ity to determine appellant's right to the office involved, as well as the actual existence of the office, appellee made no claim to the office occupied by appellant. Such being the state of the case, if appellant was ineligible, the exclusive remedy to prevent his usurpation or unlawful occupancy of the office was by quo warranto. Revised Statutes, art. 6398.

This suit, however, is not a quo warranto suit. In no event, under the authorities cited, would an injunction be the remedy in this case.

[10] The commissioners' court, by a valid order, having determined that there was in justice precinct No. 1 of Stephens county, a city of over 8,000 people, upon the official announcement of such fact, and the entry of the order, the office of an additional justice of the peace for the precinct, created by the Constitution, but awaiting the determination of fact by the commissioners' court (the agency designated by the Constitution for such purpose), came into being, and thenceforward was an existing office. Since the office came into existence and was not filled, it was vacant. 22 Ruling Case Law, p. 437 et seq.; 23 Amer. & Eng. Ency. of Law, 349; People v. Chaves, 122 Cal. 134, 54 Pac. 596; State v. Maloney, 92 Tenn. 62, 20 S. W. 419, 422; Stocking v. State, 7 Ind. 326; State v. McMillan, 108 Mo. 153, 18 S. W. 784; In the Matter of the Fourth Judicial District, 4 Wyo. 133, 32 Pac. 850; In re Collins, 16 Misc. Rep. 598, 40 N. Y. Supp. 519. The commissioners' court, being the constitutional and statutory agency selected to fill vacancies, had authority to fill this vacancy. State Constitution, art. 5, § 28; Revised Statutes, art. 2288.

The questions certified are answered as follows: The first question is answered in the affirmative; to the second we answer that the method pursued by the court, though not exclusive, was a proper method, and that the determination and order of the court cannot be collaterally attacked; the third is answered in the negative; and the fourth in the affirmative.

O'BRIEN et al. v. AMERMAN et al. (No. 3707.)

(Supreme Court of Texas. Dec. 20, 1922.)

1. Statutes ⟸76(1), 93(2)—Act as to pilots held not special, and not to violate prohibition of special law where general law applicable.

Acts 36th Leg. (1919) 4th Called Sess., c. 3 (Vernon's Ann. Civ. St. Supp. 1922, arts. 6319—1 to 6319—5), as to pilots, does not violate Const. art. 1, § 3, as not affecting alike all belonging to the class of pilots on the state's inland waters, in that the law is applicable to one city only, as the act is general, applying to cities of 100,000 population or more, situated along or upon a navigable stream and owning or operating municipal docks, wharves, or warehouses, although only one city in the state in fact meets the act's requirements; nor does the act violate Const. art. 3, § 56, as being a local or special law where a general law can be made applicable; the classification being based upon substantial grounds.

2. Constitutional law ⟸63(2)—Pilots ⟸3—Pilotage act held not delegation of legislative powers.

Acts 36th Leg. (1919), 4th Called Sess., c. 3 (Vernon's Ann. Civ. St. Supp. 1922, arts. 6319—1 to 6319—5), as to pilots, is not void as violating the state Constitution and federal statutes in delegating legislative power with respect to pilotage to a municipality or to its officers, nor is it void as attempting to confer on the city power and jurisdiction over pilotage beyond its territorial limits, for the Legislature, having enacted a complete law, could authorize administrative authorities to provide rules and regulations for its effective execution and enforcement, so that no valid objection to the law is to be found in the authority conferred upon the governing board of the city to establish and enforce rates and regulations for pilotage; and, the powers conferred being granted for purposes essentially public and to promote the general welfare, so that those in whom the powers vest exercise them as agents of the state, such agents, standing in the place of the sovereign state, can exercise jurisdiction beyond as well as within the limits of the city.

3. Statutes ⟸64(4)—Grant of power to enact criminal ordinances for enforcement of act held severable from pilotage act.

In Acts 36th Leg. (1919), 4th Called Sess., c. 3 (Vernon's Ann. Civ. St. Supp. 1922, arts. 6319—1 to 6319—5), as to pilots, the grant of power to enact criminal ordinances for the enforcement of the law by punishing offenses committed beyond the boundaries of the city affected by the act is severable from the balance of the act, if such grant is not valid.

Error to Court of Civil Appeals of First Supreme Judicial District.

Suit by Charles O'Brien and others against A. E. Amerman and others. Judgment for defendants was affirmed by the Court of Civil Appeals (233 S. W. 1016), and plaintiffs bring error. Affirmed.

J. M. Gibson and Sewall Myer, both of Houston, for plaintiffs in error.

Geo. D. Sears, of Houston, for defendants in error.

GREENWOOD, J. The writ of error was granted to review a judgment of the Galveston Court of Civil Appeals affirming a judgment of the district court of Harris county which sustained a general demurrer to plaintiffs in error's petition. By that petition plaintiffs in error, who were acting as pilots under chapter 1, tit. 107, of the Revised Statutes of Texas, sought to enjoin defendants in error, the mayor, commissioners, and har-

bor board of the city of Houston, from enforcing the provisions of chapter 3 of the Acts of the Fourth Called Session of the Thirty-Sixth Legislature, being articles 6319—1 to 6319—5 of Vernon's Texas Statutes, 1922 Supplement, and from thereby interfering with the performance of plaintiffs in error's duties.

The attack of plaintiffs in error on the validity of articles 6319—1 to 6319—5 of Vernon's Texas Statutes, 1922 Supplement, presents the principal questions for our determination.

The articles are assailed on the following grounds: First, that they violate article 1, § 3, of the Constitution, in that they do not affect alike all belonging to the class of pilots on the state's inland waters: second, that the articles violate article 3, § 56, of the Constitution, in being a local or special law when a general law can be made applicable; third, that the articles are void because by them the Legislature undertakes, in violation of the state Constitution and of the federal statutes, to delegate the nondelegable power of legislation with respect to pilotage to a municipality or to its officers; and, fourth, that the articles are void because they attempt to confer on the city power and jurisdiction over pilotage beyond its territorial limits.

[1] It is urged in support of the first two grounds of attack that the law was enacted for application by the city of Houston alone, between that port and the Gulf, when the conditions of pilotage were in no wise different there and elsewhere on the state's inland waters.

The articles are not confined, by their terms, to any particular city or waterways. The law is instead general. True it is that the rights and powers granted by the articles are to be exercised only by officers of cities meeting these tests: First, having a population of 100,000 or more; second, being situated along or upon a navigable stream in the state; and third, owning or operating municipal docks, wharves, or warehouses. Though no other city except Houston meets these requirements at this time, the law is applicable to any other city which may hereafter meet them. There is no foundation whatever for holding that the law was put in a general form merely to evade the Constitution. There are such substantial grounds for the classification made that the articles would stand the test of the strictest rule applied in such an inquiry. The Legislature might reasonably conclude that the officials of a port city of 100,000 population or over, maintaining its own docks, wharves, or warehouses, would have so special an interest in safeguarding and maintaining the port's commercial interests, that the state could best intrust to them such matters as to appoint, suspend, and remove pilots on the waterway connecting the city and the Gulf, and to make reasonable regulations pertaining to the pilots' services. It seems obvious that the number of pilots and the need of careful and strict supervision of pilotage would increase with the size of the port and the extension of its terminal water transportation facilities. Classification of pilots according to port population and municipal terminal facilities, having a reasonable basis and operating uniformly on those coming within the same class, violates no provision of the Constitution. Texas Co. v. Stephens, 100 Tex. 641, 103 S. W. 481.

A proposition which is decisive of the questions under consideration was stated in a few words by the Supreme Court of Illinois when it reaffirmed and declared that—

"Laws are general and uniform, and hence not obnoxious to the objection that they are local or special, when they are general and uniform in their operation upon all in like situation." People ex rel. Meyer v. Hazelwood, 116 Ill. 329, 6 N. E. 486.

The principles so clearly enunciated in Chief Justice Gaines' opinion in Clark, Sheriff, v. Finley, Comptroller, 93 Tex. 177, 54 S. W. 343, also completely refute the claim that the law is special or local, or that it is obnoxious class legislation, either because there is now only one city meeting the law's requirements, or because of differences made between pilots or pilotage in and out of a port of over 100,000 population, owning or operating municipal docks, wharves, or warehouses, and on the state's other inland waterways.

[2] Under the third and fourth grounds of attack, it is contended that the articles are void because they empowered the city or the city council to create new state offices and to fix the qualifications and to control the tenures of those filling them, and to establish rates of pilotage and regulations of navigation beyond the city limits. Reference is made to the federal statute leaving pilots in ports of the United States to be regulated by the laws of the several states; it being argued that in delegating to a municipality this power of regulation, the articles conflict with both the federal statute and the state Constitution.

Our decisions recognize that there can be no delegation of the power to make laws which the people intrusted to the Legislature in framing the Constitution. The power to make laws is necessarily involved in the creation of state offices. But the law assailed, on the date it became effective as an act of the Legislature, created the offices therein specified. Such offices were the creation of the Legislature alone. The enumerated rights, power, and authority conferred were likewise derived from the exercise by the Legislature itself of the legislative prerogative. The option given by the act to the governing board of the municipality was not

to make law, but to do something under a law previously made. Though the application and execution of the act depended on the voluntary assumption of granted authority, still the binding force of the act as law was not so dependent. The principal objections to this law as a delegation of legislative power are answered by the following declaration in San Antonio v. Jones, 28 Tex. 32, viz.:

"The Legislature may grant authority as well as give commands, and acts done under its authority are as valid as if done in obedience to its commands. Nor is a statute, whose complete execution and application to the subject-matter is, by its provisions, made to depend on the assent of some other body, a delegation of legislative power. The discretion goes to the exercise of the power conferred by the law, but not to make the law itself. The law, in such cases, may depend for its practical efficiency on the act of some other body or individual; still it is not derived from such act, but from the legislative authority."

The application and execution of the law under discussion is made to depend on the exercise of discretion in the enactment of ordinances by the city's governing body. If the city council of Houston had never elected to enact ordinances or to act under the law, it would have remained no less a law and no less a potential source of authority whenever any other city came within the law's requirements.

The case of Spears v. San Antonio, 110 Tex. 618, 223 S. W. 166, presented the question as to the validity of an act of the Legislature providing that its terms should apply to a city only after its governing body had submitted the question of adoption of the act to a vote of resident property taxpaying qualified voters, and a majority had voted to adopt same. It was vigorously argued that the act delegated to the governing body of the city and to the voters the Legislature's nondelegable lawmaking power. It was determined that the act, properly interpreted, merely granted specified authority, which the city's governing body and taxpaying electors might in their discretion accept or reject, but that this did not impair the validity of the act.

We agree with the holding of the Court of Civil Appeals that the Legislature, having enacted a complete law, could authorize administrative authorities to provide rules and regulations for its effective execution and enforcement. Hence no valid objection to the law is to be found in the authority conferred on the governing board of the city to establish and enforce rates and regulations for pilotage. Wayman v. Southard, 10 Wheat. 43, 6 L. Ed. 253; U. S. v. Ormsbee (D. C.) 74 Fed. 207; Staples v. Llano Co., 28 S. W. 571; 12 C. J. 847.

We think that the powers conferred are granted for purposes essentially public and to promote the general welfare of all the people of the state, and that those in whom the powers vest exercise them as agents of the state. Standing in the place of the sovereign state, the agents can, of course, exercise jurisdiction beyond as well as within the limits of the city. Bexar County v. Linden, 110 Tex. 339, 220 S. W. 761; City of Galveston v. Posnainsky, 62 Tex. 127, 50 Am. Rep. 517.

[3] We do not pass on the validity of the grant of power to enact criminal ordinances for the enforcement of the law by punishing offenses committed beyond the boundaries of the city. The disposition of this case depends on no such question, for the grant of such power is obviously severable from the balance of the act. Nor do we determine whether plaintiffs in error's petition shows any right to injunctive relief, though inclined to the view that it does not, as held by the Court of Civil Appeals. See opinion of Chief Justice Cureton in Williams v. Castleman, 247 S. W. 263, delivered December 13, 1922.

As defendants in error were expressly authorized by a valid law to do all those things which plaintiffs in error sought to prevent by this suit, it follows that the court below correctly sustained the demurrer to plaintiffs in error's petition, and that the judgment of the Court of Civil Appeals was right.

It is ordered that the judgments of the district court and of the Court of Civil Appeals be affirmed.

WALKER et al. v. FIELDS et al.*

(No. 377-3520.)

(Commission of Appeals of Texas, Section A. Jan. 24, 1923.)

1. Wills ⇐146—Nuncupative will must be reduced to writing only if probate delayed over six months.

A nuncupative will, under Rev. St. arts. 3269, 7860, 7863, need be reduced to writing only if its probate is delayed longer than six months.

2. Wills ⇐146—Nuncupative will need not be reduced to writing by three witnesses.

Under Rev. St. arts. 3269, 7860, 7863, a nuncupative will need not be reduced to writing by each of the three witnesses thereto; nor need they all participate in reducing it to writing or sign the writing, but it suffices if it be shown that the writing was made by at least one of the witnesses called on by the testator to bear witness to his will, or that it was made under the direction of at least one such witness, or, if prepared by another, that it was examined by at least one of such witnesses within the six days prescribed by the statute with reference to its accuracy, and found correct, and the other two witnesses must concur

⇐For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes

*Rehearing denied March 21, 1923.