The roll call showed no quorum present.

Senator Holbrook moved a call of the Senate for the purpose of obtaining a quorum. The call was ordered.

The quorum was completed at 8:30.

Committee of the Whole.

The Senate resolved itself into a Committee of the Whole, Senator Berkeley presiding.

Committee Reports.

Senator Berkeley reported that the Committee of the Whole had made progress and moved that the Senate meet again as a Committee of the Whole tomorrow morning immediately after the morning call. The motion prevailed.

Adjournment.

On motion of Senator Woodward, the Senate, at 10:15 o'clock p. m., adjourned until 10 o'clock tomorrow morning.

EIGHTH DAY.

Senate Chamber,
Austin, Texas,
January 30, 1930.

The Senate met at 10 o'clock a. m. pursuant to adjournment, and was called to order by Lieutenant Governor Barry Miller.

The roll was called, a quorum being present, the following Senators answering to their names:

Beck.	Neal.
Berkeley.	Parr.
Cousins.	Parrish.
Cunningham.	Patton.
DeBerry.	Pollard.
Gainer.	Russek.
Hardin.	Small.
Holbrook.	Stevenson.
Hornsby.	Thomason.
Hyer.	Westbrook.
Love.	Wirtz.
Martin.	Witt.
McFarlane.	Woodward.
Miller.	

Absent—Excused.

Greer.	Williamson.
Moore.	Woodul.

Prayer by the Chaplain.

Pending the reading of the Journal of yesterday, the same was dispensed with on motion of Senator Woodward.

Petitions and Memorials

(See Appendix.)

Committee Reports.

(See Appendix.)

Bills and Resolutions.

By Senator Hyer:

S. B. No. 18, A bill to be entitled "An Act amending Section 6 of Chapter 45, Acts of the Forty-first Legislature, First Called Session; and declaring an emergency."

Read first time and referred to Committee on Penitentiaries.

By Senator Parrish:

S. B. No. 19, A bill to be entitled "An Act to amend Article 2340 of the Revised Civil Statutes of Texas for 1925, declaring an emergency, and providing said Act shall take effect on January 1, 1931, and that bonds of county commissioners who are elected at the general election in 1930 shall comply with this amended article."

Read first time and referred to Committee on State Affairs.

By Senator Parrish:

S. B. No. 20, A bill to be entitled "An Act further regulating the registration of motor vehicles; making it a necessary prerequisite to registering a motor vehicle that evidence be produced that State and County ad valorem taxes on said vehicle have been paid wherever such vehicle has become subject to such taxes and the time for paying same has expired; enacting all necessary provisions incidental to said purpose; and declaring an emergency."

Read first time and referred to Committee on State Affairs.

By Senator Parrish:

S. B. No. 21, A bill to be entitled "An Act requiring certain independent school districts to contribute to the expense of the county superintendent's office; and declaring an emergency."

Read first time and referred to Committee on State Affairs.

By Senator Parrish:

S. B. No. 22, A bill to be entitled "An Act providing for a county depository for trust funds in the possession of county and district clerks, providing the manner of selection and designation of same and paying out said funds and liability of depository for failure to pay checks drawn on said funds, requiring depositories to receive deposits of said funds and pay checks on same at the county seat, authorizing the commissioners' court to require a new bond of depositories, relieving county and district clerks from liability for said funds upon deposit of same in the depository, making the county liable for the loss of any funds placed in the depository, requiring county and district clerks having custody of money for more than three days deposited in court to abide the result of any legal proceeding to deposit same in the depository, providing manner of carrying accounts in the depository and withdrawing same, providing manner of holding trust funds in counties not having a depository for trust funds, prescribing penalties for violation of the Act, declaring an emergency, and providing that the same shall become effective February 10, 1931."

Read first time and referred to Committee on Banks and Banking.

By Senator Parrish:

S. B. No. 23, A bill to be entitled "An Act providing for the removal from office of county attorneys and tax collectors who fail or refuse to perform their duties with reference to the collection of delinquent taxes, declaring an emergency, and providing that said Act shall take effect on January 1, 1931."

Read first time and referred to Committee on State Affairs.

By Senators Woodul and Holbrook:

S. B. No. 24, A bill to be entitled "An Act amending Article 6954 of the Revised Civil Statutes of 1925, as amended, with reference to the mode of preventing horses and certain other animals from running at large, and enumerating the counties to which said article shall apply; omitting from said article the following language: "provided that where there is an application to include an entire county there shall not be less than twelve free holders from each justice precinct of said county as signers to the petition for such election," and declaring an emergency."

Read first time and referred to Committee on Stock and Stock Raising.

By Senator Parrish:

S. B. No. 25, A bill to be entitled "An Act amending Article 1645 of the Revised Civil Statutes of 1925 as amended so as to fix and regulate the compensation of county auditors; and declaring an emergency."

Read first time and referred to Committtee on State Affairs.

By Senators Parrish and Small:

S. B. No. 26, A bill to be entitled "An Act authorizing a certain portion of the salary of county judges and county commissioners to be paid out of the road and bridge fund and the remainder out of the general fund of the county; and declaring an emergency."

Read first time and referred to Committee on State Affairs.

By Senator Small:

S. B. No. 27, A bill to be entitled "An Act to fix the maximum rate of tax to be levied for the purpose of maintaining the public schools and issuing bonds in school districts in all counties which, according to the federal census of 1920, have a population of not fewer than 720 and not more than 750; repealing all laws in conflict herewith; and declaring an emergency."

Read first time and referred to Committee on State Affairs.

Simple Resolution No. 11.

Senator Hyer sent up the following resolution:

Whereas, Texas, in which state was located many of the aviation training camps during the last World War, and because of its equable climate and its level topography is the cradle of American aviation, and

Whereas, Texas, because of its great area needs as a part of its development the expansion of aviation, both air passenger lines and air mail, and

Whereas, Because under the present contract system of the United

States Post Office Department air mail is denied to many towns and cities which are located on air transport lines, and,

Whereas, Postmaster General Walter F. Brown in a speech made recently before the Cleveland Chamber of Commerce outlined a plan whereby the United States Post Office Department will place air mail on air transport lines thus affording the towns, cities and communities along the present and future air transport passenger lines the great advantage of air mail, and

Whereas, present development of aviation and that contemplated under the plan of the Postmaster General will serve to stabilize American aviation so that it will be able to aid in any military conflict of the future, therefore, be it

Resolved, That the Senate of Texas endorse the purposes hereinbefore set out and urge upon their Congressmen and Senators their assistance in fostering air mail and air transporation under the plan set forth by the Postmaster General, and, therefore be it

Resolved, Further, That copies of these resolutions be sent to Postmaster General Brown and to members of the Texas delegation in the national House of Representatives.

Hyer, Pollard, Russek, Wirtz, Gainer, Parr, Parrish, Hardin, Love, Berkeley, Moore, Hornsby.

Read and adopted.

Message From the Governor.

The Chair recognized the Doorkeeper, who introduced a messenger from the Governor with the following message:

(Copy)

Executive Department,
Austin, Texas, January 30, 1930.

To the Members of the Senate.

Through inadvertence the name of Honorable Gus F. Schreiner as a member of the State Game, Fish and Oyster Commission was omitted from the list of appointees sent to you for confirmation a few days ago. Therefore, I hereby submit the name of Gus F. Schreiner, of Kerr County, to be a member of the State Game, Fish and Oyster Commission.

Respectfully submitted,

DAN MOODY,
Governor.

Read and referred to the Committee on Governor's Nominations.

Committee of the Whole.

At the conclusion of the morning call the Senate resolved itself into a Committee of the Whole, Senator Berkeley presiding.

Committee Reports.

Senator Berkeley announced that the Committee of the Whole had made progress and moved that the Senate resolve itself again into a Committee of the Whole immediately following recess. The motion prevailed.

S. C. R. No. 5.

Senator Hyer sent up the following resolution:

Whereas, The Hon. Carl Williams, cotton member of the Federal Farm Board, is at this time in Texas, for the purpose of advising regarding a program in the State designed to make available to Texas cotton farmers the cotton marketing facilities sponsored by the Federal Farm Board, and

Whereas, The subject of cotton marketing is a matter of the deepest concern to the citizenship of this State and it is very desirable that the fullest possible understanding of the Farm Board's program be had,

Therefore Be It Resolved That the Hon Carl Williams be invited to address a joint session of the House and Senate of this Legislature at such time as he may conveniently appear before it.

HYER.

The resolution was read and adopted.

Recess.

On motion of Senator Berkeley, the Senate, at 12 o'clock, recessed until 2 o'clock p. m.

After Recess.

The Senate met at 2:00 o'clock p. m., pursuant to recess, and was called to order by Lieutenant Governor Barry Miller.

Invitation From Mrs. Dan Moody.

The Chair laid before the Senate

the following invitation from Mrs. Dan Moody:

Observing her regular day "At Home," February 4, Mrs. Dan Moody will entertain, honoring the Legislative Ladies.

All ladies of the Senate are cordially invited to be present and to receive with Mrs. Moody, Tuesday from 4:00 to 6:00 o'clock, Governor's Mansion.

Message From the House.

The Chair recognized the Doorkeeper, who introduced a messenger from the House with the following message:

Hall of the House of Representatives.
Austin, Texas, January 30, 1930.
Hon Barry Miller, Presdient of the Senate.

Sir: I am directed by the House to inform the Senate that the House has passed the following resolutions:

H. C. R. No. 14, inviting a reconsideration by the Real Estate Board of Wisconsin of the recently established policy toward realtors from the State of Texas.

H. C. R. No. 16, inviting the Hon. Carl Williams, cotton member of the Federal Farm Board to addres a joint session of the House and Senate.

Respectfully submitted,
LOUISE SNOW PHINNEY,
Chief Clerk, House of Representatives.

Committee of the Whole.

The Senate resolved itself into a Committee of the Whole, Senator Berkeley presiding.

Committee Reports.

Senator Berkeley reported that the Committee of the Whole had made progress and moved that the Senate resolve itself into a Committee of the Whole tomorrow morning immediately after the morning call.

The motion prevailed.

Committee Appointed.

The Chair announced the appointment of the following committee on the part of the Senate to make arrangements for the Hon. Carl Williams to address a joint session:

Senators Hyer, Patton, Beck, Hornsby and Witt.

Simple Resolution No. 12.

Senator Hyer sent up the following resolution:

Whereas, The issue of the Saturday Evening Post of the week of January 27, 1930, contains a very pertinent article by an eminent authority on prison reform,

Therefore, Be It Resolved by the Senate, That the Sergeant-at-Arms be instructed by the Senate to secure as many copies of said issue of the Saturday Evening Post as possible not to exceed 32, and furnish the same to the Senators out of the contingent expense.

HYER.

The resolution was read.

The roll call showed no quorum present, the following vote resulting:

Yeas—11.

Berkeley.	Parr.
Holbrook.	Patton.
Hornsby.	Stevenson.
Hyer.	Thomason.
Love.	Woodward.
McFarlane.	

Nays—6.

Beck.	Martin.
Cunningham.	Russek.
DeBerry.	Wirtz.

Present—Not voting.

Small.

Absent.

Gainer.	Neal.
Hardin.	Parrish.
Miller.	Westbrook.
Moore.	Witt.

Absent—Excused.

Cousins.	Williamson.
Greer.	Woodul.
Pollard.	

Adjournment.

On motion of Senator Berkeley, the Senate, at 5:10 o'clock p. m., adjourned until 10 o'clock tomorrow morning.

APPENDIX.

Committee Reports.

Committee Room,
Austin, Texas, January 30, 1930.
Hon Barry Miller, President of the Senate.

Sir: We, your Committee on Civil

Jurisprudence, to whom was referred S. B. No. 16, A bill to be entitled "An Act providing that the Supreme Court and Courts of Civil Appeals of this State shall have original jurisdiction in the matter of issuing the writ of mandamus, or any other mandatory or compulsory writ or process to compel the performance by any chairman or member of any executive committee, or primary committee, or primary election officer of any party, of any duty imposed upon them, respectively, by the laws of this State, and making this Act cumulative of all other laws affecting its subject matter, and declaring an emergency.'

Have had the same under consideration and I am instructed to report the same back to the Senate with the recommendation that it do pass and be printed in the Journal.

WOODWARD, Chairman.

Senate Bill No. 16.

By Love, Parrish, Williamson, Hyer, Moore, Hardin, Thomason, Woodward, Berkeley, Small, McFarlane, Beck, Hornsby, Cunningham, Witt, Neal, Russek, Martin, Holbrook, Woodul, Westbrook, Cousins, Pollard, Patton, Stevenson.

A BILL
To Be Entitled

An Act providing that the Supreme Court and Courts of Civil Appeals of this State shall have original jurisdiction in the matter of issuing the writ of mandamus, or any other mandatory or compulsory writ or process to compel the performance by any chairman or member of any executive committee, or primary committee, or primary election officer of any party, of any duty imposed upon them, respectively, by the laws of this State, and making this Act cumulative of all other laws affecting its subject matter, and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Section. 1. The Supreme Court, or any Court of Civil Appeals, shall have power, or authority, or jurisdiction, to issue the writ of mandamus, or any other mandatory or compulsory writ or process, against any chairman or member of any executive committee, or primary committee, or primary election officer, of any political party, to compel the performance, in accordance with the laws of this State, of any duty imposed upon them, respectively, by law. If it appear to the Court that delay will not prove injurious to either party, and that justice may be subserved thereby, it may cause notice of the application for any such writ or process, and of the time fixed for considering the same, to be given the opposite party in such manner as it may direct. This Act shall be cumulative of all other laws affecting its subject matter.

Sec. 2. The fact that the present system of considering applications for writs of mandamus and other mandatory writs, compelling the performance of duty by officers and members of party executive committees, involves needless delays which may work injustice in many cases, constitutes an emergency and an imperative public necessity that the constitutional rule requiring bills to be read in each House on three several days, be suspended, and the same is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Committee Room,
Austin, Texas, January, 30, 1930.

Hon. Barry Miller, President of the Senate.

Sir: We, your Committee on Federal Relations, beg leave to report that an opinion of the Attorney General of Texas has been received in response to the request of the committee, as heretofore reported to the Senate, which opinion is submitted herewith.

LOVE, Chairman.

Elections—Primary Elections—Powers of Committees.

1. The statutes of Texas provide that every political party in this State, through its State Executive Committee, shall have the power to prescribe the qualifications of its own members and shall, in its own way, determine who shall be qualified to vote or otherwise participate in such political party; provided that no person shall ever be denied the right to participate in a primary in this State because of former political views or affiliations or because of membership

or non-membership in organizations other than the political party.

2. While not passing upon the extent of the powers of party executive committees to determine who shall vote or otherwise participate in party affairs (this opinion being confined strictly to the question propounded to the Attorney General) it is held that no party executive committee has power to bar any person from participating in a party primary, either as a candidate for office or as a voter, because such person has voted against a nominee of such party at an election heretofore held after participating in the primary convention and primary elections of such party. This holding is based upon the inhibitions in the statute above mentioned which have the effect of prohibiting such committees from excluding persons from the party by reason of past political affiliations or beliefs.

Attorney General's Department,
January 30, 1930.

Hon. Thomas B. Love, Chairman,
Federal Relations Committee of the Senate of Texas, Capitol.

Dear Sir: Attorney General Bobbitt is in receipt of your communication of the twentieth instant, reading as follows:

"At a duly called meeting, today, of the Federal Relations Committee of the State Senate of Texas, of which committee I am chairman, the following resolution was duly adopted:

" 'Resolved: That the Attorney General of Texas is requested, as early as practicable, to communicate to the Committee on Federal Relations of the Senate, for its information, his opinion as to whether any executive committee of any political party has the power, under the laws of this State, to bar any person from participating in a party primary, either as a candidate for office or as a voter, because such person has voted against a nominee of such party at an election heretofore held, after participating in the primary conventions and primary elections of such party.' "

The statute (Article 4399, R. S. 1925) relating to the duties of the Attorney General, provides as follows:

"The Attorney General at the request of . . . . committees of either branch of the Legislature . . . . shall give them written advice upon any question touching the public interest, or concerning their official duties."

Pursuant to the provisions of this statute, this opinion is given in response to the request of your committee, above quoted. You will therefore, please communicate it to your committee for its information.

It is not necessary, in order to answer your inquiry, to determine the extent of the affirmative power of the State Executive Committee to prescribe qualifications of the members of the party or its candidates, our opinion being strictly confined to the question submitted.

It is a matter of common knowledge that the real question at issue is the power of the executive committees of the Democratic Party to bar those who participated in the primaries and conventions in 1928 and then voted for Hoover, the Republican nominee, instead of Smith, the Democratic nominee. While you do not so state, we are assuming that your question relates to our major political parties governed and controlled by our statutes which relate to parties casting 100,000 votes or more at the last general election.

The question is, whether any executive committee of any such political party has the power, under existing laws of this State, to bar any person from participating in a party primary, either as a candidate for office or as a voter, because such person has voted against a nominee of such party at an election heretofore held, after participating in the primary conventions and primary elections of such party.

If any such committee has the power, it must have been granted to them, either by statute or by the party itself, in the absence of a valid statute; for committees are simply agencies through which the party machinery functions. The State Executive Committee and other executive committees of political parties in this State are provided for by statute, and their duties are prescribed in detail. We naturally, therefore, look first to the statute in order to determine the power of such committees.

Article 3107 of the Revised Civil

Statutes of 1925 as enacted by the First Called Session of the Fortieth Legislature, Chapter 67, reads as follows:

"Art. 3107. Political Party May Prescribe Qualifications of Members. —Every political party in this State through its State Executive Committee shall have the power to prescribe the qualifications of its own members and shall in its own way determine who shall be qualified to vote or otherwise participate in such political party; provided that no person shall ever be denied the right to participate in a primary in this State because of former political views or affiliations or because of membership or non-membership in organizations other than the political party."

Whatever authority this statute may confer, it certainly purports and intends to inhibit any party committee from denying any person the right to participate in a primary in this State because of former political views or affiliations or because of membership or non-membership in organizations other than the political party. If a committee should attempt to bar persons from voting or becoming candidates on account of the fact that they voted against a nominee of such party at an election heretofore held after participating in the primary conventions and primary elections of such party, such attempt would be plainly contrary to the express provisions of this statute. The statute is plain, and no rules of construction are necessary in order to determine its purpose and intent.

While this is true, a brief statement of the history of Article 3107 may be in order so that the legislative intent, particularly in reference to county committees, may be made plain. Article 3107 supersedes the Statute which had a provision in it barring negroes from participating in primaries of the democratic party, which latter mentioned law had superseded what was formerly Article 3093, Revised Statutes of 1911, authorizing county executive committees of political parties to prescribe additional qualifications for voters in primaries not inconsistent with the statutes. Having repealed this former law conferring this authority on county committees and having enacted what is now Article 3107, the intention is plain to withdraw from both state and county executive committees authority to exclude persons from primaries because of former political views or affiliations.

The statute being plain as to its purpose and intent, the answer to your inquiry must be in the negative unless the statute itself is invalid. Is this statute invalid in so far as it contains this prohibition as applied to party executive committees? We are now dealing with the power of party committees and the power of the Legislature to pass a statute denying to committees authority to exclude from the party those who may have previously had other party views or affiliations. Since the committees are provided for and their duties prescribed by statute, it would seem to be within the province of the Legislature, by statute, to restrict their powers. It may be that the mere creation of a committee would give, by implication, certain powers in the absence of statute or party rule to the contrary, and in accordance with party usage, but certainly the implied power would not extend to power directly contrary to statute.

The best authority on this point is the decision of the Supreme Court of Texas in the case of Gilmore v. Waples, 188 S. W. 1037. In that case the question involved was whether State Democratic Executive Committee had authority to make a nomination for the party where none had been made by the party at the general primary election. A vacancy by death had occurred in the office of Railroad Commissioner after the primaries had been held, and while there was a vacancy in the office there was no vacancy in any nomination for the office. The statute conferred authority upon the State Executive Committee to fill vacancies in nominations but expressly prohibited it from making nominations in other instance. It was contended in the case that the State Democratic Executive Committee had this power notwithstanding the statute, since the statute had provided no means of making a nomination under such circumstances as then existed. The Supreme Court overruled this contention, however, and held that the State Democratic Executive Committee had no power to make the nomination because the

statutes deprived such committee of this power, saying, through Chief Justice Phillips:

"Vested as it was with the power of legislation upon the subject, it was clearly competent for the Legislature to provide for nominations by the committee in certain instances and to deny such authority in all others."

If the Legislature had power to prohibit the State Executive Committee from making a nomination where the law provided no method, we see no reason why it cannot enact a law depriving committees of the power to exclude from the party those who may have previously had other party affiliations or beliefs.

Another case that may be mentioned is Briscoe v. Boyle, 286, S. W. 275, in which it was expressly held by the Court of Civil Appeals that a party executive committee was unauthorized to require a voter in a primary to make affidavit that he did not aid any other political party in that last general election. This court decision was handed down even before the present law was passed expressly denying such power to party committees. In prior years the statute, as before mentioned, provided that the executive committee of any party for any county might prescribe additional qualifications for voters in such primaries not inconsistent with the statutes. At the time of the decision of the case just mentioned, this statute had been superseded and the Court held that there being no statute conferring such authority, the committee had no authority to exact such a pledge of party fealty in the previous election. The Court said:

"The law does not purport to measure his eligibility by his past political performance but by his present intentions; not by what he has done or omitted to do in the past but what he promises and in honor obligates himself to do in the immediate future."

It may be noted in this connection that there is now not only no affirmative statute conferring the authority in question on committees, but there is a negative provision expressly denying this authority.

We think there can be no doubt, in view of this plain statute, that party committees do not possess the power in question. If any further evidence is needed than the plain wording of the statute, together with the decisions of the courts upholding the power of the Legislature to regulate and even restrict political parties, the action that was recently taken in the Legislature may be cited as strong evidence that the party executive committee is without this power. It will be recalled that there was introduced in the Legislature a measure commonly known as the Wirtz Bill, which sought to amend the present law (Art. 3107) so as to confer upon state executive committees of the several political parties the express power to determine who may vote, or otherwise participate in their respective primary elections and who may become candidates for their respective nominations, without any provision inhibiting such committees from ousting voters and candidates because of prior political views and affiliations. This bill was passed by both houses of the Legislature and was vetoed by the Governor. An examination of the Journals of each branch of the Legislature, as well as the veto message of Governor Moody, discloses that the bill was passed on the conviction that the executive committee did not possess the power to bar voters and candidates on account of prior party affiliations, and that it was vetoed upon the same understanding. Thus, we have a clear legislative construction of our present law, and a legislative opinion as to the power of party committees under existing laws. The Legislature clearly construed the law to mean just what it says, and construed it as being valid and effective for such purpose.

The intention of the statute being plain, its validity, of course, is measured by its reasonableness. We do not believe the courts would hold it unreasonable for the Legislature to deny this great power to party committees. Committees, of course, act as agents of the party. The party is composed of its members—the voters. It is a matter of common knowledge that in the last election a great portion of the membership of the Democratic Party voted for the Republican nominee in the general election. That same member-

ship had, through its conventions, selected the State Executive Committee. County executive committees were likewise selected by the party membership in the manner prescribed by law. Is it unreasonable for the law to prohibit committees from ousting the very members of the party who selected such committees? A party committee is just what the name implies,—a committee. It is somewhat analagous to the board of directors of a corporation. It is the machinery through which certain business of the party is transacted, but the power to oust from the party nearly fifty per cent of its members on account of voting for a candidate on another ticket in the general election, and to deny to nearly fifty per cent of the party the right to be candidates for nomination in the primary, is a tremendous power even for the convention of a party to possess, much less a committee. Therefore, we cannot say that the statute in question goes beyond what is a reasonable regulation of party affairs in so far as its inhibition against committees is concerned. We cannot say that it is unconstitutional in so far as it denies this power to party committees. One of the prime purposes of a primary election is to permit the party to select candidates for the various offices. If the committee can eliminate a large per cent of the party's membership and disqualify them as candidates, then, to that extent, it is depriving the party itself from performing the main functions for which it was created. These considerations were, very probably, in the mind of the Legislature when it enacted the statute and probably influenced it in determining that it was within constitutional bounds in enacting this law in so far as committees are concerned.

It is true that the Supreme Court of the United States held invalid a statute which expressly excluded negroes from the Democratic party. Nixon v. Herndon, 273 U. S. 536. However, this case is not authority to the contrary of our holding. In the Nixon case it was simply held that a staute prohibiting negroes from participating in a Democratic primary election was invalid as violating the Fourteenth Federal Amendment. The question of the power of the Legislature to deny authority to party executive committees was, in no way, involved in that case.

It may be well for us to review, briefly, various cases in order to indicate the holdings of the various courts in reference to the power of the Legislature to regulate political parties and, also, to show that these cases do not hold contrary to the conclusion reached in this opinion.

In Robbins, et al. v. Thompson, 8 S. W. (2nd) 813, the Court of Civil Appeals held that a party committee cannot be forced to place on the ticket as a candidate, one who had never been a Democrat and had fought the Democratic Party and who was unwilling to pledge his fealty to the party. Speaking of Article 3107, the Court said:

"The statute may be able to force committees to allow Republicans and others of different political faith to vote in Democratic primaries, but cannot force the executive committees to place enemies of the party on its ticket to be voted for by loyal Democrats."

In Scurry v. Nicholson, 9 S. W. (2nd) 747, it was held that, there being no statute to the contrary, the county executive committee had authority to require members of the committee to take a pledge of party fealty.

In Grigsby, et al., v. Harris, et al., 27 Fed. (2nd) 942, the Court held that to exclude negroes from participating in party primary elections pursuant to the rule adopted by the State Executive Committee, was not in violation of constitutional right.

In Waples v. Marrast, 184 S. W. 180, the Supreme Court of Texas held that the authority of the Legislature to require the holding of a primary election by political parties for the purpose of enabling their members to vote their choice for party nominees for elective offices, whether state or national, and likewise express their preference in the selection of party delegates to party conventions, is undoubted. We cite this case only for the purpose of showing that the Legislature has power to regulate nominations by political parties.

In Koy v. Schneider, 218 S. W. 479, our State Supreme Court held that the Legislature has the power

to regulate and restrict the right to vote in primary elections, the specific holding being that the Legislature had the right to extend the voting privilege in primary elections to women even before they were granted the right to vote in general elections.

In Morris v. Mims, 224 S. W. 586, it was held by the Court of Civil Appeals that the Legislature can not forbid nominations being made by newly organized parties.

In Westerman v. Mims, 227 S. W. 178, the State Supreme Court held that upon equitable principles a court will not issue the writ of mandamus to assist a candidate to have his name placed on the ballot as an independent candidate opposed to the regular party nominee where such independent candidate had participated in the primary and had taken the pledge to support the nominees of the primary. In that case, the question of prior party affiliations was not involved. The power of party committees to exclude from the party persons on account of their prior party affiliations was not involved. On the other hand, the candidate seeking the writ of mandamus had taken a pledge and he was asking the Court to compel action which would assist him in breaking the pledge. The Court declined to render such assistance by issuing the extraordinary writ of mandamus.

In the case of Beene v. Waples, 187 S. W. 191, the Supreme Court of Texas held as follows:

"In the absence of constitutional or statutory restrictions upon their duties and powers, the duly existing authorities of a political party, such as State and county executive committees, in accordance with party usage, may make and enforce all reasonable regulations relating to nominations within such party including reasonable assessments against any and all candidates for such nominations."

In this case the court held that the party had the right, under the statute, to levy an assessment against candidates for party nominations to cover the expense of primaries.

In the case of DeWees v. Stevens, et al., 150 S. W. 589, it was held that mandamus will not lie in the Supreme Court to compel the vacation of an order by the district judge in which the latter mandamused the county chairman to certify the name of a nominee who was a Republican but had received the highest number of votes in a democratic primary, the court holding, however, that in a proper proceeding, the Democratic candidate receiving the proper number of votes, would have had his remedy.

In the case of Love vs. Taylor, 8 S. W. (2nd) 795, it was held by the Court of Civil Appeals that one who took a pledge to support the Democratic nominee for president and thereafter repudiated the obligation, and took a contrary stand, held not entitled to require the executive committee to include his name as a candidate in the Democratic primary.

The statute providing for applications of candidates to go on the ballot in the general primary provides that "the request to have the name of any person affiliating with any party placed on the official ballot for a general primary as a candidate, etc." shall be governed by certain regulations. This seems to require party affiliation in order to become a candidate. In view of the latter enactment inhibiting the exclusion of persons on account of previous affiliations, this statute must be construed as contemplating present party affiliation and not previous affiliations.

Another statute that must be considered is Article 3093 requiring each applicant for nomination for United States Senator to state in his application that "if he voted at the preceding election he voted for the nominee of said party." This must be considered as modified by the later statute (Art. 3107) providing that no person shall ever be denied the right to participate in a primary in this State because of former political views or affiliations.

The statute being plain and unambiguous in so far as your inquiry is concerned, and it being the opinion of this Department that it is valid for the purpose of restricting the power of committees in reference to the matter submitted, it is scarcely necessary to inquire what the power of committees would be in the absence of this negative statute.

However, we do not wish to be understood as holding that, in the

event Article 3107 should be held to be unconstitutional, party committees would have this authority. Such committees would have such implied powers only as are in accordance with party usage. Beene v. Waples, (Tex. Sup.) 187 S. W. 191. We find no sanction in party usage in this State for such action by party committees. There have been defections in the ranks of the major party in the recent past, and it has never been the policy of the party to expel from the party those members who may have voted another ticket in the general election, nor to exclude them as candidates. On the contrary, they have been welcomed back for the sake of party harmony. Therefore, such power of party committees would not be held to be an implied or inherent power. No power is to be implied in such committees as against party usage.

It is not for this Department to either condone party irregularity or condemn those who saw fit to vote for presidential nominees of another party in the last election. This opinion is confined strictly to the one question—which is a law question, though on a political subject—as to whether party committees have the authority in question.

In the light of the foregoing, you are, therefore, advised that in the opinion of this Department, no executive committee of a political party has the power to bar any person from participating in a party primary either as a candidate for office or as a voter, because such person has voted against a nominee of such party at an election heretofore held, after participating in the primary conventions and primary elections of such party.

Yours very truly,

L. C. SUTTON,

LCS:W Assistant Attorney General.

This opinion has been considered in conference, approved and ordered recorded.

ROBERT LEE BOBBITT,
Attorney General.

NINTH DAY.

Senate Chamber,
Austin, Texas,
January 31, 1927.

The Senate met at 10 o'clock a. m. pursuant to adjournment, and was called to order by Lieutenant Governor Barry Miller.

The roll was called, a quorum being present, the following Senators answering to their names:

Beck.	Neal.
Berkeley.	Parr.
Cousins.	Parrish.
DeBerry.	Patton.
Gainer.	Russek.
Holbrook.	Stevenson.
Hornsby.	Thomason.
Hyer.	Westbrook.
Love.	Wirtz.
Martin.	Witt.
McFarlane.	Woodul.
Miller.	Woodward.
Moore.	

Absent—Excused.

Cunningham.	Pollard.
Greer.	Small.
Hardin.	Williamson.

Prayer by the Chaplain.

Pending the reading of the Journal of yesterday, the same was dispensed with on motion of Senator Gainer.

Petitions and Memorials.

(See Appendix.)

Committee Reports.

(See Appendix.)

Bills and Resolutions.

By Senator Small:

S. B. No. 28, A bill to be entitled "An Act creating a more efficient road system for Collingsworth County, Texas; and declaring an emergency."

Read first time and referred to Committee on State Highways and Motor Traffic.

By Senators Parrish and Small:

S. B. No. 29, A bill to be entitled "An Act providing for the sale of all oil and/or gas in State Prison lands by lease; creating a Board for Lease of State Prison Lands and prescribing the duties and powers of said Board; prescribing the mode and manner of selling oil and gas in State prison lands and the disposition to be made of the proceeds of such sales; making an appropriation to defray the expense of enforcing