither event have the power to grant relief to the purchasers.

Section 13. **Agricultural and Mechanical College; Appropriations.**—The Agricultural and Mechanical College of Texas, established by an act of the Legislature passed April 17, 1871, located in the County of Brazos, is hereby made and constituted a branch of the University of Texas, for instruction in agriculture, the mechanic arts and the natural sciences connected therewith. And the Legislature shall at its next session make an appropriation not to exceed $40,000 for the construction and completion of the buildings and improvements, and for providing the furniture necessary to put said college in immediate and successful operation.

Section 14. **Branch University for Colored.**—The Legislature shall also, when deemed practicable, establish and provide for the maintenance of a college or branch university for the instruction of the colored youths of the state, to be located by a vote of the people; provided, that no tax shall be levied and no money appropriated out of the general revenue, either for this purpose or for the establishment and erection of the buildings of the University of Texas.

Section 15. **Land Appropriated for University; How Sold.**—In addition to the lands heretofore granted to the University of Texas, there is hereby set apart and appropriated, for the endowment, maintenance and support of said university and its branches, 1,000,000 acres of the unappropriated public domain of the State, to be designated and surveyed as may be provided by law; and said lands shall be sold under the same regulations and the proceeds invested in the same manner as is provided for the sale and investment of the permanent university fund; and the Legislature shall not have the power to grant any relief to the purchasers of said lands.

Section 16. **Terms of Office in School System.**—The Legislature shall fix by law the terms of all offices of the public school system and of the State institutions of higher education, inclusive, and the terms of members of the respective boards, not to exceed six years.

(Note.—The foregoing Section 16 of Article VII is the first of two amendments numbered 16. (See following section and note thereon.) This amendment was added for the stated purpose of providing for fixing of terms of office in public school system. Submitted by the Fortieth Legislature (1927); ratified Nov. 6, 1928; proclaimed Feb. 6, 1929.)

Section 16-a. **Taxation of University Lands.**—All land mentioned in Sections 11, 12 and 15 of Article VII of the Constitution of the State of Texas, now belonging to the University of Texas, shall be subject to the taxation for county purposes to the same extent as lands privately owned; provided, they shall be rendered for taxation upon values fixed by the State Tax Board; and providing, that the State shall remit annually to each of the counties in which said lands are located an amount equal to the tax imposed upon said land for county purposes.

(Note.—The foregoing section, which obviously should have been numbered either 16-a or 17, was designated as No. 16 in H.J.R. No. 11 of the Forty-first Legislative (1929) in which the amendment was submitted. It is customarily printed in legal references as Section 16[a]. This amendment was added for the stated purpose of providing for taxation of University of Texas lands. It was ratified Nov. 4, 1930. Declared adopted Dec. 17, 1930.)

Section 17. **Confederate Pension Fund Tax; College Building Fund Tax, Permission to Issue Bonds and Distribute Proceeds Therefrom, Etc.; Reducing Ad Valorem Ceiling for General Purposes from Thirty-five to Thirty Cents.**—In lieu of the State ad valorem tax on property of seven (7c) cents on the one hundred ($100.00) dollars valuation heretofore permitted to be levied by Section 51 of Article III, as amended, there is hereby levied, in addition to all other taxes permitted by the Constitution of Texas, a State ad valorem tax on property of two (2c) cents on the one hundred ($100.00) dollars valuation for the purpose of creating a special fund for the payment of pensions for services in the Confederate Army and Navy, frontier organizations, and Militia of the State of Texas, and for the widows of such soldiers serving in said armies, navies, organizations or militia; provided, that the Legislature may reduce the tax rate hereinabove levied.

Also, there is hereby levied, in addition to all other taxes permitted by the Constitution of Texas, a State ad valorem tax on property of five (5c) cents on the one hundred ($100.00) dollars valuation for the purpose of creating a special fund for the purpose of acquiring, constructing and initially equipping buildings, or other permanent improvements at the designated institutions of higher learning; and the governing board of each of such institutions of higher learning is fully authorized to pledge all or any part of said funds allotted to such institutions as hereinafter provided, to secure bonds or notes issued for the purpose of acquiring, constructing and initially equipping such buildings or other permanent improvements at said respective institutions. Such bonds or notes shall be issued in such amounts as may be determined by the governing boards of said respective institutions, shall bear interest not to exceed three (3%) per cent per annum and shall mature serially or otherwise not to exceed ten (10) years from the first (1st) days of January of each year in which such funds are allocated or reallocated to said respective institutions; provided, the power to issue bonds or notes hereunder is expressly limited to a period of thirty (30) years from the date of the adoption of this amendment; and provided further, that the five (5c) cent tax hereby levied shall expire finally upon payment of all bonds hereby authorized; provided further, that the State tax on property as heretofore permitted to be levied by Section 9 of Article VIII, as amended, exclusive of the tax necessary to pay the public debt, and of the taxes provided for the benefit of the public free schools, shall never exceed thirty (30c) cents on the one hundred ($100.00) dollars valuation. All bonds shall be examined and approved by the Attorney General of the State of Texas, and when so approved shall be incontestable; and all approved bonds shall be registered in the office of the Comptroller of Public Accounts of the State of Texas. Said bonds shall be sold only through competitive bids and shall never be sold for less than their par value and accrued interest.

Funds raised from said five (5c) cents tax levy for the ten (10) year period beginning January 1, 1948, are hereby allocated to the following institutions of higher learning, and in the following proportions to-wit:

| Institution— | Per Cent of Total |
|---|---|
| John Tarleton Agricultural College | 5.72107 |
| North Texas Agricultural College | 6.17028 |
| Texas State College for Women | 11.52992 |
| Texas College of Arts and Industries | 4.75551 |
| College of Mines and Metallurgy | 4,71936 |
| Texas Technological College | 16,54877 |
| East Texas State Teachers College | 8.10657 |
| North Texas State Teachers College | 12.64522 |
| Sam Houston State Teachers College | 5.55068 |
| Southwest State Teachers College | 6.78474 |
| Stephen F. Austin State Teachers College | 4.55414 |
| Sul Ross State Teachers College | 2.15315 |
| West Texas State Teachers College | 5.41643 |
| Prairie View Agricultural and Mechanical College of Texas | 5.34416 |

Not later than June 1st of the beginning year of each succeeding ten (10) year period, the Comptroller of Public Accounts of the State of Texas, based on the average long session full-time student enrollment for the preceding five (5) year period of time, shall reallocate, to the above designated institutions of higher learning then in existence, all funds to be derived from said five (5c) cent ad valorem tax for said ten (10) year period; and all such designated institutions of higher learning which participate in the allocation or reallocation of such funds shall not thereafter receive any other state funds for the acquiring or constructing of buildings or other permanent improvements for which said five (5c) cents ad valorem tax is herein provided, except in case of fire, flood, storm or earthquake occurring at any such institution, in which case an appropriation in an amount sufficient to replace the loss so incurred may be made by the Legislature out of other State funds. This amendment shall be self-enacting. The State Comptroller of Public Accounts shall draw all necessary and proper warrants upon the State Treasury in order to carry out the purpose of this amendment; and the State Treasurer shall pay warrants so issued out of the special fund hereby created for said purpose.

(Note.—The foregoing is an added section. It amends Section 51 of Article III by (1) reducing the Confederate pension tax from 7c to 2c, and (2) levying a new tax of 5c, providing for the distribution of revenues derived therefrom among the state colleges and reducing ad valorem tax for general revenue from 35c to 30c. (See Article VIII, Section 1-a, and note thereon.) Submitted by the Fiftieth Legislature (1947) and adopted in election Aug. 23, 1947. See note on Section 18 below. See also footnote under Section 51 of Article III.)

Section 18. **Building Bonds Authorized for the University of Texas and the Agricultural and Mechanical College; Retired from Income from the Permanent University Fund; Etc.**—For the purpose of constructing, equipping or acquiring buildings or other permanent improvements, the Board of Directors of the Agricultural and Mechanical College of Texas is hereby authorized to issue negotiable bonds or notes not to exceed a total amount of five million ($5,000,000) dollars, and the Board of Regents of the University of Texas is hereby authorized to issue negotiable bonds or notes not to exceed a total amount of ten million ($10,000,000) dollars. Any bonds or notes issued hereunder shall be payable solely out of the income from the Permanent University Fund. Bonds or notes so issued shall mature serially or otherwise not more than twenty (20) years from their respective dates, and in no event later than twenty-five (25) years after the date of the adoption of this amendment. This amendment shall be self-enacting.

Said boards are severally authorized to pledge the whole or any part of the respective interests of the Agricultural and Mechanical College of Texas and of the University of Texas in the income from the Permanent University Fund, as such interests are now apportioned by Chapter 42 of the Acts of the Regular Session of the Forty-second Legislature of the State of Texas, for the purpose of securing the payment of the principal and interest of such bonds or notes. The Permanent University Fund may be invested in such bonds or notes.

All bonds or notes issued pursuant hereto shall be approved by the Attorney General of Texas and when so approved shall be incontestable.

(Note.—Section 18 and the preceding Section 17 of Article VII were added to the Constitution as a single amendment. (See note under Section 17 above.) The purpose of Section 18 is fully explained in its text. Submitted by the Fiftieth Legislature (1947) and adopted in election Aug. 23, 1947.)

## ARTICLE VIII.—TAXATION AND REVENUE

Section 1. **Taxation to Be Equal and Uniform; Occupation and Income Taxes; Exemptions; Limitations Upon Counties, Cities, Etc.**—Taxation shall be equal and uniform. All property in this State, whether owned by natural persons or corporations, other than municipal, shall be taxed in proportion to its value, which shall be ascertained as may be provided by law. The Legislature may impose a poll tax. It may also impose occupation taxes, both upon natural persons and upon corporations, other than municipal, doing any business in this State. It may also tax incomes of both natural persons and corporations, other than municipal, except that persons engaged in mechanical and agricultural pursuits shall never be required to pay an

occupation tax; provided, that $250 worth of household and kitchen furniture belonging to each family in this State shall be exempt from taxation; and provided, further, that the occupation tax levied by any county, city or town, for any year, on persons or corporations pursuing any profession or business, shall not exceed one half of the tax levied by the State for the same period on such profession or business.

Section 1-a. **Abolishing Ad Valorem Tax for State's General Fund Purposes; Providing Local Tax Rate, Etc.**—From and after January 1, 1951, no State ad valorem tax shall be levied upon any property within this State for general revenue purposes. From and after January 1, 1951, the several counties of the State are authorized to levy ad valorem taxes upon all property within their respective boundaries for county purposes, except the first three thousand dollars ($3,000) value of residential homesteads, not to exceed thirty cents (30c) on each one hundred dollars ($100) valuation, in addition to all other ad valorem taxes authorized by the Constitution of this State, provided the revenue derived therefrom shall be used for construction and maintenance of farm-to-market roads or for flood control, except as herein otherwise provided.

Provided that in those counties or political subdivisions or areas of the State from which tax donations have heretofore been granted, the State Automatic Tax Board shall continue to levy the full amount of the State ad valorem tax for the duration of such donation, or until all legal obligations heretofore authorized by the law granting such donation or donations shall have been fully discharged, whichever shall first occur; provided that if such donation to any such county or political subdivision is for less than the full amount of State ad valorem taxes so levied, the portion of such taxes remaining over and above such donation shall be retained by said county or subdivision.

(Note.—Section 1-a of Article VIII was first added and then amended, as follows: (1) Giving homesteads $3,000 exemption from State taxes. Submitted by the Forty-second Legislature (1931), and adopted at an election Nov. 8, 1932. (2) Making more definite the provision for extending the exemption to counties and subdivisions having tax remission as soon as tax remission ceased, whether by expiration of the period designated in the act granting remission or voluntarily by action of local authorities. The original amendment failed to make provision for the latter contingency. Submitted by the Forty-third Legislature (1933), and adopted in an election Aug. 26, 1933. (3) Reducing maximum ad valorem tax for general revenue from 35c to 30c. (See Article VII, Section 17, and note thereon.) (4) Abolishing ad valorem tax for state general fund purposes and providing for local taxation as indicated in text of section. (See also Section 1-b immediately below, and note thereon.) Submitted by Fiftieth Legislature (1947) and adopted in election Nov. 2, 1948.)

Section 1-b. **Homestead Exemption Under State Tax.**—Three thousand dollars ($3,000) of the assessed taxable value of all residence homesteads as now defined by law shall be exempt from all taxation for all State purposes.

(Note.—See note under Section 1-c, immediately below.)

Section 1-c. **Optional Provisions Relating to Section 1-a and Section 1-b.**—Provided, however, the terms of this resolution shall not be effective unless House Joint Resolution No. 24 is adopted by the people and in no event shall this resolution go into effect until January 1, 1951.

(Note.—Section 1-b and Section 1-c were added because of an oversight in writing the text of Section 1-a (adopted by joint resolution at an earlier date) which would have abolished the $3,000 homestead exemption under the state school tax on adoption of Section 1-a by the people. Submitted by Fiftieth Legislature (1947) and adopted on election Nov. 2, 1948.)

Section 2. **Occupation Taxes Equal and Uniform; Exemptions Therefrom.**—All occupation taxes shall be equal and uniform upon the same class of subjects within the limits of the authority levying the tax; but the Legislature may, by general laws, exempt from taxation public property used for public purposes; actual places or (of) religious worship, also any property owned by a church or by a strictly religious society for the exclusive use as a dwelling place for the ministry of such church or religious society, and which yields no revenue whatever to such church or religious society; provided that such exemption shall not extend to more property than is reasonably necessary for a dwelling place and in no event more than one acre of land; places of burial not held for private or corporate profit; all buildings used exclusively and owned by persons or associations of persons for school purposes and the necessary furniture of all schools and property used exclusively and reasonably necessary in conducting any association en-

gaged in promoting the religious, educational and physical development of boys, girls, young men or young women operating under a State or National organization of like character; also, the endowment funds of such institutions of learning and religion not used with a view to profit; and when the same are invested in bonds or mortgages, or in land or other property which has been and shall hereafter be bought in by such institutions under foreclosure sales made to satisfy or protect such bonds or mortgages, that such exemption of such land and property shall continue only for two years after the purchase of the same at such sale by such institutions and no longer, and institutions of purely public charity; and all laws exempting property from taxation other than the property above mentioned shall be null and void.

(Note.—Section 2 of Article VIII has been amended twice, as follows: (1) Adding clause with reference to endowment fund. Submitted by Twenty-ninth Legislature (1905); ratified Nov. 6, 1906, and proclaimed adopted Jan. 7, 1907. (2) Permitting exemption of ministers' dwellings and certain other property of religious organizations, the original amendment having provided only for exemption for "actual places of worship." Submitted by Fortieth Legislature (1927); ratified Nov. 6, 1928; proclaimed Feb. 6, 1929.)

Section 3. **Taxes to Be Collected for Public Purposes Only.**—Taxes shall be levied and collected by general laws and for public purposes only.

Section 4. **Power to Tax Corporations Not to Be Surrendered.**—The power to tax corporations and corporate property shall not be surrendered or suspended by act of the Legislature, by any contract or grant to which the State shall be a party.

Section 5. **Railroad Taxes Due Cities and Towns.**—All property of railroad companies, of whatever description, lying or being within the limits of any city or incorporated town within this State, shall bear its proportionate share of municipal taxation, and if any such property shall not have been heretofore rendered, the authorities of the city or town within which it lies shall have power to require its rendition and collect the usual municipal tax thereon, as on other property lying within said municipality.

Section 6. **Appropriations; How Made and for What Period.**—No money shall be drawn from the Treasury but in pursuance of specific appropriations made by law; nor shall any appropriation of money be made for a longer term than two years, except by the First Legislature to assemble under this Constitution, which may make the necessary appropriations to carry on the government until the assembling of the Sixteenth Legislature.

Section 7. **Special Funds Not to Be Borrowed or Diverted.**—The Legislature shall not have power to borrow, or in any manner divert from its purpose any special fund that may, or ought to, come into the Treasury; and shall make it penal for any person or persons to borrow, withhold or in any manner to divert from its purpose, any special fund or any part thereof.

Section 7-a. **Net Motor License Fees and Motor Fuel Tax Revenues Restricted, Except One Fourth of Fuel Taxes to Schools, to Highway Improvement, Policing and Administration.**—Subject to legislative appropriation, allocation and direction, all net revenues remaining after payment of all refunds allowed by law and expenses of collection derived from motor vehicle registration fees, and all taxes, except gross production and ad valorem taxes, on motor fuels and lubricants used to propel motor vehicles over public roadways, shall be used for the sole purpose of acquiring rights of way, constructing, maintaining, and policing such public roadways, and for the administration of such laws as may be prescribed by the Legislature pertaining to the supervision of traffic and safety on such roads; and for the payment of the principal and interest on county and road district bonds or warrants voted or issued prior to January 2, 1939, and declared eligible prior to January 2, 1945, for payment out of the County and Road District Highway Fund under existing law; provided, however, that one fourth (¼) of such net revenue from the motor fuel tax shall be allocated to the Available School Fund; and, provided, however, that the net revenue derived by counties from motor vehicle registration fees shall never be less than the maximum amounts allowed to be retained by each county and the percentage allowed to be retained by each county under the laws in effect on January 1, 1945. Nothing contained herein shall be construed as authorizing the pledging of the State's credit for any purpose.

(Note.—Sec. 7-a of Art. VIII is an added amendment, restricting revenues from motor ve-

hicle registration and motor fuel taxes to the stated purposes of highway improvement, policing and administration. Submitted by Forty-ninth Legislature (1945), ratified in an election Nov. 5, 1946.)

Section 8. **Railroad Property; How Assessed.**—All property of railroad companies shall be assessed, and the taxes collected in the several counties in which said property is situated, including so much of the roadbed and fixtures as shall be in each county. The rolling stock may be assessed in gross in the county where the principal office of the company is located, and the county tax paid upon it shall be apportioned by the Comptroller, in proportion to the distance such road may run through any such county, among the several counties through which the road passes, as part of their tax assets.

Section 9. **Rate of State and Municipal Taxation.**—The State tax on property, exclusive of the tax necessary to pay the public debt, and of the taxes provided for the benefit of the public free schools, shall never exceed 35c on the $100 valuation; and no county, city or town shall levy more than 25c for city or county purposes, and not exceeding 15c for roads and bridges, and not exceeding 15c to pay jurors, on the $100 valuation, except for the payment of debts incurred prior to the adoption of the amendment Sept. 25, 1883; and for the erection of public buildings, streets, sewers, waterworks and other permanent improvements, not to exceed 25c on the $100 valuation, in any one year, and except as is in this Constitution otherwise provided; provided, however, that the Commissioners' Court in any county may reallocate the foregoing county taxes by changing the rates provided for any of the foregoing purposes by either increasing or decreasing the same, but in no event shall the total of said foregoing county taxes exceed eighty (0.80) cents on the $100 valuation in any one year, provided further, that before the said Commissioners' Court may make such reallocations and changes in said county taxes that the same shall be submitted to the qualified property taxpaying voters of such county at a general or special election, and shall be approved by a majority of the qualified property taxpaying voters, voting in such election; and, provided further, that if and when such reallocations and changes in the aforesaid county taxes have been approved by the qualified property taxpaying voters of any county, as herein provided, such reallocations and changes shall remain in force and effect for a period of six years from the date of the election at which the same shall be approved, unless the same again shall have been changed by a majority vote of the qualified property taxpaying voters of such county, voting on the proposition, after submission by the Commissioners' Court at a general or special election for that purpose; and the Legislature may also authorize an additional annual ad valorem tax to be levied and collected for the further maintenance of the public roads; provided, that a majority of the qualified property taxpaying voters of the county voting at an election to be held for that purpose shall vote such tax, not to exceed 15c on the $100 valuation of the property subject to taxation in such county. And the Legislature may pass local laws for the maintenance of the public roads and highways, without the local notice required for special or local laws. This section shall not be construed as a limitation of powers delegated to counties, cities or town by any other section or sections of this Constitution.

(Note.—The foregoing Section 9 Article VIII has been amended five times, as follows: (1) To lower State tax rate from 50c to 35c, a separate State school tax having been provided by companion amendment of Section 3 of Article VII. Submitted by Eighteenth Legislature (1883), ratified in an election Aug. 14, 1883, and declared adopted Sept. 25, 1883. (2) To authorize Legislature to provide for a 15c local road tax. Submitted by Twenty-first Legislature (1889), ratified in an election Nov. 3, 1890, and declared adopted Dec. 19, 1890. (3) To authorize 15c tax for jurors. Submitted by Twenty-ninth Legislature (1905), ratified in an election Nov. 6, 1906, and declared adopted Jan. 7, 1907. (4) Providing that County Commissioners "may re-allocate the foregoing county taxes by changing the rates provided for any of the foregoing purposes" if approved by "a majority of the qualified property taxpaying voters," but restricting the period to six years, and restricting total to 80c on the $100 valuation. Submitted by Forty-eighth Legislature and adopted in an election Nov. 7, 1944. (5) Abolishing ad valorem tax for State general revenue fund purposes, and making other provisions. (See Section 1-a of Article VIII and note thereon.))

Section 10. **Taxes Not to Be Released Except by Two-Thirds Vote of Each House.**—The Legislature shall have no power to release the inhabitants of, or property in, any county, city or town, from the payment of taxes levied for State or

county purposes, unless in case of great public calamity in any such county, city or town, when such release may be made by a vote of two thirds of each house of the Legislature.

Section 11. **Where Property Is to Be Assessed.**—All property, whether owned by persons or corporations, shall be assessed for taxation and the taxes paid in the county where situated, but the Legislature may by a two-thirds vote authorize the payment of taxes of nonresidents of counties to be made at the office of the Comptroller of Public Accounts. And all lands and other property not rendered for taxation by the owner thereof shall be assessed at its fair value by the proper officer.

Section 12. **Unorganized Counties.**—All property subject to taxation in, and owned by residents of, unorganized counties shall be assessed and the taxes thereon paid in the counties to which such unorganized counties shall be attached for judicial purposes; and lands lying in and owned by nonresidents of unorganized counties and lands lying in the territory not laid off into counties shall be assessed and the taxes thereon collected at the office of the Comptroller of the State.

Section 13. **Tax Sales; Tax Deeds; Redemptions.**—Provisions shall be made by the first Legislature for the speedy sale, without the necessity of a suit in court, of a sufficient portion of all lands and other property for the taxes due thereon, and every year thereafter for the sale, in like manner, of all lands and other property upon which the taxes have not been paid; and the deed of conveyance to the purchaser, for all lands and other property thus sold shall be held to vest a good and perfect title in the purchaser thereof, subject to be impeached only for actual fraud; provided, that the former owner shall within two years from date of filing for record of purchaser's deed have the right to redeem the land upon the following basis:

(1) Within the first year of the redemption period upon the payment of the amount of money paid for the land, including one ($1) dollar tax deed recording fee and all taxes, penalties, interest and costs paid plus not exceeding twenty-five (25%) per cent of the aggregate total;

(2) Within the last year of the redemption period upon the payment of the amount of money paid for the land, including one ($1) dollar tax deed recording fee and all taxes, penalties, interest and costs paid plus not exceeding fifty (50%) per cent of the aggregate total.

(Note.—The foregoing Section 13 of Article VIII was amended to insert the provisions for redemption given above for the original clause, which provided for "double the amount of money paid for the land" to be paid by the original owner for redemption. Submitted by Forty-second Legislature (1931), and adopted in an election Nov. 8, 1932. Proclaimed July 26, 1933.)

Section 14. **County Tax Assessor and Collector.**—Except as provided in Section 16 of this Article, there shall be elected by the qualified electors of each county an Assessor and Collector of Taxes, who shall hold his office for four years and until his successor is elected and qualified; and such Assessor and Collector of Taxes shall perform all the duties with respect to assessing property for the purpose of taxation and of collecting taxes as may be prescribed by the Legislature.

(Note.—Section 14 of Article VIII was first amended to consolidate offices of Tax Assessor and Tax Collector. (See also Section 16.) Submitted by Forty-second Legislature (1931), and adopted in an election Nov. 8, 1932. Proclaimed Jan. 9, 1933. It was again amended to change term of office from two to four years. Submitted by Fifty-third Legislature (1953) and adopted in election Nov. 2, 1954.)

Section 15. **Tax Liens and Sales.**—The annual assessment made upon landed property shall be a special lien thereon; and all property, both real and personal, belonging to any delinquent taxpayer shall be liable to seizure and sale for the payment of all the taxes and penalties due by such delinquent, and such property may be sold for the payment of the taxes and penalties due by such delinquent, under such regulations as the Legislature may provide.

Section 16. **Sheriff to Be County Tax Assessor-Collector in Some Counties.**—The Sheriff of each county, in addition to his other duties, shall be the Assessor and Collector of Taxes therefor. But in counties having ten thousand (10,000) or more inhabitants, to be determined by the last preceding census of the United States, an Assessor and Collector of Taxes shall be elected, as provided in Section 14 of this Article and shall hold office for four years and until his successor shall be elected and qualified.

(Note.—Section 16 of Article VIII was first amended to harmonize with section consolidating offices of Assessor and Collector of Taxes. (See also Section 14.) Submitted by Forty-second Legislature (1931) and adopted in an election Nov. 8, 1932. Proclaimed Jan. 9, 1933. It was again amended to change term of office from two to four years. Submitted by Fifty-third Legislature (1953) and adopted in election Nov. 2, 1954.)

Section 16-a. **Assessor-Collector of Taxes in Counties of Less Than Ten Thousand.**—In any county having a population of less than ten thousand (10,000 inhabitants, as determined by last preceding census of the United States, the Commissioners' Court may submit to the qualified property taxpaying voters of such county at an election the question of adding an Assessor-Collector of Taxes to the list of authorized county officials. If a majority of such voters voting in such election shall approve of adding an Assessor-Collector of Taxes to such list, then such official shall be elected at the next General Election for such Constitutional term of office as is provided for other Tax Assessor-Collectors in this State.

(Note.—The foregoing Section 16-a of Article VIII, an amendment, was added for the stated purpose of providing for a Tax Assessor-Collector in counties of less than 10,000 population. Submitted by the Fifty-third Legislature (1953) and adopted in an election Nov. 2, 1954.)

Section 17. **Power of Legislature as to Taxes.**—The specification of the objects and subjects of taxation shall not deprive the Legislature of the power to require other subjects or objects to be taxed, in such manner as may be consistent with the principles of taxation fixed in this Constitution.

Section 18. **Equalization of Taxes.**—The Legislature shall provide for equalizing, as near as may be, the valuation of all property subject to or rendered for taxation (the County *Commissioners' Court to constitute a board of equalization); and may also provide for the classification of all lands with reference to their value in the several counties.

Section 19. **Farm Products in the Hands of the Producer Exempt from All Taxation.**—Farm products in the hands of the producer and family supplies for home and farm use are exempt from all taxation until otherwise directed by a two-thirds vote of all the members *elect to both houses of the Legislature.

(Note.—The foregoing Section 19 of Article VIII, an amendment, was added for the stated purpose of exempting farm products from taxation. Submitted by Sixteenth Legislature (1879); ratified in an election Sept. 2, 1879, and declared adopted Oct. 14, 1879.)

Section 20. **Limiting Ad Valorem Tax Assessment; Discount for Prompt Payment of Taxes.**—No property of any kind in this State shall ever be assessed for ad valorem taxes at a greater value than its fair cash market value nor shall any Board of Equalization of any governmental or political subdivision or taxing district within this State fix the value of any property for tax purposes at more than its fair cash market value; provided, that in order to encourage the prompt payment of taxes, the Legislature shall have the power to provide that the taxpayer shall be allowed by the State and all governmental and political subdivisions and taxing districts of the State a three per cent discount on ad valorem taxes due the State or due any governmental or political subdivision or taxing district of the State if such taxes are paid ninety days before the date when they would otherwise become delinquent; and the taxpayer shall be allowed a two per cent discount on said taxes if paid sixty days before said taxes would become delinquent; and the taxpayer shall be allowed a one per cent discount if said taxes are paid thirty days before they would otherwise become delinquent. This amendment shall be effective Jan. 1, 1939. The Legislature shall pass necessary laws for the proper administration of this section.

(Note.—The foregoing Section 20 of Article VIII, an amendment, was added (1) to restrict assessed value to true market value, and (2) to provide for stated discounts for prepayment of taxes. Adopted in an election Aug. 23, 1937.)

## ARTICLE IX.—COUNTIES

Section 1. **Creation and Organization of Counties; Changing of County Lines.**—The Legislature shall have power to create counties for the convenience of the people, subject to the following provisions:

First. In the territory of the State exterior to all counties now existing, no new counties shall be created with a less area than 900 square miles, in a square form,

* Explanatory Note.—Official text erroneously states "Commissioner's" instead of "Commissioners'."

* Explanatory Note.—Expressed thus in official draft of Constitution.

unless prevented by pre-existing boundary lines. Should the State lines render this impracticable in border counties, the area may be less. The territory referred to may, at any time, in whole or in part, be divided into counties in advance of population and attached for judicial and land surveying purposes to the most convenient organized county or counties.

Second. Within the territory of any county or counties now existing, no new county shall be created with a less area than 700 square miles, nor shall any such county now existing be reduced to a less area than 700 square miles. No new counties shall be created so as to approach nearer than twelve miles of the county seat of any county from which it may, in whole or in part, be taken. Counties of a less area than 900, but of 700 or more square miles, within counties now existing, may be created by a two-thirds vote of each house of the Legislature, taken by yeas and nays, and entered on the journals. Any county now existing may be reduced to an area of not less than 700 square miles by a like two-thirds vote. When any part of a county is stricken off and attached to or created into another county, the part stricken off shall be holden for and obliged to pay its proportion of all the liabilities then existing of the county from which it was taken, in such manner as may be prescribed by law.

Third. No part of any existing county shall be detached from it and attached to another existing county until the proposition for such change shall have been submitted, in such manner as may be provided by law, to a vote of the electors of both counties, and shall have received a majority of those voting on the question in each.

### County Seats

Section 2. **How County Seats Are Created and Changed.**—The Legislature shall pass laws regulating the manner of removing county seats, but no county seat situated within five miles of the geographical center of the county shall be removed except by a vote of two thirds of all electors voting on the subject. A majority of such electors, however, voting at such election, may remove a county seat from a point more than five miles from a geographical center of the county to a point within five miles of such center, in either case the center to be determined by a certificate from the Commissioner of the General Land Office.

Section 3. **Home Rule.**—(1) Holding the belief that the highest degree of local self-government which is consistent with the efficient conduct of those affairs by necessity lodged in the Nation and the State will prove most responsive to the will of the people, and result to reward their diligence and intelligence by greater economy and efficiency in their local governmental affairs, it hereby is ordained:

(2) Any county having a population of sixty-two thousand (62,000) or more according to the then last Federal census may adopt a county home rule charter, to embrace those powers appropriate hereto, within the specific limitations hereinafter provided. It further is provided that the Legislature, by a favoring vote of two thirds of the total membership of both the Senate and the House of Representatives, may authorize any county, having a population less than that above specified, to proceed hereunder for the adoption of a charter; however, as a condition for such authorization, it is required that notice of the intent to seek legislative authority hereunder must be published in one or more newspapers, to give general circulation in the county affected, not less than once per week for four (4) consecutive weeks, and the first of such publications shall appear not less than thirty (30) days next prior to the time an act making proposal hereunder may be introduced in the Legislature. No county home rule charter may be adopted by any county save upon a favoring vote of the resident qualifying electors of the affected county. In elections submitting to the voters a proposal to adopt a charter (unless otherwise provided by a two-thirds vote of the total membership of each house of the Legislature) the votes cast by the qualified electors residing within the limits of all the incorporated cities and towns of the county shall be separately kept but collectively counted and the votes of the qualified electors of the county who do not reside within the limits of any incorporated city or town likewise shall be separately kept and separately counted, and unless there be a favoring majority of the votes cast within and a favoring majority of the votes cast without such collective cities and towns, the charter shall not be adopted. It

is expressly forbidden that any such charter may inconsonantly affect the operation of the general laws of the State relating to the judicial, tax, fiscal, educational, police, highway and health systems, or any other department of the State's superior government. Nothing herein contained shall be deemed to authorize the adoption of a charter provision inimical to or inconsistent with the sovereignty and established public policies of this State, and no provision having such vice shall have validity as against the State. No charter provision may operate to impair the exemption of homesteads as established by this Constitution and the status relating thereto.

(3) a. A charter hereunder may provide: the continuance of a County Commissioners' Court, as now constituted, to serve as the governing body of a county to operate hereunder; or, may provide for a governing body otherwise constituted, which shall be elective, and service therein shall be upon such qualifications, for such terms, under such plan of representation, and upon such conditions of tenure and compensation as may be fixed by any such charter. The terms of service in such governing body may exceed two (2) years, but shall not exceed six (6) years. In any event, in addition to the powers and duties provided by any such charter such governing body shall exercise all powers, and discharge all duties which, in the absence of the provisions hereof, would devolve by law on County Commissioners and County Commissioners' Courts. Further, any such charter may provide for the organization, reorganization, establishment and administration of the government of the county, including the control and regulation of the performance of and the compensation for all duties required in the conduct of the county affairs, subject to the limitations herein provided.

b. A charter hereunder may provide that judges of County Courts (including that County Court designated in this Constitution), and Justices of the Peace be compensated upon a salary basis in lieu of fees. The jurisdiction of the County Court designated in this Constitution, and the duties of the Judges thereof, may be confined to that general jurisdiction of a probate court, which elsewhere is defined in this Constitution. The office of Justice of the Peace may be made either elective or appointive. Other than as herein provided, no such charter shall provide for altering the jurisdiction or procedure of any court. The duties of District Attorney and/or County Attorney may be confined to representing the State in civil cases to which the State is a party and to enforcement of the State penal code, and the compensation of said attorneys may be fixed on a salary basis in lieu of fees.

c. Save as hereinabove and hereinafter otherwise provided, such charters, within the limits expressed therein, may invest the governing body to be established for any county electing to operate hereunder with the power to create, consolidate or abolish any office or department, whether created by other provisions of the Constitution or by statute, define the duties thereof, fix the compensation for service therein, make the same elective or appointive and prescribe the time, qualifications and conditions for tenure in any such office; save, that no such charter other than as hereinbefore authorized, shall provide to regulate the status, service, duties or compensation of members of the Legislature, Judges of the courts, District Attorneys, County Attorneys, or any office whatever by the law of the State required to be filled by an election embracing more than one county. Excepting herefrom nominations, elections or appointments to offices, the terms whereof may not have expired prior to the adoption of this amendment to the Constitution, at such time as a charter provision adopted hereunder may be in effect (save as to those offices which must continue to be elective, as herein elsewhere specified), all terms of county officers and all contracts for the giving of service by deputies under such officers, may be subject to termination by the administrative body of the county, under an adopted charter so providing, and there shall be no liability by reason thereof.

d. Any county electing to operate hereunder shall have the power, by charter provision, to levy, assess and collect taxes, and to fix the maximum rate for ad valorem taxes to be levied for specific purposes, in accordance with the Constitution and laws of this State, provided, however, that the limit of the aggregate taxes which may be levied, assessed and collected hereunder shall not exceed the limit or total fixed, or hereafter to be fixed by this Constitution to control counties, and the annual assess-

ment upon property, both real, personal and mixed, shall be a first superior and prior lien thereon.

e. In addition to the power herein provided, and in addition to powers included in county home rule charters, any county may, by a majority vote of the qualified electors of said county, amend its charter to include other powers, functions, duties and rights which now or hereafter may be provided by this Constitution and the statutes of the State for counties.

(4) Any county operating hereunder shall have the power to borrow money for all purposes lawful under its charter, to include the refunding of a lawful debt, in a manner conforming to the general laws of the State, and may issue therefor its obligations. Such obligations, other than those to refund a lawful debt, shall not be valid unless authorized by a majority of all votes cast by those resident qualified voters of the area affected by the taxes required to retire such obligations, who may vote thereon. In case of county obligations, maturing after a period of five (5) years, the same shall be issued to mature serially, fixing the first maturity of principal at a time not to exceed two (2) years next after the date of the issuance of such obligations. Such obligations may pledge the full faith and credit of the county; but in no event shall the aggregate obligations so issued, in principal amount outstanding at any one time, exceed the then existing constitutional limits for such obligations and such indebtedness and its supporting tax shall constitute a first and superior lien upon the property taxable in such county. No obligation issued hereunder shall be valid unless prior to the time of the issuance thereof there be levied a tax sufficient to retire the same as it matures, which tax shall not exceed the then existing constitutional limits.

(5) Such charter may authorize the governing body of a county operating hereunder to prescribe the schedule of fees to be charged by the officers of the county for specified service, to be in lieu of the schedule for such fees prescribed by the general laws of the State; and, to appropriate such fees to such funds as the charter may prescribe; provided, however, no fees for a specified service shall exceed in amount the fee fixed by general law for that same service. Such charter as to all judicial officers, other than District Judges, may prescribe the qualifications for services, provided the standards therefore be not lower than those fixed by the general laws of the State.

(6) a. Subject to the express limitations upon the exercise of the powers of this subdivision to be authorized, such charters may provide (or omit to provide) that the governmental and/or proprietary functions of any city, town, district or other defined political subdivision (which is a governmental agency and embraced within the boundaries of the county) be transferred, either as to some or all of the functions thereof, and yielded to the control of the administrative body of the county. No such transfer or yielding of functions may be effected, unless the proposal is submitted to a vote of the people and, unless otherwise provided by a two-thirds vote of the total membership of each house of the Legislature, such a proposal shall be submitted as a separate issue, and the vote within and without any such city, town, district, or other defined governmental entity, shall be separately cast and counted, and unless two thirds of the qualified votes cast within the yielding defined governmental entity, and a majority of the qualified votes cast in the remainder of the county, favor the proposed merger, it shall not be effected. In case of the mergers hereby authorized, without express charter provision therefor, in so far as may be required to make effective the object of the proposed merger, the county shall succeed to all the appropriate lawful powers, duties, rights, procedures, restrictions and limitations which prior to the merger were reposed in, or imposed upon, the yielding governmental agency. Particularly, it is provided that the power to create funded indebtedness and to levy taxes in support thereof may be exercised only by such procedures, and within such limits, as now are, or hereafter may be provided by law to control such appropriate other governmental agencies were they to be independently administered. Such mergers may be effected under proposed contracts between the county and any such yielding governmental agency, to be approved at an election as hereinbefore provided for. In order to increase governmental efficiency and effect economy the county may contract with the principal city of the county to perform

one or more of its functions, provided such contracts shall not be valid for more than two (2) years.

b. In case of the partial or complete merger of the government of a city operating under a home rule charter, with the government of a county operating hereunder, those city charter provisions affected thereby shall cease to control, and the county charter provisions shall control.

c. When any embraced incorporated city or town elects to merge its governmental functions with those of the county under the provisions hereof, such charter may provide for defining or redefining boundaries of such cities and towns, provided, however, that in defining or redefining the boundaries of such cities and towns, such boundaries may be extended only to include those areas contiguous to such cities as are urban in character; and as to such cities or town and for the benefit thereof the county, in addition to the primary city and county tax herein authorized and any other lawful district tax, may levy and collect taxes upon the property taxable within such city or town as defined or redefined, within the limits authorized by Sections 4 and 5 of Article XI of this Constitution (or any amendments thereof), for incorporated cities according to the population, provided that no tax greater than that existing at the time of such merger or for any added purpose shall be imposed upon any such city or town unless authorized by a majority of all votes cast by the resident qualified voters of such city or town.

d. Areas urban in character though not incorporated, under appropriate charter provision may be defined as such by the governing body of the county, provided, however, that no portion of the county shall be defined as an urban area unless it has sufficient population to entitle it to incorporate under the then existing laws of the State; and no such urban area, when created, shall be vested with any taxing or bonding power which it would not possess if it were operating as a separate incorporated unit under the then existing constitutional and statutory provisions of this State; and provided further that the governing body of the county for the government of such areas shall have and exercise all powers and authority granted by law to the governing bodies of similar areas when separately incorporated as a city or town, and such areas shall be subject to additional taxation within the same constitutional limits as control taxation for a city or a town of like population. Likewise such charter may provide for the governing board of the county subject to existing constitutional and statutory provisions to define, create and administer districts, and have and exercise the powers and authority granted by the Constitution and laws relative to the same.

(7) No provision of this Constitution inconsonant with the provisions of this Section 3, of Article IX, shall be held to control the provisions of a charter adopted hereunder, and conforming herewith. Charters adopted hereunder shall make appropriate provision for the abandonment, revocation, and amendment thereof, subject only to the requirements that must be a favoring majority of the vote cast upon such a proposal, by the qualified resident electors of the county; and, no charter may forbid amendments thereof for a time greater than two (2) years. The provisions hereof shall be self-executing, subject only to the duty of the Legislature to pass all laws (consistent herewith) which may be necessary to carry out the intent and purpose hereof. Further, the Legislature shall prescribe a procedure for submitting to decision, by a majority vote of the electors, voting thereon, proposed alternate and elective charter provisions.

(Note.—The foregoing Section 3 of Article IX, an amendment, was added to the Constitution for the purposes of providing for county government under home rule charter, when of stated population; making permissible consolidation of city and county governments under stipulated conditions; and for other stated purposes. Submitted by the Forty-third Legislature (1933), and adopted in an election Aug. 26, 1933.)

Section 4. **County-Wide Hospital Districts.**—The Legislature may by law authorize the creation of county-wide Hospital Districts in counties having a population in excess of 190,000 and in Galveston County, with power to issue bonds for the purchase, acquisition, construction, maintenance and operation of any county-owned hospital, or where the hospital system is jointly operated by a county and city within the county, and to provide for the transfer to the county-wide hospital district of the title to any land, buildings or equipment, jointly or separately owned, and for the assumption by the district of

any outstanding bonded indebtedness theretofore issued by any county or city for the establishment of hospitals or hospital facilities; to levy a tax not to exceed Seventy-five (75¢) cents on the One Hundred ($100.00) Dollars valuation of all taxable property within such district, provided, however, that such district shall be approved at an election held for that purpose, and that only qualified, property taxpaying voters in such county shall vote therein; provided further, that such hospital district shall assume full responsibility for providing medical and hospital care to needy inhabitants of the county, and thereafter such county and cities therein shall not levy any other tax for hospital purposes; and provided further that should such hospital district construct, maintain and support a hospital or hospital system, that the same shall never become a charge against the State of Texas, nor shall any direct appropriation ever be made by the Legislature for the construction, maintenance or improvement of the said hospital or hospitals. Should the Legislature enact enabling laws in anticipation of the adoption of this amendment, such acts shall not be invalid because of their anticipatory character.

(Note.—The foregoing Section 4 of Article IX, an amendment, was added to the Constitution for the purpose of providing for county-wide hospital districts. Submitted by Fifty-third Legislature (1953) and adopted in election Nov. 2, 1954.)

Section 5-a. The Legislature may by law authorize the creation of two hospital districts, one to be coextensive with and have the same boundaries as the incorporated City of Amarillo, as such boundaries now exist or as they may hereafter be lawfully extended, and the other to be coextensive with Wichita County.

If such district or districts are created, they may be authorized to levy a tax not to exceed Seventy-five Cents (75¢) on the One Hundred Dollars ($100.00) valuation of taxable property within the district; provided, however, no tax may be levied until approved by a majority vote of the participating resident qualified property taxpaying voters who have duly rendered their property for taxation. The maximum rate of tax may be changed at subsequent elections so long as obligations are not impaired, and not to exceed the maximum limit of Seventy-five Cents (75¢) per One Hundred Dollars ($100.00) valuation, and no election shall be required by subsequent changes in the boundaries of the City of Amarillo.

If such tax is authorized, no political subdivision or municipality within or having the same boundaries as the district may levy a tax for medical or hospital care for needy individuals, nor shall they maintain or erect hospital facilities, but the district shall by resolution assume all such responsibilities and shall assume all of the liabilities and obligations (including bonds and warrants) of such subdivisions or municipalities or both. The maximum tax rate submitted shall be sufficient to discharge such obligations, liabilities, and responsibilities, and to maintain and operate the hospital system, and the Legislature may authorize the district to issue tax bonds for the purpose of the purchase, construction, acquisition, repair or renovation of improvements, and initially equipping the same, and such bonds shall be payable from said Seventy-five Cents (75¢) tax. The Legislature shall provide for transfer of title to properties to the district.

b. The Legislature may by law permit the County of Potter (in which the City of Amarillo is partially located) to render financial aid to that district by paying a part of the expenses of operating and maintaining the system and paying a part of the debts of the district (whether assumed or created by the district) and may authorize the levy of a tax not to exceed Ten Cents (10¢) per One Hundred Dollars ($100.00) valuation (in addition to other taxes permitted by this Constitution) upon all property within the county but without the City of Amarillo at the time such levy is made for such purposes. If such tax is authorized, the district shall by resolution assume the responsibilities, obligations, and liabilities of the County in the manner and to the extent hereinabove provided for political subdivisions having boundaries coextensive with the district, and the county shall not thereafter levy taxes (other than herein provided) for hospital purposes nor for providing hospital care for needy individuals of the county.

c. The Legislature may by law authorize the creation of a hospital district within Jefferson County, the boundaries of which shall include only the area comprising the Jefferson County Drainage District No. 7

and the Port Arthur Independent School District, as such boundaries existed on the first day of January, 1957, with the power to issue bonds for the sole purpose of purchasing a site for, and the construction and initial equipping of, a hospital system, and with the power to levy a tax of not to exceed Seventy-five Cents (75¢) on the One Hundred Dollars ($100.00) valuation of property therein for the purpose of paying the principal and interest on such bonds.

The creation of such hospital district shall not be final until approved at an election by a majority of the resident property taxpaying voters voting at said election who have duly rendered their property for taxation upon the tax rolls of either said Drainage or said School District, nor shall such bonds be issued or such tax be levied until so approved by such voters.

The district shall not have the power to levy any tax for the maintenance or operation of the hospital or facilities, but shall contract with other political subdivisions of the state or private individuals, associations, or corporations for such purposes.

If the district hereinabove authorized is finally created, no other hospital district may be created embracing any part of the territory within its boundaries, but the Legislature by law may authorize the creation of a hospital district incorporating therein the remainder of Jefferson County, having the powers and duties and with the limitations presently provided by Article IX, Section 4, of the Constitution of Texas, except that such district shall be confirmed at an election wherein the resident qualified property taxpaying voters who have duly rendered their property within such proposed district for taxation on the county rolls, shall be authorized to vote. A majority of those participating in the election voting in favor of the district shall be necessary for its confirmation and for bonds to be issued.

d. Should the Legislature enact enabling laws in anticipation of the adoption of this amendment, such Acts shall not be invalid because of their anticipatory character.

(Note.—The foregoing Section 4 of Article IX, an amendment, was added to the Constitution for the purpose of providing for county-wide hospital districts. Submitted by Fifty-third Legislature (1953) and adopted in election Nov. 2, 1954.)

## ARTICLE X.—RAILROADS

Section 1. **Railroads Connecting at State Lines; Crossing; Continuous Lines.**—Any railroad corporation or association organized under the law for the purpose shall have the right to construct and operate a railroad between any points within this State, and to connect at the State line with railroads of other States. Every railroad company shall have the right with its road to intersect, connect with or cross any other railroad; and shall receive and transport each the other's passengers, tonnage and cars, loaded or empty, without delay or discrimination, under such regulations as shall be prescribed by law.

*Article [Section] 2. **Public Highways; Common Carriers; Duty of the Legislature; Fixing Rates.**—Railroads heretofore constructed or which may hereafter be constructed in this State are hereby declared public highways and railroad companies common carriers. The Legislature shall pass laws to regulate railroad freight and passenger tariffs to correct abuses, and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs on the different railroads in this State, and enforce the same by adequate penalties; and to the further accomplishments of these objects and purposes may provide and establish all requisite means and agencies invested with such powers as may be deemed adequate and advisable.

(Note.—The foregoing *"Article [Section] 2" of Article X is an amended section, the amendment being in the last clause which permitted establishment of the Railroad Commission of Texas. Submitted by Twenty-first Legislature (1889), ratified in an election Nov. 4, 1890, and declared adopted Dec. 19, 1890.)

Section 3. **Railroads to Keep Public Office in State; Directors; Annual Report.**—Every railroad or other corporation, organized or doing business in this State under the laws or authority thereof, shall have and maintain a public office or place in this State for the transaction of its business, where transfers of stock shall be made, and where shall be kept, for inspection by the stockholders of such corporations, books in which shall be recorded the amount of capital stock subscribed, the

* Explanatory Note.—The legislative resolution submitting this amendment erroneously used the word, "Article," instead of the usual word, "Section." Order used above is according to official draft of the Constitution.

names of the owners of the stock, the amounts owned by them, respectively, the amount of stock paid, and by whom, the transfer of said stock, with the date of the transfer, the amount of its assets and liabilities, and the names and places of residence of its officers. The directors of every railroad company shall hold one meeting annually in this State, public notice of which shall be given thirty days previously, and the president or superintendent shall report annually under oath to the Comptroller or Governor their acts and doings, which report shall include such matters relating to railroads as may be prescribed by law. The Legislature shall pass laws enforcing by suitable penalties the provisions of this section.

Section 4. **Rolling Stock for Railroad Property Not Exempt from Execution.**—The rolling stock and all other movable property belonging to any railroad company or corporation in this State shall be considered personal property, and its real and personal property, or any part thereof, shall be liable to execution and sale in the same manner as the property of individuals; and the Legislature shall pass no laws exempting any such property from execution and sale.

Section 5. **Railroads Shall Not Consolidate with Competing Lines.**—No railroad or other corporation, or the lessees, purchasers or managers of any railroad corporation, shall consolidate the stock, property or franchises of such corporation with or lease or purchase the works or franchises of or in any way control any railroad corporation owning or having under its control a parallel or competing line; nor shall any officer of such railroad corporation act as an officer of any other railroad corporation owning or having the control of a parallel or competing line.

Section 6. **No Railroad Shall Consolidate with a Foreign Road.**—No railroad company organized under the laws of this State shall consolidate by private or judicial sale or otherwise with any railroad company organized under the laws of any other State or of the United States.

Section 7. **No Street or Public Highway Shall Be Used for the Construction of Street Railways Without the Consent of the Local Authorities Having Control of the Street or Highway.**—No law shall be passed by the Legislature granting the right to construct and operate a street railroad within any city, town or village, or upon any public highway without first acquiring the consent of the local authorities having control of the street or highway proposed to be occupied by such street railroad.

Section 8. **Conditions Upon Which Railroad Corporations May Receive the Benefit of Future Legislation.**—No railroad corporation in existence at the time of the adoption of this Constitution shall have the benefit of any future legislation except on condition of complete acceptance of all the provisions of this Constitution applicable to railroads.

Section 9. **Under Certain Conditions Railroads Must Be Constructed Through County Seats.**—No railroad hereafter constructed in this State shall pass within a distance of three miles of any county seat without passing through the same, and establishing and maintaining a depot therein, unless prevented by natural obstacles, such as streams, hills or mountains; provided, such town or its citizens shall grant the right of way through its limits and sufficient ground for ordinary depot purposes.

## ARTICLE XI.—MUNICIPAL CORPORATIONS

Section 1. **Counties Are Legal Subdivisions of the State.**—The several counties of this State are hereby recognized as legal subdivisions of the State.

Section 2. **Public Buildings and Roads.**—The construction of jails, courthouses and bridges and the establishment of county poorhouses and farms and the laying out, construction and repairing of county roads shall be provided for by general laws.

Section 3. **No County or Municipal Corporation Shall Become a Subscriber to the Capital Stock of Any Private Corporation or Make Any Donation to the Same.**—No county, city or other municipal corporation shall hereafter become a subscriber to the capital of any private corporation or association, or make any appropriation or donation to the same, or in anywise loan its credit; but this shall not be construed to in any way affect any obligation heretofore undertaken pursuant to law.

Section 4. **Cities and Towns Having a Population of Less Than 5,000 Inhabitants to Be Chartered by General Laws; Dues to be Collected in Current Money.**—Cities

and towns having a population of 5,000 or less may be chartered alone by general law. They may levy, assess and collect such taxes as may be authorized by law, but no tax for any purpose shall ever be lawful for any one year which shall exceed 1½ per cent of the taxable property of such city; and all taxes shall be collectible only in current money, and all licenses and occupation taxes levied, and all fines, forfeitures and penalties accruing to said cities and towns shall be collectible only in current money.

(Note.—The foregoing Section 4 of Article XI has been twice amended, as follows: (1) To provide that towns of 5,000 or less (instead of 10,000 or less, as provided by the original section) may be chartered alone by general law. Submitted by Thirty-first Legislature (1909), ratified in an election Aug. 3, 1909, and declared adopted Sept. 24, 1909. (2) To authorize a maximum tax rate, in towns of 5,000 or less, of 1½ per cent of taxable values, in lieu of the originally specified maximum of one fourth of 1 per cent. Submitted by Thirty-sixth Legislature (1919) and adopted at election of Nov. 2, 1920.)

Section 5. **Cities of More than 5,000 Inhabitants May by a Majority Vote of the Qualified Voters Adopt Their Own Charter; Limitation as to Taxation and Debt.**—Cities having more than five thousand (5,000) inhabitants may by a majority vote of the qualified voters of said city, at an election held for that purpose, adopt or amend their charters, subject to such limitations as may be prescribed by the Legislature, and providing that no charter or any ordinance passed under said charter shall contain any provision inconsistent with the Constitution of the State or of the general laws enacted by the Legislature of this State; said cities may levy, assess and collect such taxes as may be authorized by law or by their charters; but no tax for any purpose shall ever be lawful for any one year which shall exceed 2½ per cent of the taxable property of such city, and no debt shall ever be created by any city unless at the same time provision be made to assess and collect annually a sufficient sum to pay the interest thereon and creating a sinking fund of at least 2 per cent thereon; and provided, further, that no city charter shall be altered, amended or repealed oftener than every two years.

(Note.—The foregoing Section 5 of Article XI has been twice amended, as follows: (1) To authorize towns of more than 5,000 population (instead of more than 10,000, as provided in the original section) to be chartered by special act, and allowing in such cities a maximum tax rate of 2½ per cent. Submitted by Thirty-first Legislature (1909), ratified in an election Aug. 3, 1909, and proclaimed Sept. 24, 1909. (2) To grant home rule to cities of more than 5,000 population. Submitted by Thirty-second Legislature (1911), adopted at election of Nov. 5, 1912, and proclaimed Dec. 30, 1912.)

Section 6. **Municipal Taxation.**—Counties, cities and towns are authorized, in such mode as may now or may hereafter be provided by law, to levy, assess and collect the taxes necessary to pay the interest and provide a sinking fund to satisfy any indebtedness heretofore legally made and undertaken; but all such taxes shall be assessed and collected separately from that levied, assessed and collected for current expenses of municipal government and shall, when levied, specify in the act of levying the purpose therefor; and such taxes may be paid in the coupons, bonds or other indebtedness for the payment of which such tax may have been levied.

Section 7. **Taxation of Seawalls, Etc.; Restrictions and Limitations; Eminent Domain.**—All counties and cities bordering on the coast of the Gulf of Mexico are hereby authorized upon a vote of two-thirds majority of the resident property taxpayers voting thereon at an election called for such purpose, to levy and collect such tax for construction of seawalls, breakwaters or sanitary purposes, as may now or may hereafter be authorized by law, and may create a debt for such works and issue bonds in evidence thereof. But no debt for any purpose shall ever be incurred in any manner by any city or county unless provision is made at the time of creating the same, for levying and collecting a sufficient tax to pay the interest thereon and provide at least 2 per cent as a sinking fund; and the condemnation of the right of way for the erection of such work shall be fully provided for.

(Note.—The foregoing Section 7 of Article XI was amended to simplify language describing electors' qualifications. Submitted by Forty-second Legislature (1931), adopted in election Nov. 8, 1932. Proclaimed Jan. 9, 1933.)

Section 8. **State Aid for Seawalls, Etc.**—The counties and cities on the Gulf Coast being subject to calamitous overflows, and a very large proportion of the general revenue being derived from those

otherwise prosperous localities. *The Legislature is specially authorized to aid, by donation of such portion of the public domain as may be deemed proper, and in such mode as may be provided by law, the construction of seawalls, or breakwaters, such aid to be proportioned to the extent and value of the works constructed, or to be constructed, in any locality.

Section 9. **Public Buildings, Etc.**—The property of counties, cities and towns owned and held only for public purposes, such as public buildings and the sites therefor, fire engines and the furniture thereof, and all property used or intended for extinguishing fires, public grounds and all other property devoted exclusively to the use and benefit of the public, shall be exempt from forced sale and from taxation; provided, nothing herein shall prevent the enforcement of the vendor's lien, the mechanic's or builder's lien, or other liens now existing.

Section 10. **City or Town May Be School District; Special Tax.**—The Legislature may constitute any city or town a separate and independent school district. And when the citizens of any city or town have a charter authorizing the city authorities to levy and collect a tax for the support and maintenance of a public institution of learning, such tax may hereafter be levied and collected, if, at an election held for that purpose, two thirds of the taxpayers of such city or town shall vote for such tax.

Section 11. A Home Rule City may provide by charter or charter amendment, and a city, town or village operating under the general laws may provide by majority vote of the qualified voters voting at an election called for that purpose, for a longer term of office than two (2) years for its officers, either elective or appointive, or both, but not to exceed four (4) years; provided, however, that tenure under Civil Service shall not be affected hereby.

Provided, however, if any of such officers, elective or appointive, shall announce their candidacy, or shall in fact become a candidate, in any general, special or primary election, for any office of profit or trust under the laws of this State or the United States other than the office then held, at any time when the unexpired term of the office then held shall exceed one (1) year, such announcement or such candidacy shall constitute an automatic resignation of the office then held, and the vacancy thereby created shall be filled pursuant to law in the same manner as other vacancies for such office are filled.

A municipality so providing a term exceeding two (2) years but not exceeding four (4) years for any of its non-civil service officers must elect all of the members of its governing body by majority vote of the qualified voters in such municipality, and any vacancy or vacancies occurring on such governing body shall not be filled by appointment but must be filled by majority vote of the qualified voters at a special election called for such purpose within one hundred and twenty (120) days after such vacancy or vacancies occur.

## ARTICLE XII.—PRIVATE CORPORATIONS

Section 1. **Corporations Created by General Laws.**—No private corporation shall be created except by general laws.

Section 2. **General Laws to Be Enacted.**—General laws shall be enacted providing for the creation of private corporations, and shall therein provide fully for the adequate protection of the public and of the individual stockholders.

Section 3. **Franchises to Be Under Legislative Control.**—The right to authorize and regulate freights, toll, wharfage or fares, levied and collected or proposed to be levied and collected, by individuals, companies or corporations for the use of highways, landings, wharves, bridges and ferries, devoted to public use, has never been and shall never be relinquished or abandoned by the State, but shall always be under legislative control and depend upon legislative authority.

Section 4. **Charges and Collections of Freights, Wharfage, Fares or Tolls for the Use of Property Devoted to the Public Prohibited Except Specially Authorized by Law.**—The first Legislature assembled after the adoption of this Constitution shall provide a mode of procedure by the Attorney General and District or County Attorneys, in the name and behalf of the

* Explanatory Note.—The starting of a new sentence at this point follows the official draft of the Constitution, but it is evident that the foregoing phrase ending with "localities" was meant to modify the following sentence.

State, to prevent and punish the demanding and receiving or collection of any and all charges, as freight, wharfage, fares or tolls, for the use of property devoted to the public, unless the same shall have been specially authorized by law.

Section 5. **Freights, Wharfage, Fares or Tolls Subject to Legislative Control.**—All laws granting the right to demand and collect freights, fares, tolls or wharfage shall at all times be subject to amendment, modification or repeal by the Legislature.

Section 6. **The Issuance of Stocks and Bonds by Corporations Prohibited Except for Money Paid and Labor Done, Etc.**—No corporation shall issue stock or bonds except for money paid, labor done, or property actually received, and all fictitious increase of stock or indebtedness shall be void.

Section 7. **Vested Rights Protected.**—Nothing in this article shall be construed to divest or affect rights guaranteed by any existing grant or statute of this State or of the Republic of Texas.

## ARTICLE XIII.—SPANISH AND MEXICAN LAND TITLES

Section 1. **Fines, Penalties and Escheats.**—All fines, penalties, forfeitures and escheats which have heretofore accrued to the Republic and State of Texas under their Constitutions and laws shall accrue to the State under this Constitution; and the Legislature shall provide a method for determining what lands have been forfeited and for giving effect of escheats; and all such rights of forfeiture and escheat to the State shall, ipso facto, inure to the protection of the innocent holders of junior titles, as provided in Sections 2, 3 and 4 of this article.

Section 2. **Lands Not Recorded, Archived or in Possession.**—Any claim of title or right to land in Texas, issued prior to the 13th day of November, 1835, not duly recorded in the county where the land was situated at the time of such record, or not duly archived in the General Land Office, or not in the actual possession of the grantee thereof, or some person claiming under him, prior to the accruing of junior title thereto from the sovereignty of the soil, under circumstances reasonably calculated to give notice to said junior grantee, has never had, and shall not have, standing or effect against such junior title, or color of title, acquired without such or actual notice of such prior claim of title or right; and no condition annexed to such grants, not archived or recorded, or occupied as aforesaid, has been or ever shall be released or waived, but actual performance of all such conditions shall be proved by the person or persons claiming under such title or claim of right in order to maintain action thereon, and the holder of such junior title, or color of title, shall have all the rights of the government which have heretofore existed, or now exist, arising from the nonperformance of all such conditions.

Section 3. **Nonpayment of Taxes; Presumptions.**—Nonpayment of taxes on any claim of title to land dated prior to the 13th day of November, 1835, not recorded or archived, as provided in Section 2, by the person or persons so claiming or those under whom he or they so claim, from that date up to the date of the adoption of this Constitution, shall be held to be a presumption that the right thereto has reverted to the State, and that said claim is a stale demand, which presumption shall only be rebutted by payment of all taxes on said lands. State, county and city or town, to be assessed on the fair value of such lands by the Comptroller, and paid to him, without commutation or deduction for any part of the above period.

Section 4. **Titles Not to Be Recorded or Archived; Actual Possession; "Duly Recorded" Defined.**—No claim of title or right to land which issued prior to the 13th day of November, 1835, which has not been duly recorded in the county where the land was situated at the time of such record, or which has not been duly archived in the General Land Office, shall ever hereafter be deposited in the General Land Office, or recorded in this State or delineated on the maps, or used as evidence in any of the courts of this State, and the same are stale claims; but this shall not affect such rights or presumptions as arise from actual possession. By the words "duly recorded" as used in Sections 2 and 4 of this article it is meant that such claim of title or right to land shall have been recorded in the proper office, and that mere errors in the certificate of registration, or informality, not affecting the fairness and good faith of the holder thereof, with which the record was made,

shall not be held to vitiate such record.

Section 5. **Certain Claims Declared Void.**—All claims, locations, surveys, grants and titles of any kind which are declared null and void by the Constitution of the Republic or State of Texas are, and the same shall remain forever, null and void.

Section 6. **Forgers of Land Titles.**—The Legislature shall pass stringent laws for the detection and conviction of all forgers of land titles, and may make such appropriations of money for that purpose as may be necessary.

Section 7. **Certain Sections Not a Repeal of Laws.**—Sections 2, 3, 4 and 5 of this article shall not be so construed as to set aside or repeal any law or laws of the Republic or State of Texas, releasing the claimants of headrights of colonists of a league of land, or less, from compliance with the conditions on which their grants were made.

## ARTICLE XIV.—PUBLIC LANDS AND LAND OFFICE

Section 1. **General Land Office; Grants to Be Registered in; Land Office to Be Self-Sustaining.**—There shall be one General Land Office in the State, which shall be at the seat of government, where all land titles which have emanated or may hereafter emanate from the State shall be registered, except those titles the registration of which may be prohibited by this Constitution. It shall be the duty of the Legislature at the earliest practicable time to make the Land Office self-sustaining, and from time to time the Legislature may establish such subordinate offices as may be deemed necessary.

Section 2. **Revival, Survey and Location of Genuine Certificates.**—All unsatisfied genuine land certificates barred by Section 4, Article X, of the Constitution of 1869, by reason of the holders or owners thereof failing to have them surveyed and returned to the Land Office by the 1st day of January, 1875, are hereby revived. All unsatisfied genuine land certificates now in existence shall be surveyed and returned to the General Land Office within five years after the adoption of this Constitution, or be forever barred; and all genuine land certificates hereafter issued by the State shall be surveyed and returned to the General Land Office within five years after issuance, or be forever barred; provided, that all genuine land certificates heretofore or hereafter issued shall be located, surveyed or patented only upon vacant and unappropriated public domain, and not upon any land title or equitably owned under color of title from the sovereignty of the State, evidence of the appropriation of which is on the county records or in the General Land Office; or when the appropriation is evidenced by the occupation of the owner, or of some person holding for him.

Section 3. **Grants to Railways.**—The Legislature shall have no power to grant any of the lands of this State to any railway company except upon the following restrictions and conditions.

First. That there shall never be granted to any such corporation more than sixteen sections to the mile, and no reservation of any part of the public domain for the purpose of satisfying such grant shall ever be made

Second. That no land certificate shall be issued to such company until they have equipped, constructed and in running order at least ten miles of road; and on failure of such company to comply with the terms of its charter, or to alienate its land at a period to be fixed by law, in no event to exceed twelve years from the issuance of the patent, all said land shall be forfeited to the State and become a portion of the public domain, and liable to location and survey. The Legislature shall pass general laws only, to give effect to the provisions of this section.

Section 4. **Sale of Lands to Actual Settlers.**—No certificate for land shall be sold at the Land Office except to actual settlers upon the same, and in lots not to exceed one hundred and sixty acres.

Section 5. **Alienation of Railroad Grants; Duty of Attorney General.**—All lands heretofore or hereafter granted to railroad companies, where the charter or law of the State required or shall hereafter require their alienation within a certain period, on pain of forfeiture, or is silent on the subject of forfeiture, and which lands have not been or shall not hereafter be alienated, in conformity with the terms of their charters, and the laws under which the grants were made, are hereby declared forfeited to the State, and subject to preemption, location and survey, as other vacant lands. All lands heretofore granted

to said railroad companies to which no forfeiture was attached, on their failure to alienate, are not included in the foregoing clause, but in all such last named cases it shall be the duty of the Attorney General, in every instance where alienations have been or hereafter may be made, to inquire into the same, and if such alienation has been made in fraud of the rights of the State, and is colorable only, the real and beneficial interest being still in such corporation, to institute legal proceedings in the county where the seat of government is situated, to forfeit such lands to the State, and if such alienation be judicially ascertained to be fraudulent and colorable as aforesaid, such lands shall be forfeited to the State and become a part of the vacant public domain, liable to pre-emption, location and survey.

Section 6. **Grants to Heads of Families and Single Men.**—To every head of a family without a homestead there shall be donated 160 acres of public land, upon condition that he will select and locate said land, and occupy the same three years, and pay the office fees due thereon. To all single men of 18 years of age and upwards shall be donated eighty acres of public land, upon the terms and conditions prescribed for heads of families.

Section 7. **Mines and Minerals Released to Owners of the Soil.**—The State of Texas hereby releases to the owner or owners of the soil all mines and minerals that may be on the same, subject to taxation as other property.

Section 8. **Time Extended to Comply with Act of 1870.**—Persons residing between the Nueces River and the Rio Grande and owning grants for lands which emanated from the Government of Spain, or that of Mexico, which grants have been recognized and validated by the State, by acts of the Legislature, approved Feb. 10, 1852; Aug. 15, 1870, and other acts, and who have been prevented from complying with the requirements of said acts by the unsettled condition of the country, shall be allowed until the 1st day of January, 1880, to complete their surveys and the plots thereof, and to return their field notes to the General Land Office; and all claimants failing to do so shall be forever barred; provided, nothing in this section shall be so construed as to validate any titles not already valid, or to interfere with the rights of third persons.

## ARTICLE XV.—IMPEACHMENT

Section 1. **Power of Impeachment Vested in the House of Representatives.**—The power of impeachment shall be vested in the House of Representatives.

Section 2. **Trial by Senate.**—Impeachment of the Governor, Lieutenant Governor, Attorney General, Treasurer, Commissioner of the General Land Office, Comptroller, and the Judges of the Supreme Courts, Courts of Appeal and District Courts shall be tried by the Senate.

Section 3. **Oath of Senators.**—When the Senate is sitting as a court of impeachment, the Senators shall be on oath, or affirmation, impartially to try the party impeached, and no person shall be convicted without the concurrence of two thirds of the Senators present.

Section 4. **Judgment; Party Convicted Subject to Indictment Under the Criminal Laws.**—Judgment in cases of impeachment shall extend only to removal from office and disqualification from holding any office of honor, trust or profit under this State. A party convicted on impeachment shall also be subject to indictment, trial and punishment, according to law.

Section 5. **Officers Suspended During Pending Proceedings.**—All officers against whom articles of impeachment may be preferred shall be suspended from the exercise of the duties of their office during the pendency of such impeachment. The Governor may make a provisional appointment to fill the vacancy occasioned by the suspension of an officer until the decision on the impeachment.

Section 6. **Removal of District Judges.**—Any Judge of the District Courts of the State who is incompetent to discharge the duties of his office, or who shall be guilty of partiality, or oppression, or other official misconduct, or whose habits and conduct are such as to render him unfit to hold such office, or who shall negligently fail to perform his duties as Judge, or who shall fail to execute in a reasonable measure the business in his courts, may be removed by the Supreme Court. The Supreme Court shall have original jurisdiction to hear and determine the causes aforesaid when presented in writing, upon the oaths, taken before some Judge of a court of record, of not less than ten lawyers, practicing in the courts held by such Judge, and licensed to practice in the Supreme Court; said presentment to be founded either

upon the knowledge of the persons making it or upon the written oaths as to facts of creditable witnesses. The Supreme Court may issue all needful process and prescribe all needful rules to give effect to this section. Causes of this kind shall have precedence and be tried as soon as practicable.

Section 7. **Trial and Removal of Other Officers.**—The Legislature shall provide by law for the trial and removal from office of all officers of this State, the modes for which have not been provided in this Constitution.

### Address

Section 8. **Removal of Judges of Supreme Court and Courts of Appeals and of District Courts.**—The Judges of the Supreme Court, Courts of Appeals and District Courts shall be removed by the Governor on the address of two thirds of each house of the Legislature, for willful neglect of duty, incompetency, habitual drunkenness, oppression in office, or other reasonable cause which shall not be sufficient ground for impeachment; provided, however that the cause or causes for which such removal shall be required shall be stated at length in such address and entered on the journals of each house; and provided, further, that the cause or causes shall be notified to the Judge so intended to be removed, and he shall be admitted to a hearing in his own defense before any vote for such address shall pass; and in all such cases the vote shall be taken by yeas and nays and entered on the journals of each house, respectively.

## ARTICLE XVI.—GENERAL PROVISIONS

Section 1. **Official Oaths.**—Members of the Legislature, and all officers, before they enter upon the duties of their offices, shall take the following Oath or Affirmation:

"I, ....., do solemnly swear (or affirm), that I will faithfully execute the duties of the office of ..... of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this state; and I furthermore solemnly swear (or affirm), that I have not, directly nor indirectly paid, offered, or promised to pay, contributed, nor promised to contribute any money, or valuable thing, or promised any public office or employment, as a reward for the giving or withholding a vote at the election at which I was elected. So help me God."

(Note.—The foregoing Section 1 of Article XVI was amended from the original text to eliminate that part of the oath stating that the incoming official had not fought a duel or sent or accepted a challenge to a duel or acted as a second in a duel. Submitted by Forty-fifth Legislature (1937) and adopted in an election Nov. 8, 1938.)

Section 2. **Right of Suffrage to Be Protected; Criminals Disfranchised.**—Laws shall be made to exclude from office, serving on juries, and from the right of suffrage, those who may have been or shall hereafter be convicted of bribery, perjury, forgery or other high crimes. The privilege of free suffrage shall be protected by laws, regulating elections and prohibiting, under adequate penalties, all undue influence therein from power, bribery, tumult, or other improper practice.

Section 3. **Fines and Costs to Be Discharged by Manual Labor.**—The Legislature shall make provisions whereby persons convicted of misdemeanors and committed to the county jails in default of payment of fines and costs shall be required to discharge such fines and costs by manual labor, under such regulations as may be prescribed by law.

Section 4. **Dueling Prohibited.**—Any citizen of this State who shall, after the adoption of this Constitution, fight a duel with deadly weapons, or send or accept a challenge to fight a duel with deadly weapons, either within this State or out of it, or who shall act as second, or knowingly assist in any manner those thus offending, shall be deprived of the right of suffrage, or of holding any office of trust or profit under this State.

Section 5. **Bribery in Elections Disqualification for Holding Office.**—Every person shall be disqualified from holding any office of profit or trust in this State who shall have been convicted of having given or offered a bribe to procure his election or appointment.

Section 6. **Appropriations for Private Purposes Prohibited; Expenditures to Be Published.**—No appropriation for private or individual purposes shall be made. A regular statement, under oath, and an account of the receipts and expenditures of all public money, shall be published annually, in such manner as shall be prescribed by law.

Section 7. **No Paper to Circulate as Money.**—The Legislature shall in no case have power to issue "treasury warrants," "treasury notes," or paper of any description intended to circulate as money.

Section 8. **Counties May Provide Workhouses, Poorhouses and Farms.**—Each county in the State may provide, in such manner as may be prescribed by law, a manual labor poorhouse and farm, for taking care of, managing, employing and supplying the wants of its indigent and poor inhabitants.

Section 9. **Absence on Business of the State or United States Shall Not Forfeit a Residence Once Obtained.**—Absence on business of the State or of the United States shall not forfeit a residence once obtained, so as to deprive anyone of the right of suffrage, or of being elected or appointed to any office, under the exceptions contained in this Constitution.

Section 10. **Deductions from salaries to Be Provided for.**—The Legislature shall provide for deductions from the salaries of public officers who may neglect the performance of any duty that may be assigned them by law.

Section 11. **Usurious Interest Prohibited.**—All contracts for a greater rate of interest than ten per centum per annum shall be deemed usurious, and the first Legislature after this amendment is adopted shall provide appropriate pains and penalties to prevent the same; but when no rate of interest is agreed upon the rate shall not exceed six per cent per annum.

(Note.—The foregoing Section 11 of Article XVI was amended from the original, setting 10 per cent and 6 per cent as interest rates, in place of original provision for 12 per cent and 8 per cent. Submitted by Twenty-second Legislature (1891), ratified in election Aug. 11, 1891, and declared adopted Sept. 22, 1891.)

Section 12. **Officers Not Eligible.**—No member of Congress, nor person holding or exercising any office of profit or trust under the United States, or either of them, or under any foreign power, shall be eligible as a member of the Legislature or hold or exercise any office of profit or trust under this State.

Section 13. **Legislature Shall Pass Arbitration Laws.**—It shall be the duty of the Legislature to pass such laws as may be necessary and proper to decide differences by arbitration, when the parties shall elect that method of trial.

Section 14. **Residence of Officers.**—All civil officers shall reside within the State, and all district or county officers within their districts or counties, and shall keep their offices at such places as may be required by law; and failure to comply with this condition shall vacate the office so held.

Section 15. **Community Property of Husband and Wife; Partition Thereof.**—All property, both real and personal, of the wife, owned or claimed by her before marriage, and that acquired afterward by gift, devise or descent, shall be the separate property of the wife; and laws shall be passed more clearly defining the rights of the wife, in relation as well to her separate property as that held in common with her husband; provided that husband and wife, without prejudice to pre-existing creditors, may from time to time by written instrument as if the wife were a femme sole partition between themselves in severalty or into equal undivided interests all or any part of their existing community property, or exchange between themselves the community interest of one spouse in any property for the community interest of the other spouse in other community property, whereupon the portion or interest set aside to each spouse shall be and constitute a part of the separate property of such spouse.

This amendment is self-operative, but laws may be passed prescribing requirements as to the form and manner of execution of such instruments, and providing for their recordation, and for such other reasonable requirements not inconsistent herewith as the Legislature may from time to time consider proper with relation to the subject of this amendment. Should the Legislature pass an act dealing with the subject of this amendment and prescribing requirements as to the form and manner of the execution of such instruments and providing for their recordation and other reasonable requirements not inconsistent herewith and anticipatory hereto, such act shall not be invalid by reason of its anticipatory character and shall take effect just as though this Constitutional Amendment was in effect when the act was passed.

(Note.—Section 15 of Article XVI originally had no provision for partition of community property of husband and wife. Provision for partition, as prescribed above, was the purpose of the foregoing amended section. Submitted by Fiftieth

Legislature (1947) and adopted in election Nov. 2, 1948.)

Section 16. **Banking Corporations.**—The Legislature shall, by general laws, authorize the incorporation of corporate bodies with banking and discounting privileges, and shall provide for a system of state supervision, regulation and control of such bodies which will adequately protect and secure the depositors and creditors thereof.

No such corporate body shall be chartered until all of the authorized capital stock has been subscribed and paid for in full in cash. Such body corporate shall not be authorized to engage in business at more than one place, which shall be designated in its charter.

No foreign corporation, other than the national banks of the United States, shall be permitted to exercise banking or discounting privileges in this State.

(Note.—The foregoing Section 16 of Article XVI has been twice amended from the original, as follows: (1) To eliminate the original provision that "No corporate body shall hereafter be created, renewed or extended with banking or discounting privileges," and making possible the establishment of the present state banking system. Submitted by the Twenty-eighth Legislature (1903), ratified in an election Nov. 8, 1904, and declared adopted Dec. 29, 1904. (2) Eliminating a provision, contained in the amendment of 1904, making shareholders of banks liable to the extent of twice the par value of the shares owned. Submitted by the Forty-fifth Legislature (1937), and adopted in an election Aug. 23, 1937.)

Section 17. **Officers to Perform Duties Until Successor Qualified.**—All officers within this State shall continue to perform the duties of their offices until their successors shall be duly qualified.

Section 18. **Vested Rights.**—The rights of property and of action, which have been acquired under the Constitution and the laws of the Republic and State, shall not be divested; nor shall any rights or actions which have been divested, barred or declared null and void by the Constitution of the Republic and State be reinvested, renewed or reinstated by this Constitution; but the same shall remain precisely in the situation which they were before the adoption of this Constitution, unless otherwise herein provided; and provided, further, that no cause of action heretofore barred shall be revived.

Section 19. **Qualifications of Jurors.**—The Legislature shall prescribe by law the qualifications of grand and petit jurors; provided that neither the right nor the duty to serve on grand and petit juries shall be denied or abridged by reason of sex. Whenever in the Constitution the term "men" is used in reference to grand or petit juries, such term shall include persons of the female as well as the male sex.

(Note.—The foregoing Section 19 of Article XVI was amended to include women jurors. Submitted by Fifty-third Legislature (1953) and adopted in an election Nov. 2, 1954.)

Section 20. **Manufacture and Sale of Intoxicants.**—(a) The open saloon shall be and is hereby prohibited. The Legislature shall have the power, and it shall be its duty to define the term "open saloon" and enact laws against such.

Subject to the foregoing, the Legislature shall have the power to regulate the manufacture, sale, possession and transportation of intoxicating liquors, including the power to establish a State monopoly on the sale of distilled liquors.

(b) The Legislature shall enact a law or laws whereby the qualified voters of any county, justice's precinct or incorporated town or city may, by a majority vote of those voting, determine from time to time whether the sale of intoxicating liquors for beverage purposes shall be prohibited or legalized within the prescribed limits; and such laws shall contain provisions for voting on the sale of intoxicating liquors of various types and various alcoholic content.

(c) In all counties, justice's precincts or incorporated towns or cities wherein the sale of intoxicating liquors had been prohibited by local option elections held under the laws of the State of Texas and in force at the time of the taking effect of Section 20, Article XVI of the Constitution of Texas, it shall continue to be unlawful to manufacture, sell, barter or exchange in any such county, justice's precinct or incorporated town or city, any spiritous, vinous or malt liquors or medicated bitters capable of producing intoxication or any other intoxicants whatsoever, for beverage purposes, unless and until a majority of the qualified voters in such county or political subdivision thereof voting in an election held for such purposes shall determine such to be lawful; provided that this subsection shall not prohibit the sale of alcoholic beverages containing not more than 3.2 per cent alcohol by weight in cities, counties or political subdivisions thereof in which the qualified voters have

voted to legalize such sale under the provisions of Chapter 116, Acts of the Regular Session of the Forty-third Legislature.

(Note.—The foregoing Section 20 of Article XVI has been amended from the original (which merely provided for local option elections in "any county, justice's precinct, town or city") four times, as follows: (1) To insert a clause in original section "or such subdivision of a county as may be designated by Commissioners' Court of said county," with reference to local option elections. Submitted by Twenty-second Legislature (1891), ratified in an election Aug. 11, 1891, and declared adopted Sept. 22, 1891. (2) To declare state-wide prohibition. Submitted by Thirty-sixth Legislature (1919), and declared adopted May 24, 1919. (3) To legalize sale of vinous and malt liquors of not more than 3.2 per cent alcohol. Submitted by the Forty-third Legislature (1933), and adopted in an election Aug. 26, 1933. (4) Legalizing sale of all liquors, as stated in the section printed above. Submitted by the Forty-fourth Legislature (1935), and adopted in an election Aug. 24, 1935.)

Section 21. **Stationery; Public Printing.**—All stationery and printing, except proclamations and such printing as may be done at the Deaf and Dumb Asylum, paper and fuel used in the legislative and other departments of the government, except the judicial department, shall be furnished and the printing and binding of the laws, journals and department reports and all other printing and binding, and the repairing and furnishing the halls and rooms used for the meetings of the Legislature and its committees, shall be performed under contract, to be given to the lowest responsible bidder, below such maximum price and under such regulations as shall be prescribed by law. No member or officer of any department of the government shall be in any way interested in such contract; and all such contracts shall be subject to the approval of the Governor, Secretary of State and Comptroller.

Section 22. **Fence Laws.**—The Legislature shall have the power to pass such fence laws, applicable to any subdivision of the State or county, as may be needed to meet the wants of the people.

Section 23. **Stock Laws.**—The Legislature may pass laws for the regulation of livestock and the protection of stock raisers in the stock raising portion of the State, and exempt from the operation of such laws other portions, sections or counties; and shall have power to pass general and special laws for the inspection of cattle, stock and hides, and for the regulation of brands; provided, that any local law thus passed shall be submitted to the freeholders of the section to be affected thereby, and approved by them before it shall go into effect.

Section 24. **Roads; Convict Labor.**—The Legislature shall make provision for laying out and working public roads, for the building of bridges, and for utilizing fines, forfeitures, and convict labor to all these purposes.

Section 25. **Drawbacks and Rebates in Freight Insurance, Transportation, Storage, Etc., Prohibited.**—That all drawbacks and rebatement of insurance, freight, transportation, carriage, wharfage, storage, compressing, bailing, repairing, or for any other kind of labor or service of, or to any cotton, grain or any other produce or article of commerce, in this State, paid or allowed or contracted for to any common carrier, shipper, merchant, commission merchant, factor, agent or middleman of any kind not the true and absolute owner thereof, are forever prohibited; and it shall be the duty of the Legislature to pass effective laws punishing all persons in this State who pay, receive or contract for or respecting the same.

Section 26. **Homicide: Civil Action For.**—Every person, corporation or company that may commit a homicide, through willful act or omission or gross neglect, shall be responsible in exemplary damages to the surviving husband, widow, heirs of his or her body, or such of them as there may be, without regard to any criminal proceeding that may or may not be had in relation to the homicide.

Section 27. **Vacancies in Offices Filled for Unexpired Terms Only.**—In all elections to fill vacanies of office in this State, it shall be to fill the unexpired term only.

Section 28. **Wages exempt from Garnishment.**—No current wages for personal service shall ever be subject to garnishment.

Section 29. **Barratry to Be Prohibited.**—The Legislature shall provide by law for defining and punishing barratry.

Section 30. **Duration of Offices; Term of Railroad Commissioner.**—The duration of all offices not fixed by this Constitution shall never exceed two years; provided, that when a Railroad Commission is created by law it shall be composed of three Commissioners, who shall be elected

by the people at a general election for state officers, and their term of office shall be six years; provided, Railroad Commissioners first elected after this amendment goes into effect shall hold office as follows: One shall serve two years and one four years, and one six years, their terms to be decided by lot, immediately after they shall have qualified. And one Railroad Commissioner shall be elected every two years thereafter. In case of vacancy in said office, the Governor of the State shall fill said vacancy by appointment until the next general election.

(Note.—The foregoing Section 30 of Article XVI was amended from the original to permit six-year terms for the newly created offices of the three-place Railroad Commission of Texas. The original section consisted only of the first clause of the amendment as printed above. Submitted by Twenty-third Legislature (1893), ratified in an election Nov. 6, 1894, and declared adopted Dec. 21, 1894.)

Section 30-a. **Board of Regents, Trustees, Managers, Etc.; Term of Office.**—The Legislature may provide by law that the members of the Board of Regents of the State University and boards of trustees or managers of the educational, eleemosynary and penal institutions of this State, and such boards as have been or may hereafter be established by law, may hold their respective offices for the term of six (6) years, one third of the members of such boards to be elected or appointed every two years in such manner as the Legislature may determine; vacancies in such offices to be filled as may be provided by law, and the Legislature shall enact suitable laws to give effect to this section.

(Note.—The foregoing Section 30-a of Article XVI, an amendment, was added to give the Legislature authority to provide official terms of more than two years. (See Section 30 above and note thereunder.) Submitted by Thirty-second Legislature (1911), ratified at an election Nov. 5, 1912, and declared adopted Dec. 30, 1912.)

Section 30-b. **Tenure Under Municipal Civil Service.**—Wherever by virtue of statute or charter provisions appointive officers of any municipality are placed under the terms and provisions of Civil Service and rules are set up governing appointment to and removal from such offices, the provisions of Article 16, Section 30, of the Texas Constitution limiting the duration of all offices not fixed by the Constitution to two (2) years shall not apply, but the duration of such offices shall be governed by the provisions of the Civil Service law or charter provisions applicable thereto.

(Note.—The foregoing Section 30-b of Article XVI, an amendment, was added to extend to local official terms under the civil service exemption from the two-year restriction in the first clause of Section 30. (See Sections 30 and 30-a and notes thereunder.) Submitted by the Forty-sixth Legislature; ratified in an election Nov. 5, 1940.)

Section 31. **Qualifications of Physicians to Be Prescribed.**—The Legislature may pass laws prescribing the qualifications of practitioners of medicine in this State, and to punish persons for malpractice, but no preference shall ever be given by law to any schools of medicine.

Section 32. **Board of Health and Vital Statistics.**—The Legislature may provide by law for the establishment of a Board of Health and Vital Statistics, under such rules and regulations as it may deem proper.

Section 33. **Condition Under Which a Person Can Not Receive Compensation from the State.**—The accounting officers of this State shall neither draw nor pay a warrant upon the Treasury in favor of any person, for salary or compensation as agent, officer or appointee, who holds at the same time any other office or position of honor, trust or profit, under this State or the United States, except as prescribed in this Constitution. Provided, that this restriction as to the drawing and paying of warrants upon the Treasury shall not apply to officers of the National Guard of Texas, the National Guard Reserve, the Officers' Reserve Corps of the United States, nor to enlisted men of the National Guard, the National Guard Reserve, and the Organized Reserves of the United States, nor to retired officers of the United States Army, Navy and Marine Corps, and the retired warrant officers and retired enlisted men of the United States Army, Navy and Marine Corps.

(Note.—The foregoing Section 33 of Article XVI has been amended twice, as follows: (1) To release National Guard of Texas, National Guard Reserve and Officers' Reserve Corps and United States Organized Reserves from the prohibition against holding remunerative office. Submitted by Thirty-ninth Legislature (1925), and adopted in an election Nov. 2, 1926. Proclaimed Jan. 20, 1927. (2) To add to those released from the prohibition against holding remunerative office all retired officers and enlisted men of the United States Army, Navy and Marine Corps. Submitted

by Forty-second Legislature (1931), and adopted in an election Nov. 8, 1932. Proclaimed Jan. 9, 1933.)

Section 34. **How Forts May Be Acquired by the United States.**—The Legislature shall pass laws authorizing the Governor to lease or sell to the Government of the United States a sufficient quantity of the public domain of the State necessary for the erection of forts, barracks, arsenals and military stations or camps, and for other needful military purposes; and the action of the Governor therein shall be subject to the approval of the Legislature.

Section 35. **Laborers on Public Works to Be Protected.**—The Legislature shall, at its first session, pass laws to protect laborers on public buildings, streets, roads, railroads, canals and other similar public works, against the failure of contractors and subcontractors to pay their current wages when due, and to make the corporation, company or individual for whose benefit the work is done responsible for their ultimate payment.

Section 36. **Payments of Schoolteachers Provided for.**—The Legislature shall, at its first session, provide for the payment or funding, as they may deem best, of the amounts found to be justly due to the teachers in the public schools by the State for services rendered prior to the 1st day of July, 1873, and for the payment by the school districts in the State of amounts justly due teachers of public schools by such districts to January, 1876.

Section 37. **Mechanic's Liens to Be Enforced.**—Mechanics, artisans and material men of every class shall have a lien upon the buildings and articles made or repaired by them, for the value of their labor done thereon, or material furnished therefor; and the Legislature shall provide by law for the speedy and efficient enforcement of said liens.

Section 38. **Commissioner of Insurance, Statistics and History.**—The Legislature may, at such time as the public interest may require, provide for the office of Commissioner of Insurance, Statistics and History, whose term of office, duties and salary shall be prescribed by law.

Section 39. **Memorials of Texas History.**—The Legislature may, from time to time, make appropriations for preserving and perpetuating memorials of the history of Texas, by means of monuments, statues, paintings and documents of historical value.

Section 40. **Provision Against Holding More Than One Office; Exceptions.**—No person shall hold or exercise, at the same time, more than one civil office of emolument, except that of Justice of the Peace, County Commissioner, notary public and postmaster, officer of the National Guard, the National Guard Reserve and the Officers' Reserve Corps of the United States, and enlisted men of the National Guard, the National Guard Reserve and the Organized Reserves of the United States, and retired officers of the United States Army, Navy and Marine Corps, and the retired warrant officers and retired enlisted men of the United States Army, Navy and Marine Corps, unless otherwise specially provided herein. Provided, that nothing in this Constitution shall be construed to prohibit an officer, or enlisted man of the National Guard, the National Guard Reserve, or an officer in the Officers' Reserve Corps of the United States, or an enlisted man in the Organized Reserves of the United States, or retired officers of the United States Army, Navy and Marine Corps, and the retired warrant officers and retired enlisted men of the United States Army, Navy and Marine Corps from holding in conjunction with such office any other office or position of honor, trust or profit, under this State, or the United States, or from voting at any election, general, special or primary, in this State when otherwise qualified.

(Note.—The foregoing Section 40 of Article XVI has been amended twice, as follows: (1) To release National Guard, National Guard Reserve and Officers' Reserve Corps and United States Organized Reserves from the prohibition against holding remunerative office. Submitted by Thirty-ninth Legislature (1925), and adopted in an election Nov. 2, 1926. Proclaimed Jan. 20, 1927. (2) To add to those released from the prohibition against holding remunerative office all retired officers and enlisted men of the United States Army, Navy and Marine Corps. Submitted by Forty-second Legislature (1931) and adopted in an election Nov. 8, 1932. Proclaimed Jan. 9, 1933.)

Section 41. **Bribery of Certain Officials to Be Prohibited.**—Any person who shall, directly or indirectly, offer, give or promise any money or thing of value, testimonial, privilege or personal advantage to any executive or judicial officer or member of

the Legislature, to influence him in the performance of any of his public or official duties, shall be guilty of bribery and be punished in such manner as shall be provided by law. And any member of the Legislature, or executive or judicial officer, who shall solicit, demand or receive, or consent to receive, directly or indirectly, for himself or for another, from any company, corporation or person, any money, appointment, employment testimonial, reward, thing of value or employment, or of personal advantage or promise thereof, for his vote or official influence, or for withholding the same, or with any understanding, expressed or implied, that his vote or official action shall be in any way influenced thereby, or who shall solicit, demand and receive any such money or other advantage, matter or thing aforesaid, for another, as the consideration of his vote or official influence, in consideration of the payment or promise of such money, advantage, matter or thing to another, shall be held guilty of bribery within the meaning of the Constitution, and shall incur the disabilities provided for said offenses, with a forfeiture of the office they may hold, and such other additional punishment as is or shall be provided by law.

Section 42. **Legislature May Provide for Inebriate Asylum.**—The Legislature may establish an inebriate asylum for the cure of drunkenness and the reform of inebriates.

Section 43. **Exemption from Public Service.**—No man or set of men shall ever be exempted, relieved or discharged from the performance of any public duty or service imposed by general law, by any special law. Exemptions from the performance of such public duty or service shall only be made by general law.

Section 44. **County Treasurer and Surveyor.**—The Legislature shall prescribe the duties, and provide for the election, by the qualified voters of each county in this State, of a County Treasurer and a County Surveyor, who shall have an office at the county seat, and hold their office for four years, and until their successors are qualified; and shall have such compensation as may be provided by law.

(Note.—The foregoing Section 44 of Article XVI was amended to raise term of office from two to four years. Submitted by Fifty-third Legislature (1953) and adopted in election Nov. 2, 1954.)

Section 45. **Records of the History of Texas.**—It shall be the duty of the Legislature to provide for collecting, arranging and safely keeping such records, rolls, correspondence and other documents, civil and military, relating to the history of Texas as may be now in the possession of parties willing to confide them to the care and preservation of the State.

Section 46. **Militia to Be Organized.**—The Legislature shall provide by law for organizing and disciplining the militia of the State, in such manner as they shall deem expedient, not incompatible with the Constitution and laws of the United States.

Section 47. **Scruples Against Bearing Arms.**—Any person who conscientiously scruples to bear arms shall not be compelled to do so, but shall pay an equivalent for personal service.

Section 48. **Laws to Remain in Force.**—All laws and parts of laws now in force in the State of Texas which are not repugnant to the Constitution of the United States or to this Constitution shall continue and remain in force as the laws of this State until they expire by their own limitation or shall be amended or repealed by the Legislature.

Section 49. **Exemptions from Forced Sales.**—The Legislature shall have power, and it shall be its duty, to protect by law from forced sale a certain portion of the personal property of all heads of families, and also of unmarried adults, male and female.

Section 50. **Homestead Exemptions; Incumbrances; Pretended Sales.**—The homestead of a family shall be, and is hereby, protected from forced sale for the payment of all debts, except for the purchase money thereof, or a part of such purchase money, the taxes due thereon, or for work and material used in constructing improvements thereon, and in this last case only when the work and material are contracted for in writing, with the consent of the wife given in the same manner as is required in making a sale and conveyance of the homestead; nor shall the owner, if a married man, sell the homestead without the consent of the wife, given in such manner as may be prescribed by law. No mortgage, trust deed or other lien on the homestead shall ever be valid except for the purchase money therefor, or improvements made thereon, as hereinbefore provided,

whether such mortgage or trust deed or other lien shall have been created by the husband alone or together with his wife; and all pretended sales of the homestead involving any condition of defeasance shall be void.

Section 51. **Homestead Defined.**—The homestead not in a town or city shall consist of not more than 200 acres of land, which may be in one or more parcels, with the improvements thereon; the homestead in a city, town or village shall consist of lot or lots, not to exceed in value $5,000 at the time of their designation as the homestead, without reference to the value of any improvements thereon; provided, that the same shall be used for the purposes of a home, or as a place to exercise the calling or business of the head of the family; provided, also, that any temporary renting of the homestead shall not change the character of the same, when no other homestead has been acquired.

Section 52. **Descent of Homestead.**—On the death of the husband or wife, or both, the homestead shall descend and vest in like manner as other real property of the deceased, and shall be governed by the same laws of descent and distribution, but it shall not be partitioned among the heirs of the deceased during the lifetime of the surviving husband or wife, or so long as the survivor may elect to use or occupy the same as a homestead, or so long as the guardian of the minor children of the deceased may be permitted, under the order of the proper court having jurisdiction, to use and occupy the same.

Section 53. **Declaration Validating Process and Writs.**—That no inconvenience may arise from the adoption of this Constitution, it is declared that all process and writs of all kinds which have been or may be issued and not returned or executed when this Constitution is adopted shall remain valid, and shall not be in any way affected by the adoption of this Constitution.

Section 54. **Indigent Lunatics.**—It shall be the duty of the Legislature to provide for the custody and maintenance of indigent lunatics at the expense of the State, under such regulations and restrictions as the Legislature may prescribe.

Section 55. **Pensions.**—The Legislature may provide annual pensions, not to exceed $150 per annum, to surviving soldiers or volunteers in the war between Texas and Mexico, from the commencement of the revolution in 1835 until the 1st of January, 1837; and also to the surviving signers of the Declaration of Independence of Texas; and to the surviving widows continuing unmarried, of such soldiers and signers; provided, that no such pension be granted except to those in indigent circumstances, proof of which shall be made before the County Court of the county where the applicant resides, in such manner as may be provided by law.

Section 56. The Legislature of the State of Texas shall have the power to appropriate money and establish the procedure necessary to expend such money for the purpose of developing information about the historical, natural, agricultural, industrial, educational, marketing, recreational and living resources of Texas, and for the purpose of informing persons and corporations of other states through advertising in periodicals having national circulation, and the dissemination of factual information about the advantages and economic resources offered by the State of Texas; providing, however, that neither the name nor the picture of any living state official shall ever be used in any of said advertising, and providing that the Legislature may require that any sum of money appropriated hereunder shall be matched by an equal sum paid into the State Treasury from private sources before any of said money may be expended.

Section 57. **Land Set Aside for State Capitol.**—Three million acres of the public domain are hereby appropriated and set apart for the purpose of erecting a new State Capitol and other necessary public buildings at the seat of government, said lands to be sold under the direction of the Legislature; and the Legislature shall pass suitable laws to carry this section into effect.

Section 58. **Management of Prison System.**—The Legislature shall have full power and authority to provide by law for the management and control of the prison system of Texas; and to this end shall have power and authority to place the prison system under the supervision, management and control of such trained and experienced officer, or officers, as the Legislature may from time to time provide for by law.

(Note.—The foregoing Section 58 of Article XVI, an amendment, was added to the Constitution, and subsequently altered, for the following

purposes: (1) To provide specifically for a Prison Board. Submitted by the Thirty-second Legislature (1911), ratified in an election Nov. 5, 1912, and proclaimed Dec. 30, 1912. (2) To give the Legislature authority to provide for prison management, as stated in section above. Submitted by Thirty-ninth Legislature (1925), ratified Nov. 2, 1926, and proclaimed Jan. 20, 1927.)

*Section 59-a. **Conservation and Development of Natural Resources.**—The conservation and development of all the natural resources of this State, including the control, storing, preservation and distribution of its storm and flood waters, the waters of its rivers and streams, for irrigation, power and all other useful purposes, the reclamation and irrigation of its arid, semi-arid and other lands needing irrigation, the reclamation and drainage of its overflowed lands, and other lands needing drainage, the conservation and development of its forests, water and hydroelectric power, the navigation of its inland and coastal waters, and the preservation and conservation of all such natural resources of the State are each and all hereby declared public rights and duties; and the Legislature shall pass all such laws as may be appropriate thereto.

(b) There may be created within the State of Texas, or the State may be divided into, such number of conservation and reclamation districts as may be determined to be essential to the accomplishment of the purposes of this amendment to the Constitution, which districts shall be governmental agencies and bodies politic and corporate with such powers of government and with the authority to exercise such rights, privileges and functions concerning the subject matter of this amendment as may be conferred by law.

(c) The Legislature shall authorize all such indebtedness as may be necessary to provide all improvements and the maintenance thereof requisite to the achievement of the purposes of this amendment, and all such indebtedness may be evidenced by bonds of such conservation and reclamation districts, to be issued under such regulations as may be prescribed by law and shall, also, authorize the levy and collection within such districts of all such taxes, equitably distributed, as may be necessary for the payment of the interest and the creation of a sinking fund for the payment of such bonds; and also for the maintenance of such districts and improvements, and such indebtedness shall be a lien upon the property assessed for the payment thereof; provided, the Legislature shall not authorize the issuance of any bonds or provide for any indebtedness against any reclamation district unless such proposition shall first be submitted to the qualified property taxpaying voters of such district and the proposition adopted.

(Note.—The foregoing Section 59-a, obviously meant to be Section 59 (see footnote), was added to establish a conservation policy. Submitted by Thirty-fifth Legislature (1917), and adopted in an election of Aug. 21, 1917, and proclaimed Oct. 2, 1917.)

Section 60. **Texas Centennial.**—That the Constitution of the State of Texas be so amended as to authorize a Texas Centennial, commemorating the heroic period of early Texas history, and celebrating a century of our independence and progress, to be held at such times, places and in such manner as may be designated by the Legislature of Texas.

That the Legislature of Texas be authorized to make appropriation for the support and maintenance thereof; provided that this authorization shall not be construed to make appropriations for any other future exposition or celebration of any kind or character.

(Note.—The foregoing Section 60 of Article XVI, an amendment, was added to provide for the Texas Centennial. Submitted by the Forty-second Legislature (1931), and adopted in an election Nov. 8, 1932.)

Section 61. **Compensation of District and County Officials.**—All district officers in the State of Texas and all county officers in counties having a population of twenty thousand (20,000) or more, according to the then last preceding Federal Census, shall be compensated on a salary basis. In all counties in this State, the Commissioners' Courts shall be authorized to determine whether precinct officers shall be compensated on a fee basis or on a salary basis, with the exception that it shall be mandatory upon the Commissioners' Courts, to compensate all constables, deputy constables and precinct law enforcement officers on a salary basis beginning January 1, 1949; and in counties having a population of less than twenty thousands (20,000), according to the then last preceding Federal Census, the Commissioners' Court shall

* The resolution submitting this amendment was headed "Section 59-a," followed by paragraphs "(b)" and "(c)" Obviously, the first heading should have been "Section 59 (a)," the parenthetical (a) referring only to the first paragraph.

also have the authority to determine whether county officers shall be compensated on a fee basis or on a salary basis, with the exception that it shall be mandatory upon the Commissioners' Courts to compensate all sheriffs, deputy sheriffs, county law enforcement officers, including sheriffs who also perform the duties of assessor and collector of taxes, and their deputies, on a salary basis beginning January 1, 1949.

All fees earned by district, county and precinct officers shall be paid into the county treasury where earned for the account of the proper fund, provided that fees incurred by the State, county and any municipality, or in case where a pauper's oath is filed, shall be paid into the county treasury when collected and provided that where any officer is compensated wholly on a fee basis such fees may be retained by such officer or paid into the treasury of the county as the Commissioners' Court may direct. All notaries public, county surveyors and public weighers shall continue to be compensated on a fee basis.

(Note.—The foregoing Section 61 of Article XVI has been twice amended, as follows: (1) To put all district and county officials in counties of more than 20,000 population on a salary basis, substituting for fee basis, and making it optional with the Commissioners' Courts whether precinct officers in counties of less than 20,000 should be on salary or fee basis and optional with reference to county officers in counties of less than 20,000. Submitted by the Forty-fourth Legislature (1935) and adopted in an election Aug. 24, 1935. (2) To make mandatory a salary basis for constables and precinct enforcement officers in counties of more than 20,000 and making it mandatory, in counties of less than 20,000 population, that all sheriffs, deputy sheriffs and other county enforcement officers, be on salary basis. Submitted by Fiftieth Legislature (1947) and adopted in election Nov. 2, 1948.)

Section 62. **Retirement, Disability and Death Compensation Funds.**—(a) The Legislature shall have the right to levy taxes to provide a Retirement, Disability and Death Compensation Fund for the appointive officers and employees of the State; provided that the amount contributed by the State to such fund shall equal the amount paid for the same purpose from the income of each such person, and shall not exceed at any time five per centum (5%) of the compensation paid to each such person by the State, and shall in no one year exceed the sum of one hundred and eighty dollars ($180) for any such person.

All funds provided from the compensation of such person, or by the State of Texas, for such Retirement, Disability and Death Compensation Fund, as are received by the Treasury of the State of Texas, shall be invested in bonds of the United States, the State of Texas, or counties or cities of this State, or in bonds issued by any agency of the United States Government, the payment of the principal of and interest on which is guaranteed by the United States, provided that a sufficient amount of said funds shall be kept on hand to meet the immediate payment of the amount likely to become due each year out of said fund, such amount of funds to be kept on hand to be determined by the agency which may be provided by law to administer said fund; and provided that the recipients of benefits from said fund shall not be eligible for any other pension retirement funds or direct aid from the State of Texas, unless the fund, the creation of which is provided for herein, contributed by the State, is released to the State of Texas as a condition to receiving such other pension aid.

(b) Each county shall have the right to provide for and administer a Retirement, Disability and Death Compensation Fund for the appointive officers and employees of the county; provided same is authorized by a majority vote of the qualified voters of such county and after such election has been advertised by being published in at least one newspaper of general circulation in said county once each week for four consecutive weeks; provided that the amount contributed by the county to such fund shall equal the amount paid for the same purpose from the income of each such person, and shall not exceed at any time five per centum (5%) of the compensation paid to each such person by the county, and shall in no one year exceed the sum of one hundred and eighty dollars ($180) for any such person.

All funds provided from the compensation of each such person, or by the county, for such Retirement, Disability and Death Compensation Funds, as are received by the county, shall be invested in bonds of the United States, the State of Texas, or counties or cities of this State, or in bonds issued by any agency of the United States Government, the payment of the principal of and interest on which is guaranteed by the United States, provided that a suffi-

cient amount of said funds shall be kept on hand to meet the immediate payment of the amount likely to become due each year out of said fund, such amount of funds to be kept on hand to be determined by the agency which may be provided by law to administer said fund; and provided that the recipients of benefits from said fund shall not be eligible for any other pension retirement funds or direct aid from the State of Texas, unless the fund, the creation of which is provided for herein, contributed by the county, is released to the State of Texas as a condition to receiving such other pension aid.

(Note.—The foregoing Section 62 of Article XVI, an amendment, was added for the stated purposes of establishing state and county retirement funds. Submitted by the Forty-ninth Legislature (1945), ratified in election Nov. 5, 1946.)

Section 63. **Teacher and State Employee Retirement System.**—Qualified members of the Teacher Retirement System, in addition to the benefits allowed them under the Teacher Retirement System, shall be entitled to credit in the Teacher Retirement System for all services, including prior service and membership service, earned or rendered by them as an appointive officer or employee of the State. Likewise, qualified members of the Employees Retirement System of Texas, in addition to the benefits allowed them under the Employees Retirement System of Texas shall be entitled to credit in the Employees Retirement System of Texas for all services, including prior service and membership service, earned or rendered by them as a teacher or person employed in the public schools, colleges, and universities supported wholly or partly by the State.

(Note.—The foregoing Section 63 of Article XVI, an amendment, was added for the stated purpose of making teacher and state employee retirement systems interchangeable. Submitted by the Fifty-third Legislature (1953) and adopted in an election Nov. 2, 1954.)

Section 64. **Inspector of Hides and Animals; Elective District, County and Precinct Offices; Terms of Office.**—The office of Inspector of Hides and Animals, the elective district, county and precinct offices which have heretofore had terms of two years, shall hereafter have terms of four years; and the holders of such offices shall serve until their successors are qualified.

(Note.—The foregoing Section 64 of Article XVI, an amendment, was added for the purpose of setting term of office for these officials. Submitted by the Fifty-third Legislature (1953) and adopted in election Nov. 2, 1954.)

Section 65. **District and County Officials; Terms of Office.**—The following officers elected at the general election in November, 1954, and thereafter, shall serve for the full terms provided in this Constitution:

(a) District Clerks; (b) County Clerks; (c) County Judges; (d) Judges of County Courts-at-Law, County Criminal Courts, County Probate Courts, and County Domestic Relations Courts; (e) County Treasurers; (f) Criminal District Attorneys; (g) County Surveyors; (h) Inspectors of Hides and Animals; (i) County Commissioners for Precincts Two and Four; (j) Justices of the Peace.

Notwithstanding other provisions of this Constitution, the following officers elected at the general election in November, 1954, shall serve only for terms of two years: (a) Sheriffs; (b) Assessors and Collectors of Taxes; (c) District Attorneys; (d) County Attorneys; (e) Public Weighers; (f) County Commissioners for Precincts One and Three; (g) Constables. At subsequent elections, such officers shall be elected for the full terms provided in this Constitution.

In any district, county or precinct where any of the aforementioned offices is of such nature that two or more persons hold such office, with the result that candidates file for "Place No. 1," "Place No. 2," etc., the officers elected at the general election in November, 1954, shall serve for a term of two years if the designation to their office is an uneven number, and for a term of four years if the designation of their office is an even number. Thereafter, all such officers shall be elected for the terms provided in this Constitution.

(Note.—The foregoing Section 65 of Article XVI, an amendment, was added for the purpose of setting the terms of office of the aforementioned officers. Submitted by the Fifty-third Legislature (1953) and adopted in an election Nov. 2, 1954.)

Provided, however, if any of the officers named herein shall announce their candidacy, or shall in fact become a candidate, in any General, Special or Primary Election, for any office of profit or trust under the laws of this State or the United States other than the office then held, at any time

when the unexpired term of the office then held shall exceed one (1) year, such announcement or such candidacy shall constitute an automatic resignation of the office then held, and the vacancy thereby created shall be filled pursuant to law in the same manner as other vacancies for such offices are filled.

Section 66. The Legislature shall have authority to provide for a system of retirement and disability pensions for retiring Texas Rangers who have not been eligible at any time for membership in the Employees Retirement System of Texas as that retirement system was established by Chapter 352, Acts of the Fiftieth Legislature, Regular Session, 1947, and who have had as much as two (2) years service as a Texas Ranger, and to their widows; providing that no pension shall exceed Eighty Dollars ($80) per month to any such Texas Ranger or his widow, provided that such widow was legally married prior to January 1, 1957, to a Texas Ranger qualifying for such pension.

These pensions may be paid only from the special fund created by Section 17, Article VII for a payment of pensions for services in the Confederate army and navy, frontier organizations, and the militia of the State of Texas, and for widows of such soldiers serving in said armies, navies, organizations or militia.

## ARTICLE XVII.—MODE OF AMENDING THE CONSTITUTION OF THIS STATE

Section 1. **How the Constitution Is to Be Amended.**—The Legislature, at any biennial session, by a vote of two thirds of all the members elected to each house, to be entered by yeas and nays on the journals, may propose amendments to the Constitution, to be voted upon by the qualified electors for members of the Legislature, which proposed amendments shall be duly published once a week for four weeks, commencing at least three months before an election, the time of which shall be specified by the Legislature, in one weekly newspaper of each county in which such newspaper may be published; and 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 proclamations shall be made by the Governor thereof.

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