

E N R O L L E D

SENATE JOINT RESOLUTION NO. 18.

BY: TIMMONS.

A JOINT RESOLUTION DIRECTING THE SECRETARY OF STATE TO REFER TO THE PEOPLE FOR THEIR APPROVAL OR REJECTION, A PROPOSED AMENDMENT TO SECTION 3 OF ARTICLE 6, OF THE CONSTITUTION OF THE STATE OF OKLAHOMA.

BE IT RESOLVED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE EIGHTEENTH LEGISLATURE OF THE STATE OF OKLAHOMA:

SECTION 1. The Secretary of State shall refer to the people for their approval or rejection, as and in the manner provided by the law, the following proposed amendment to Section 3, Article 6, of the Constitution of the State of Oklahoma:

"Section 3, No person shall be eligible to the office of Governor, Lieutenant Governor, Secretary of State, State Auditor, Attorney General, State Treasurer, Superintendent of Public Instruction or State Examiner and Inspector, except a citizen of the United States of the age of not less than thirty-one (31) years and who shall have been ten (10) years next preceding his or her election, a qualified elector of this State,"

SECTION 2. The ballot title for said proposed amendment shall be in the following form:

"Ballot Title

"Legislative Referendum No. _____ State Question No. _____

The gist of the proposition is as follows:

Shall a Constitutional Amendment

Amending Section 3, Article 6, Constitution of Oklahoma, providing that no person shall be eligible to the office of Governor, Lieutenant Governor, Secretary of State, State Auditor, Attorney General, State Treasurer, Superintendent of Public Instruction, State Examiner and Inspector, except a citizen of the United States of the age of not less than thirty-one (31) years and who shall have been ten (10) years next preceding his or her election, a qualified elector of this State, be approved by the people?"

Shall the Proposed Amendment be Approved?

: ; Yes

: : No "

The President of the Senate shall, immediately after the effective date of this Resolution, prepare and file one (1) copy thereof, including said ballot title, with the Secretary of State and one (1)

copy with the Attorney General.

Passed the Senate the 24th day of February, 1941.

MEAD NORTON

Acting President of the Senate.

Passed the House of Representatives the 15 day of April, 1941.

E. BLUMHAGEN

Speaker of the House of Representatives.

Approved by the Governor of the State of Oklahoma the day
of , 1941.

Governor of the State of Oklahoma.

CORRECTLY ENROLLED
VIRGIL L. STOKES
CHAIRMAN OF COMMITTEE ON ENGROSSED AND ENROLLED BILLS.

Received in Office of Governor
4-21-41 at 2:15 P. M.
Ralph F. Brentlinger
Secretary.
M. Nash

Received 4-28-41 at 4:15 P. M.
C. C. Childers, Secretary of State
By B. R.

MAC Q. WILLIAMSON
ATTORNEY GENERAL



STATE OF OKLAHOMA
OFFICE OF THE ATTORNEY GENERAL
OKLAHOMA CITY

April 29, 1941

Honorable C. C. Childers
Secretary of State
B u i l d i n g

Dear Sir:

You are hereby notified that pursuant to the discretion and duty lodged in and imposed upon the Attorney General by Section 1, Article 1, Chapter 30, Oklahoma Session Laws 1939, he has examined the proposed Ballot Title of Senate Joint Resolution No. 18 of the Eighteenth Legislature of the State of Oklahoma, same being State Question No. 302, Legislative Referendum No. 83, which, together with a copy of said Resolution, was delivered to him on April 29, 1941, by the Honorable James E. Berry, President of the Senate of said Legislature, and from said examination finds that said Ballot Title is not in legal form and in harmony with the law.

Therefore, pursuant to the provisions of the above section, the Attorney General has prepared and is submitting herewith, same to be filed in your office, a Ballot Title for said measure, which, in his opinion, does conform to the law. Said Ballot Title is as follows:

"Ballot Title

State Question No. 302

Legislative Referendum No. 83

THE GIST OF THE PROPOSITION IS AS FOLLOWS:

Shall a Constitutional Amendment

Amending Section 3, Article 6, Constitution of Oklahoma, providing that no person shall be eligible to the office of Governor, Lieutenant Governor, Secretary of State, State Auditor, Attorney General, State Treasurer, Superintendent of Public Instruction or State Examiner and Inspector, except a citizen of the United States of

the age of not less than thirty-one (31) years and who shall have been ten (10) years next preceding his or her election, a qualified elector of this State,

be approved by the people?

.....
: : : YES
.....

SHALL THE PROPOSED AMENDMENT BE APPROVED?

.....
: : : NO."
.....

Yours very truly,

FOR THE ATTORNEY GENERAL

Fred Hansen
Fred Hansen
Assistant Attorney General

FH:EM

SECRETARY'S MEMORANDUM
OKLAHOMA CITY, STATE OF OKLAHOMA
SECRETARY'S OFFICE

This instrument was filed for record this
30th day of April A. D. 19 41
at 8:30 o'clock A. M.

Recorded in _____ at page _____
Record No. _____

R. W. Anderson
SECRETARY OF STATE
By *H. M. Carter*



JAMES E. BERRY

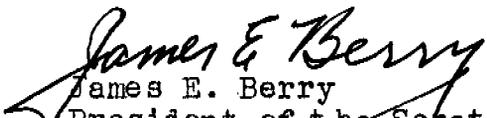
LIEUTENANT GOVERNOR OF OKLAHOMA
Oklahoma City, Oklahoma
April 29, 1941

Honorable C. C. Childers,
Secretary of State,
B U I L D I N G

Dear Sir:

Pursuant to Section 2, Senate Joint Resolution No. 18, of The Eighteenth Legislature of the State of Oklahoma, and Section 1, Article 1, Chapter 30, Oklahoma Session Laws 1939, I have prepared and hereby tender for filing with you as Secretary of State of Oklahoma one copy of Senate Joint Resolution, including ballot title therefor.

Respectfully yours,


James E. Berry
President of the Senate

Received this 29th day
of April, 1941 at 12:45 p.m.

Secretary of State

Enrolled

Senate Joint Resolution No. 18

By: Simmons

A Joint Resolution Directing The Secretary
Of State To Refer To The People For Their
Approval Or Rejection, A Proposed Amendment
To Section 3 of Article 6, Of The Constitution
Of The State Of Oklahoma.

Be It Resolved By The Senate And House Of Representatives Of The
Eighteenth Legislature Of The State Of Oklahoma:

Section 1. The Secretary of State shall refer to the people for their
approval or rejection, as and in the manner provided by the law, the following
proposed amendment to Section 3, Article 6, of the Constitution of the State of
Oklahoma:

"Section 3. No person shall be eligible to the office of Governor,
Lieutenant Governor, Secretary of State, State Auditor, Attorney General, State
Treasurer, Superintendent of Public Instruction or State Examiner and
Inspector, except a citizen of the United States of the age of not less than
thirty-one (31) years and who shall have been ten (10) years next preceding his or
her election, a qualified elector of this State."

Section 2. The ballot title for said proposed amendment shall be in
the following form:

"Ballot Title

"Legislative Referendum No.

State Section No.

The gist of the proposition is as follows:

Shall a Constitutional Amendment

Amending Section 3, Article 6, Constitution of
Oklahoma, providing that no person shall be
eligible to the office of Governor, Lieutenant
Governor, Secretary of State, State Auditor,
Attorney General, State Treasurer, Superintendent
of Public Instruction, State Examiner and Inspector,
except a citizen of the United States of the age
of not less than thirty-one (31) years and who
shall have been ten (10) years next preceding

Committee Enrolled

Chairman of Committee on Enrolled and Enrolled Bills

his or her election, a qualified elector of this State, be approved by the people?"

"Shall the Proposed Amendment be Approved?"

Yes

No

The President of the Senate shall, immediately after the effective date of this Resolution, prepare and file one (1) copy thereof, including said ballot title, with the Secretary of State and one (1) copy with the Attorney General.

Passed the Senate the 24th day of February, 1941.

Mead Norton
Acting President of the Senate.

Passed the House of Representatives the 15th day of April, 1941.

E. Blumberg
Speaker of the House of Representatives.

Approved by the Governor of the State of Oklahoma the _____ day of _____, 1941.

Governor of the State of Oklahoma.

Proposed by _____
 Reported by _____
 Chairman of the Committee on _____
 Director of _____

RECEIVED

4-29-44 At 12:45 M

C. C. Childers, Secretary of State

By CCR



DEPARTMENT OF STATE
STATE OF OKLAHOMA
OKLAHOMA CITY

In the Matter of
State Question No. 302
Referendum Petition No. 83

Honorable Leon C. Phillips
Governor of the State of Oklahoma
Capitol Building

I, C. C. Childers, Secretary of State of the State of Oklahoma, do hereby certify that on the twenty-ninth day of April, A. D. 1941, there was filed in the office of the Secretary of State of the State of Oklahoma, by James E. Berry, President of the Senate of Oklahoma, copy of Senate Joint Resolution No. 18, proposing an amendment to the Constitution.

I further certify that said Senate Joint Resolution No. 18 has been designated as State Question No. 302, Referendum Petition No. 83.

I Further certify that on the thirtieth day of April, 1941, the Attorney General of the State of Oklahoma, filed in my office the attached Ballot Title, as approved by him, of said State Question No. 302, Referendum Petition No. 83, which Ballot Title is made a part of this certificate.

I further certify that there is also attached a true and correct copy of Senate Joint Resolution No. 18.

In Witness Whereof, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be attached, this the second day of May, A. D. 1941.

C. C. Childers

SECRETARY OF STATE

Katherine Manton

Asst. Secretary of State.

Received Certificate this
the 2nd day of May, 1941

GOVERNOR'S OFFICE

By: *Walter Brown*



DEPARTMENT OF STATE
STATE OF OKLAHOMA
OKLAHOMA CITY

In the Matter of
State Question No. 302
Referendum Petition No. 83

Honorable J. William Cordell
Secretary
State Election Board
Capitol Building

I, C. C. Childers, Secretary of State of the State of Oklahoma, do hereby certify that on the twenty-ninth day of April, A. D. 1941, there was filed in the office of the Secretary of State of the State of Oklahoma, by James E. Berry, President of the Senate of Oklahoma, copy of Senate Joint Resolution No. 18, proposing an amendment to the Constitution.

I further certify that said Senate Joint Resolution No. 18 has been designated as State Question No. 302, Referendum Petition No. 83.

I further certify that on the thirtieth day of April, 1941, The Attorney General of the State of Oklahoma, filed in my office the attached Ballot Title, as approved by him, of said State Question No. 302, Referendum Petition No. 83, which Ballot Title is made a part of this certificate.

I further certify that there is also attached a true and correct copy of Senate Joint Resolution No. 18.

In Witness Whereof, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be attached, this the second day of May, A. D. 1941.

C. C. Childers

SECRETARY OF STATE.

Katherine Mantow

Asst. Secretary of State.

Received Certificate this
the 2nd day of May, 1941
State Election Board
By: *[Signature]* 9:55 am.
Secretary.

SECRETARY OF STATE
STATE OF OKLAHOMA
OKLAHOMA CITY

October 12, 1942

Enclosed are three ballot titles on proposed constitutional amendments which are to be submitted to the people for their approval or rejection at the General Election to be held on November 3, 1942. They are as follows:

State Question No. 302, Legislative Referendum No. 83
State Question No. 303, Legislative Referendum No. 84
State Question No. 304, Legislative Referendum No. 85

The ballot titles, followed by an explanation of how to vote thereon, must be published in two newspapers in each county at least five days before said election. Said ballot titles are to be published one time only at the legal rate provided in Title 28, Oklahoma Statutes 1941, Section 121 (Section 1065, Oklahoma Statutes 1931).

These ballot titles are sent to you with the understanding that the charges will not be in excess of \$1.00 per square, NONPAREIL TYPE, which would amount to \$3.00 for each proposition, or a total of \$9.00 for three.

Please fill out the enclosed claim blank for no more than \$9.00, attach thereto proof of publication properly executed and return to this office. If, however, you do not wish to print the ballot titles they should be returned immediately.

Attached to this letter are copies of the ballot titles as they should appear in your newspaper.

Very truly yours,



Secretary of State

KM:MS
Enclosures.

"Ballot Title

State Question No. 302

Legislative Referendum No. 83

THE GIST OF THE PROPOSITION IS AS FOLLOWS:

Shall a Constitutional Amendment

Amending Section 3, Article 6, Constitution of Oklahoma, providing that no person shall be eligible to the office of Governor, Lieutenant Governor, Secretary of State, State Auditor, Attorney General, State Treasurer, Superintendent of Public Instruction or State Examiner and Inspector, except a citizen of the United States of the age of not less than thirty-one (31) years and who shall have been ten (10) years next preceding his or her election, a qualified elector of this State,

be approved by the people?

.....
..... ; YES
.....

SHALL THE PROPOSED AMENDMENT BE APPROVED?

.....
..... NO."
.....

Yours very truly,

FOR THE ATTORNEY GENERAL

Fred Hansen
Fred Hansen
Assistant Attorney General

FH:BM

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA.

Mrs. Lamar Looney,
 Petitioner,
 v.
 Graves Leeper, as Secretary of State;
 C. E. Dudley, John R. Williams and Roy
 Coppock, constituting the State Board
 of Public Affairs, and Cleon Summers,
 John E. Luttrell and John W. Hayson, consti-
 tuting the State Election Board of the
 State of Oklahoma,
 Respondents.

89, 122
 ref 42

No. 21,651.

SYLLABUS.

1. Section 1, of Article 24, of the Constitution of Oklahoma provides: "Any amendment or amendments to this Constitution may be proposed in either branch of the Legislature, and if the same shall be agreed to by a majority of all the members elected to each of the two houses, such proposed amendment or amendments shall, with the yeas and nays thereon, be entered in their journals, and referred by the Secretary of State to the people, for their approval or rejection, at the next regular general election, except when the Legislature, by a two-thirds vote of each house, shall order a special election for that purpose. If a majority of all the electors voting at such election, shall vote in favor of any amendment thereto, it shall thereby become a part of this Constitution.

HELD, that, under this provision, the exception clause, which reads, "except when the Legislature, by a two-thirds vote of each house, shall order a special election for that purpose", means two-thirds vote of all the members elected to and constituting each house.

2. By Senate Joint Resolution No. 5, of the Ninth Legislature of Oklahoma, an amendment was proposed to Section 3, Article 6, Constitution of Oklahoma. A majority of the members elected to and constituting each House of the Legislature voted for this resolution, but two-thirds of the members elected to and constituting each house did not vote for a resolution submitting said proposed amendment at a special election, nevertheless said proposed amendment was submitted at a special election held October 2, 1923, There was no authority for the submission of the proposed amendment at said special election and the affirmative vote thereon, by a majority of those voting at said election, gave the same no legal force or effect.

3. The embodiment in the provision of the Legislature proposing a constitutional amendment that it shall be submitted at the next general election or at any special election is purely surplusage, for the Constitution by Article 24, Section 1, expressly provides how such an amendment as described in Section 2, hereof, shall be submitted to the people, and that is where a majority of each house vote for the amendment, (without a two-thirds majority of each house voting for submission at a special election) the same shall be referred "at the next regular general election."

4. When, under the provisions of Article 24, Section 1, Constitution, a proposed constitutional amendment is agreed to by a majority of all the members elected to each of the two houses of the Legislature, it becomes the duty of the Secretary of State to refer the proposal to the people for their approval or rejection, at the next regular general election, as directed in said constitutional provision, and if he improperly failed, because of misunderstanding

as to his duty, mandamus lies to require such submission, even though, because of delay, it is necessary to submit the proposal at a subsequent regular general election. This for the reason that an official cannot by failure to properly perform ministerial duties, thwart the people in the enjoyment of a constitutional mandate giving to them the right of voice.

Original action for writ of Mandamus. Writ Granted.

J. B. A. Robertson,
B. H. Carey,

For Petitioners.

J. Berry King,
Attorney General,
Fred Hansen,
Assistant Attorney General,

For Respondents.

R I L E Y, J.

Petitioners by leave of Court commenced this action in mandamus on September 2, 1930, to require respondents in their respective official capacities to submit a proposed amendment to the State Constitution to the people for their adoption or rejection at the next general election to be held in this state on November 4, 1930.

Senate Joint Resolution No. 5 (Ch. 250 S.L. 1923) was passed by the Legislature on March 27, 1923, and approved by the Governor March 31, 1923, and filed with the Secretary of State under caption of State Question No. 122; Referendum Petition No. 42. It reads as follows:

"CHAPTER 250
SENATE JOINT RESOLUTION NO. 5.
STATE OFFICERS.

"A RESOLUTION authorizing a submission of a proposed amendment to the Constitution to the people for their approval or rejection, said proposed amendment being an amendment to Section 3, Article 6, of the Constitution of the State of Oklahoma.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:
Amendment.

"Section 1. That the following proposed amendment to Section 3, Article 6, of the Constitution of the State of Oklahoma, shall be referred to the people for their ratification or rejection at an election, as provided by law. Said proposed amendment shall be submitted under Articles 5 and 24, of the Constitution of the State of Oklahoma. Said proposed amendment being an amendment to and in lieu of Section 3, Article 6, of the Constitution of the State of Oklahoma, as follows, to-wit:

"Section 3. No person shall be eligible to the office of Governor, Lieutenant Governor, Secretary of State, State Auditor, Attorney General, State Treasurer, Superintendent of Public Instruction, State Examiner and Inspector, except a citizen of the United States of the age of not less than thirty years, and who shall have been three years next preceding such election, a qualified elector of this State.'

"Said proposed amendment shall be submitted as provided by law in the following form:

"Shall the proposed amendment be adopted?"

() YES

() NO.

"Said proposed amendment of the Constitution of the State of Oklahoma shall, upon receiving a majority of all electors voting at said election, voting in favor of said amendment, be adopted.

"Submission --When.

"Section 2. The amendment herein proposed shall be submitted to the qualified electors of this State as provided by law at the next ensuing statewide primary election, or in a general statewide election which may be called prior thereto.

Adopted by the Senate March 27, 1923.

Adopted by the House of Representatives March 27, 1923.

Approved March 31, 1923."

By inadvertence or by mistake of law the proposed amendment to the Constitution was submitted at a special election held on October 2, 1923, but subsequently declared lost by the Governor for the reason that the same had not been properly submitted to the people, notwithstanding the question received 173,262 votes for adoption as against 86,445 votes for rejection. No submission has been made since then.

The response filed by the Attorney General herein admits all the allegations of the petition except the effectiveness of the resolution, supra, authorizing the respondents to now submit the question, but join in the request that this Court take original jurisdiction and determine the issues involved.

The only issue presented in whether Senate Joint Resolution No. 5, is now in full force and effect, and as to whether the duties of respondents are ministerial.

Section 2, of the Resolution contains the following language:

"The amendment herein proposed shall be submitted to the qualified electors of this State as provided by law, at the next ensuing statewide primary election or in a general statewide election which may be called prior thereto."

The resolution makes no reference to the next general election to be held in this State, unless it can be said that "as provided by law" is a reference thereto, but the direction of the resolution was for the submission of the question at a primary election (the same being the primary election in August, 1924) or at a general election which may be called prior thereto, meaning August, 1924. The election last referred to could only have been a special election as the laws of Oklahoma did not authorize a statewide election to be held after March 31, 1923, and prior to the

primary election of August, 1924.

The Senate Journal of the Ninth Legislature shows said resolution was originally adopted in the Senate by a vote of Forty to nothing, but no vote was taken on the question of submission at a special election. The House Journal shows that said resolution was immaterially amended and passed by a vote of Sixty-three to Sixteen, but no vote was taken on the question of submission at a special election. The Senate Journal shown concurrence by the Senate in the amendment to the resolution by a vote of thirty-seven to nothing. So, irrespective of the question of the necessity of a separate vote by each branch of the Legislature on the question of submission at a special election, it is apparent that sixty-three affirmative votes in the House did not constitute a two-thirds majority of the members of the House even though it did constitute a majority of those members present and voting.

This Court held in *State ex rel Short, Attorney General, v. State Board of Equalization, et al*, 107 Okla. 118, 230 P. 743, that the requirement of the Constitution for the submission of a proposed constitutional amendment was the adoption of a resolution proposing same by a two-thirds vote of each house, and that such two-thirds vote meant a "two-thirds vote of all the members elected to and constituting each house" and not merely two-thirds of those present and voting.

Section 1, Article 24, Constitution:

"Any amendment or amendments to this Constitution may be proposed in either branch of the Legislature, and if the same shall be agreed to by a majority of all the members elected to each of the two houses, such proposed amendment or amendments shall, with the yeas and nays thereon, be entered in their journals and referred by the Secretary of State to the people for their approval or rejection, at the next regular general election, except when the Legislature, by a two-thirds vote of each house, shall order a special election for that purpose. If a majority of all the electors voting at such election shall vote in favor of any amendment thereto, it shall thereby become a part of this Constitution.

"If two or more amendments are proposed they shall be submitted in such manner that electors may vote for or against them separately."

In the cited case it was also held:

"The embodiment in the provisions of the Legislature proposing the amendment that it shall be submitted at the next general election or at any special election, is purely surplusage, for the constitutional provision supra, which rises superior to all attempted legislature enactment, expressly provides how such an amendment agreed to shall be submitted to the people, and that, in omitting the exception, where a majority of each house agrees to an amendment, it shall be referred at a general election (meaning next regular general election) by the Secretary of State."

It should be here noted that either legislative measures or Constitutional amendments, proposed by initiative petitions and referendums by the people on legislative measures proposed by the Legislature are voted upon under the provisions of Section 3, Article 6, of the Constitution and hence, under the provisions of said section, some may be submitted, "at the next election held throughout the State" which would include a statewide primary election, but constitutional amendments proposed by the Legislature may only be submitted at the "next regular general election" as provided by Section 1, Article 24, supra.

The proposed constitutional amendment should have been referred by the Secretary of State to the people for their approval or rejection at the general election held in November, 1924. That was not done. No doubt the failure to perform this duty was occasioned by the confusion brought about by the terms of the resolution itself. The question is now presented as to whether the failure of an officer to perform his duties at a proper time operates to defeat a right of voice on the part of the people.

38 C. J. 721, states the rule we follow:

"Where an officer or a board is under a clear legal ministerial duty to give notice of and order an election, ~~mandate~~ ~~to~~ ~~compel~~ the performance of

The case of State v. Davis, 85 S. E. 779, holds:

"Election officials cannot by plain disobedience of the minor mandate contained in the statute as to the time of election deprive the citizens of the greater mandate that they shall have an election. They cannot by disobedience of a mere particular embraced in the whole of the grant to the citizens of a legal right, exonerate themselves from disobedience of the whole."

And Texas so holds, Yett v. Cook, 274 S.W.197:

"Mandamus would lie to compel municipal officers, charged with the duty of calling and conducting an election on a certain day designated in city charter, at which their successors in office were to be named, to conduct an election where they had superseded judgment in mandamus proceedings, requiring them to call election on date prescribed by charter, and thereby prevented its execution on that date, though date fixed by law governing particular election had passed."

In Wright et al v. Ward, (Ark.) 280 S.W.369, it was held:

"Circuit court HELD not prevented from granting mandamus to compel calling of referendum election because day of election, asked to be designated in referendum petition, had passed at time of filing mandamus petition."

Pennsylvania adheres to the same doctrine, Taylor v. King, 130 Atl. 407:

"If direction by Legislature, in compliance with constitutional requirements, it becomes duty of secretary of commonwealth to advertise proposed constitutional amendment, as directed by Const. Art. 18, if he improperly refused because of misunderstanding as to his duty, mandamus lies to require it to be done, even if it is necessary, because of delay, to hold election at time later than that named by Legislature."

The case of State v. City of Buckhannon, 123 S.E.182, says:

"The case of State ex rel Heironimus v. Town of Davis, 76 W. Va. 587, 85 S. E. 770, holds that, where the proper authorities have failed to hold an election on the date named by law, they may be required by mandamus to hold the election on a later date. statutes fixing the time for elections have been held to be directory, and not mandatory, to the extent of permitting and authorizing an election at a later date than that named in the statute where the authorities whose duty it is to call the election or prepare for and conduct it neglect to perform the duty, and the obligation still remains. People v. Murray, 41 Minn. 123, 42 N.W.358."

And so in West Virginia, State v. Pierson, 103 S.E.671:

"An election required by law to be held at a particular time will be void if held at a time different from that appointed by law, unless its holding at a different date is compelled by a court of competent jurisdiction."

Our Court in Board of Education of School District No.27,
v. Board of Excise of Oklahoma County, 128 P.520, held:

"That portion of Section 5, Ch.64, S.L. of Oklahoma 1910, fixing the time for the holding of a special election in school districts, for the purpose of submitting to the qualified electors thereof the question of making an increased levy, as provided for in the said act, is, as to such time, directory only; and where, for any reason, the excise board fails to give the notice and call the election provided for therein on the said date, it may be required to do so within some reasonable time subsequent thereto."

And in the body of the opinion said:

"In our judgment, there is no substantial reason to hold that, if the election were not called at the time fixed by the statute, the legislature intended that it should not be called at all, especially so long as an opportunity to call the same might occur in time, so that the tax might be extended and collected without disorganizing the system. There is no particular reason, except that it would probably conduce to orderly procedure, that the election for this particular purpose might not be called on one day as well as another. It is, as denominated in the statute, a special election, and under the conditions as shown was one that might or might not occur in any year owing to the condition of the assessment and levy made by the particular municipality and the judgment and discretion of the excise Board. Numerous authorities hold that statutes similar to this are directory in their operation, and have allowed mandamus to require the calling of elections after the time fixed by statute has passed, on the theory that the law was directory, not mandatory, and that the holding of the election, and not its date, was of the substance and paramount in its importance***."

22 R. C. L. 494;

"Where an executive officer of a state is obligated to perform a plain official duty, and performance is refused, an action in mandamus may be brought to compel its performance, at the instance of any person who will sustain personal injury by such refusal."

In Board of County Commissioners v. Pacific Ry. Co., (Idaho), 165 P. 244, it was held:

"Statutes prescribing the manner, form and time within which public officers are required to discharge their public obligations are regarded as directory, unless there is something which shows a different intent."

We conclude that the resolution presented never having been legally submitted to the people remains in force and that omission or failure on the part of an elected or appointed state officer, to do his duty at an appointed time, ought not and does not defeat the purpose of the people, evidenced by the action of their chosen representatives in the Legislature.

The resolution having been properly adopted by the Legislature, approved by the Governor, and having been received and filed by the Secretary of State, and not having been disposed of as required by constitutional mandate, the petitioner is entitled to a preemptory writ of mandamus to require the respondents and each of them to do and perform their duties in the submission of said resolution to the people for their adoption or rejection at the next general election to be held on November 4, 1930. Let the writ issue.

Mason, C. J., Clark, Swindall, Andrews, JJ.-CONCUR.

Lester, V. C. J., Hunt, Hefner, Cullison, JJ.- Absent.