SOME ECONOMIC AND POLITICAL FACTORS INVOLVED IN THE
LEGISLATIVE CONTROVERSY OVER THE SUBMISSION
OF SENATE JOINT RESOLUTION NUMBER 12 OF
THE FORTY-SIXTH LEGISLATURE

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CHAPTER I

INTRODUCTION

At 1:45 A. M. o'clock on the morning of July 4th, 1941, as the Texas House of Representatives stood at ease, the work of the session completed and the clock turned back so that the official time showed it yet several minutes before the Forty-Seventh Legislature would adjourn sine die, there appeared at the bar of the House a delegation previously appointed for the purpose of notifying the Governor that the House had completed its labors and stood ready to adjourn.

This incident caused to be printed in the Journal of the House of Representatives the following:

The committee appointed to notify the Governor that the House has completed its labors and is now ready to adjourn sine die, appeared at the bar of the House, and, being duly announced stated that they had performed the duty assigned them. The speaker laid before the House and had read, the following message from the Governor:

Executive Office, July 3, 1941

To the Members of the Forty-Seventh Legislature:

In the closing hours of the session of the 47th Legislature, I feel we are able to say that the Legislature has rendered some very definite service to the citizens of this State.

Throughout this session of the Legislature I have fought uncompromisingly for things which I
believe should be accomplished. There are a number of matters which I recommended to the Legislature which did not receive legislative approval, but I recognize that the authority and responsibility of the Chief Executive is the authority to recommend legislation and his responsibility is met when he makes these recommendations, and it is the responsibility of the Legislature to determine whether or not the recommendations are sound.

May I, as this Session closes, say to all of you that we have had our battles; I have fought for what I believed was right; I concede to you who have differed with me that you, too, were fighting for what you believed was right. Let us forget any ill-tempered things we may have said about each other. You, as Members of the 47th Legislature, have my very best wishes and my good will. I have forgotten unpleasant situations which have developed and in the years to come I shall remember you as my personal friends.

In our democratic form of government, where there exists three separate and distinct branches, it follows that if each is to function separately and properly there are bound to follow differences of opinion. Some differences of opinion have been apparent, but such differences have been settled in the democratic way. I am proud of the accomplishments made during this administration, and I thank your branch for the part you played in making these accomplishments possible.¹

The above statement of Governor O'Daniel indicates his satisfaction with the accomplishments of the Forty-Seventh Legislature. The statement indicates that there had been differences between the Chief Executive and the Legislature during the time W. Lee O'Daniel had served as Governor of Texas.

It is fundamental in our system of government that the separation of the powers of government into the legislative, judicial and executive branches results in frequent differences.

¹House Journal, 47th Texas Legislature, 1939, p. 4991.
of opinion between the several branches. The first administration of Governor W. Lee O'Daniel of Texas was not without the ordinary differences which arise between the executive, the legislative and the judicial departments. In addition, the first administration of Governor O'Daniel was marked with one unusual controversy between the executive and the legislative branches of the state government. The struggle between W. Lee O'Daniel and the House of Representatives of the Forty-Sixth Texas Legislature over the question of financing social security in Texas constitutes one of the outstanding political and social struggles of the last fifty years. This controversy, unquestionably the outstanding incident of O'Daniel's first term as Governor, directed the attention of the people of Texas to the Legislative branch of the government as it had not been directed in many years.

When the Forty-Sixth Legislature adjourned at the end of 163 days, having set a record for length of a regular session, without providing a method of financing a full social security program, the Governor at once blamed a small minority of the Legislature with having blocked all efforts to finance the program. The Dallas Morning News, June 26, 1939, Sect. I, p. 1.
minority group which he held accountable for the failure of his program.

During his campaign for re-election to a second term, O'Daniel successfully placed the blame for the non-accomplishments of his first term on the fifty-six members of the House who defeated the attempted submission of a constitutional sales tax amendment. Of the original group popularly known as "the Fifty-Six," to whom O'Daniel gave the blame for the defeat of his program, only eleven won re-election. The people of Texas answered his request for a new Legislature by electing ninety-two new House members and ten new Senators to membership in the Forty-Seventh Legislature.

Although the turn-over in membership from the Forty-Sixth to the Forty-Seventh Legislatures is generally considered to be the largest in the history of the State, this is not a matter of significant importance. What is more significant is the consideration of the economic factors involved in the political and legislative battle over the adoption of Senate Joint Resolution 12, a plan of financing endorsed by Governor O'Daniel. In determining the justice of this controversy, the people resolved the matter in favor of Governor O'Daniel and those who fought on his side; but, this was done largely in characteristic manner with opinions

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4. Statement by Bob Barker, Secretary of Texas State Senate, personal interview, Austin, Texas, January, 1941.
being determined more on mis-information, prejudice and passion than from a careful study of facts. Men of the minority were tried on the unpredictable altar of public opinion and condemned, many to political oblivion.

Statement of the Problem

The election of 1940 has been determined. The Forty-Seventh Legislature disposed of the question of financing social security by the adoption of an omnibus tax bill. The sales tax constitutional amendment and the great controversy about it seems settled for the moment. There yet remains, however, the task of evaluating for history's sake the entire legislative and political struggle over Senate Joint Resolution 12. An analysis has the importance of placing the actual record in convenient form to be studied in a critical light. Thus, the characters and personalities involved emerge in their proper light and the issues, clouded by the campaign of charge and counter-charge, come to be tested on their merits rather than on the written or spoken opinion of the principals.

It will be, therefore, the purpose of this study to present the story of the legislative and political controversy over the question of the submission to the people of Texas, as an amendment to the State Constitution, what was known as Senate Joint Resolution 12 of the Forty-Sixth Legislature. The purpose will be to trace the origin and
background of the particular resolution, the legislative record relating to its near-passage, and an analysis of the economic factors involved in the proposal. Such a study will involve, incidental to the main theme, the determination of the roles played by the Governor of Texas, the Legislature and others taking parts in the particular controversy.

It is hoped that this paper can establish by such documentary evidence as is available, the following:

1. The program for financing social security advocated by W. Lee O'Daniel during his first term as Governor of Texas;
2. The program for old age assistance advocated by O'Daniel during the Forty-Sixth Legislature of Texas;
3. The activities of the minority group credited by the Governor with defeating "all efforts to finance social security" during the Forty-Sixth Legislature;
4. The explanation of Senate Joint Resolution 12;
5. The record, based on personal experience and the reported evidence, of the various groups and individuals working for the passage of Senate Joint Resolution 12.

In connection with the first point, the legislative messages of Governor O'Daniel, the record of legislation bearing on the subject, and press releases will be utilized
in an attempt to show the program for financing social security advocated by O'Daniel during the Forty-Sixth Legislature.

The legislative messages of the Governor, his campaign statements made during the campaign of 1938 for the Governor's office of the State of Texas, and legislative session records of the Forty-Sixth Legislature will be resorted to for the purpose of comparing the program advocated by O'Daniel during the campaign and that advocated by him after his inauguration.

The complete activity of the minority group, credited with defeating the submission of Senate Joint Resolution 12 will be presented by a resort to press releases, legislative records, and personal experiences.

The analysis of Senate Joint Resolution 12 will be essayed from a study of the records of the Senate and House of Representatives of the Forty-Sixth Legislature wherein all stages of the matter, the original draft, the Senate amended draft, the House substitute, and the various House amendments can be found.

Finally, the activity of the special interests group, and others supporting Senate Joint Resolution 12, will be reported from actual personal experience as a member of the Forty-Sixth Legislature and as a member of the so-called "Fifty-Six" group. The reported evidence carried in certain newspapers will be quoted if pertinent to the issues.
Additional Sources of Data

In addition to the main sources indicated above, other sources have been utilized. For the background of the subject, the legislative journals of all sessions beginning with the Regular Session of the Forty-Fourth Legislature in 1935 were studied, together with the laws and resolutions relating to social security passed or considered during these sessions.

The campaign of 1933 for the Gubernatorial chair was studied through press releases, principally from the Dallas News, and from personal experience.

In addition to the main records of the Forty-Sixth Legislature, special records of committee meetings were used, as well as printed bills of this particular session.

The personal experience element will be reduced to a minimum because of the tendency inherent in each man to elaborate of these matters, either to his own credit or to the discredit of others. It becomes inevitable, however, that personal experience must be resorted to in presenting the activity of the special interests in support of Senate Joint Resolution 12. The conclaves in which these groups plan action are not matters of public record. The individual activity and association with members of the Legislature is carefully guarded, and is certainly not documented; hence, the personal experience of legislators is the most common way of ascertaining what the lobbyists did.
Definition of Terms

Because of the frequency with which certain terms, or abbreviations for these terms, will appear it will perhaps be clarifying to define the most commonly used terms.

Senate Joint Resolution 12, popularly known as S. J. R. 12, was a proposal of the Forty-Sixth Legislature seeking to submit to the people of Texas the question of amending the state constitution to provide a method of financing the social security program in Texas and providing certain limitations on the powers of the Legislature in dealing with the financing of social security.

House Joint Resolution 16, or H. J. R. 16, was a proposal for amending the constitution. It originated in the House of Representatives of the Forty-Sixth Legislature and was similar in content to S. J. R. 12.

"The Fifty-Six" was a popular designation for the House members of the Forty-Sixth Legislature who consistently voted against both Senate Joint Resolution 12 and House Joint Resolution 16, especially the former.

The term "special interests," is used in a general and popular sense of the word to refer to representatives of special types of business and industry, such as oil, gas, utilities, carbon black, sulphur, insurance companies and other economic groups.
Plan of Work

Following this chapter the background of the main subject will be presented in Chapter II. In Chapter II will be presented the development of the social security problem in Texas and a brief account of the Governor's race of 1936.

Chapter III will treat of preliminary legislation prior to Senate Joint Resolution 12, companion measures and pertinent tax measures in the House of Representatives.

Chapter IV will develop the House fight on the question of submitting S. J. R. 12, the pressure methods of the group supporting S. J. R. 12, together with a brief mention of the activities of "the Fifty-Six."

Chapter V will attempt an analysis of the sales tax amendment, S. J. R. 12, and the final chapter will be devoted to brief conclusions.
CHAPTER II

THE BACKGROUND OF SENATE JOINT RESOLUTION 12

The political and legislative controversy over Senate Joint Resolution 12 of the Forty-Sixth Legislature developed as an argument over the proper method of financing the social security program in the State of Texas.

By 1933 the experience of the depression, the demoralization of our entire social structure, and the destruction of faith in the stability and security of economic and social institutions led to favorable public opinion for legislation designed to bolster society against the further deteriorations of the bitter years of 1929-1933. Legislation of this kind was looked upon as the most likely way of placing a supporting factor under the weakened moral fibre of the American people by furnishing a degree of security and some insurance against the awful realities of what could happen if economic forces were left to operate without regard for social consequences. Public interest in such legislation spread rapidly.

"The big impetus to state action was given by the adoption of the federal Social Security Act of 1935."¹

¹C. F. Patterson, Sam B. McAlister, and George C. Hester, State and Local Government in Texas, p. 308.
This act provided a far-reaching program, embracing state participation, for the relief of needy aged, blind persons, dependent and crippled children, maternal and child welfare, public health and unemployment compensation laws.²

The clamor for state participation in this program grew to proportions sufficient to attract the attention of politicians and candidates for state and local office. The result of this wide-spread interest was inevitable. Preliminary legislative action was taken by the Forty-Fourth Legislature by the submission of an amendment to give authority to the Legislature to provide a system of old age pensions.

The old age pension amendment was adopted on August 24, 1935. The amendment reads as follows:

Section 51-b. The Legislature shall have the power by general laws to provide, under such limitations and restrictions and regulations as may be deemed by the legislature expedient, for old-age assistance and for the payment of same not to exceed Fifteen Dollars ($15.00) per month each to actual bona fide citizens of Texas who are over the age of sixty five (65) years; provided that no habitual criminal, and no habitual drunkard while such habitual drunkard, and no inmate of any state supported institution, while such inmate, shall be eligible for such old age assistance; provided further that the requirements for length of time of actual residence in Texas shall never be less than five (5) years during the nine(9) years immediately preceding the application for old-age assistance and continuously for one (1) year immediately preceding such application.³

Following the overwhelming adoption of this amendment, Governor Allred, on August 29, 1935, issued his proclamation calling the Legislature into special session on the 16th day of September, 1935, for the purpose of "defining the open saloon and enact laws prohibiting same, and to consider and act on such other subjects of public importance as the Governor might submit."\(^4\)

Upon the convening of this first called session of the Forty-Fourth Legislature, the Governor submitted on September 18 the subject of old age pensions. His message of that date read in part, as follows:

\[(\ldots)\text{ experience has brought to the attention of all civilized nations the necessity of providing sustenance for useful citizens who have passed the years of productive activity. A policy of humanity and social betterment prompted the Federal Government and the people of Texas to attempt provision of aged citizens. It now becomes the duty of this Legislature to determine what sort of pension plan is best suited and most practicable under existing conditions to the State of Texas. In determining this problem it behooves the Legislature to consider not alone the immediate results, but as well the far reaching effects which such a policy may have. It is to be remembered always that this pension plan, when begun, may be expected to long continue.}\(^5\)

Governor Allred's tax recommendations included: a graduated chain store tax, a sulphur tax, a tax on pipeline, a selective luxury tax, and certain improvements in the franchise tax.\(^6\)

\(^4\)James V. Allred, *Messages of Governor Allred*, p. 76.
\(^5\)Ibid., p. 81.
\(^6\)Ibid., p. 82.
Because of the congested condition of the calendar and the magnitude of the problems considered by this called session, no satisfactory action was taken on the old age pension question. The failure to solve this question necessitated the calling of a second called session to be convened on October 15, 1935. In his proclamation summoning the Legislature in session, Governor Allred stated that the purpose of the call was,

to provide, under such limitations and restrictions and regulations as may be deemed by the Legislature expedient, for old age assistance and for the payment of same not to exceed $15.00 per month each to actual bona fide citizens of Texas who are over the age of 65 years, and in all things to carry out the will of the people as expressed by the adoption of H. J. R. 19, which provided for an amendment to Article 3 of the Constitution of Texas by adopting a new section to be known as Section 51-b.

This session of the Legislature passed House Bill 26, establishing an old age pension administration and prescribing the regulations for its administration. Revenue for the payment of the pensions provided in this bill was created by taxes on liquor, wines and beer. By September of 1936, the Governor felt it necessary to issue again a proclamation calling the legislature into special session.

In this proclamation the Governor stated that the revenues provided were sufficient only to finance a part of the old age assistance program. He stated that the purpose

\[7\text{Ibid., pp. 88-89.} \quad 8\text{Ibid., p. 89.} \quad 9\text{Acts of 1935, 44th Leg. 2nd C. 3., p. 1854.}\]
of the call was to provide further necessary revenue for old age assistance to persons entitled to same under the provisions of House Bill 26 as passed by the Second Called Session of the Forty-Fourth Legislature.\textsuperscript{10}

Addressing the Third Called Session, which convened on the 18th day of September and after the primary elections of 1936, the Governor pointed out that more than 200,000 applications had been filed since the effective date of the original act, February 14, 1936.\textsuperscript{11} Later he pointed out that the state auditor had estimated a total of 60,000 aged persons would qualify under the act, and that the Texas law was one of the most liberal in the nation, resulting in many more applicants qualifying than had been anticipated.\textsuperscript{12}

Governor Allred suggested the following tax program:

1. A substantial increase in the tax on natural resources, including oil, gas and sulphur.

2. Increased franchise taxes on oil and gas pipe line companies.

3. Luxury taxes.

4. Substantial increase in inheritance taxes.

5. General increase in franchise tax laws.

6. Revision of tax laws to prevent evasion.

7. Stricter provisions for collection of delinquent taxes.

\textsuperscript{10}\textit{Allred, op. cit.}, p. 96.

\textsuperscript{11}\textit{Ibid.}, p. 97.

\textsuperscript{12}\textit{Ibid.}, p. 98.
8. Restoring the tax imposed on breweries and beer dealers to the amount imposed by law prior to the amendment adopted by the Legislature at its last session.\textsuperscript{13}

These recommendations were substantially the recommendations of the State Democratic convention which had met in Fort Worth but a few days before.\textsuperscript{14}

In a final message to the Third Called Session of the Forty-Fourth Legislature, delivered on October 21, 1936, Governor Allred called attention to the pending omnibus bill passed by both Houses in which, by a Senate amendment, the entire old age assistance law was deliteralized to the extent of authorizing pensions only to those persons over 65 years of age who were in actual need of the assistance.\textsuperscript{15} The Governor recommended the adoption of the Senate amendment and this subsequently was done by the adoption of the bill as amended.\textsuperscript{16} This same act provided some increased revenue to the old age assistance fund.

Regular Session of the Forty-Fifth Legislature

At the regular general election on November 3, 1936, the people of Texas adopted another amendment to the constitution. This amendment gave authority for the establishment of a Teacher Retirement system, and provided:

\textsuperscript{13} Ibid., p. 99.  \hspace{1cm} \textsuperscript{14} Ibid., p. 100.
\textsuperscript{15} The Fort Worth Star-Telegram, September 9, 1936, p. 1.
\textsuperscript{16} Allred, op. cit., pp. 106-108.
48-a. In addition to the powers given to the Legislature under Section 48 of Article 3, 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 five 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 ($180.00) Dollars for any such person; provided 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 pension aid. 17

The regular session of the Forty-Fifth Legislature, convening in January of 1937, was thus faced with the task of financing both the increased demand for old age pensions and the program for prospective retirement benefits for the teachers.

In his annual message to the Legislature on January 13,

1937, Governor Allred called attention to this new obligation. He repeated his tax recommendations made to the last called session and directed that these taxes be utilized as a source for the new revenue to meet the state's obligation under this new constitutional mandate.

No revenue bill was passed during the regular session of the Forty-Fifth Legislature. One significant move was the attempt to repeal pari-mutuel betting and legalized race tracks which had been legalized in the Forty-Third Legislature by means of a rider on the departmental appropriations bill. The move to repeal this law failed in the Senate, and immediately furnished the occasion for the summoning of the Legislature in special session. Governor Allred issued his proclamation on May 22, 1937 calling a special session to begin on May 27 for the sole purpose of repealing the sanction given race tracks and pari-mutuel betting.

In this first called session of the Forty-Fifth Legislature, Allred achieved the repeal of the law legalizing race tracks. The subject of raising revenue for the social security program was not submitted, and with the repeal of the race track betting laws, a part of the revenue accruing to the old age pension fund was terminated.

18 Allred, op. cit., p. 124.
19 Ibid., pp. 212-213.
Two new amendments calling for state appropriations were adopted on August 23, 1937. The first amendment added Section 51c to Article III of the Constitution authorizing aid to the needy blind. The second added a provision to the Constitution authorizing aid to destitute children.\(^{20}\)

Recognizing the need for additional revenue to meet these new social services, as well as the increased pressure for money to meet the state's obligation to the Teacher Retirement System and the old age pensioners, Governor Allred again issued a proclamation on September 11, 1937, calling the Forty-Fifth Legislature into special session to convene on September 27.\(^{21}\) The purpose of this session was expressly stated to be as follows:

To pass laws levying taxes to raise revenue sufficient to adequately provide for:
1. The wiping out of the deficit in the General Fund and to make outcome equal outgo from said fund.
2. To provide additional funds to be allocated for old age assistance.
3. To provide for aid to the needy blind, the dependent, neglected and needy children, and to take care of the State's portion of the teachers' retirement amendment and act.\(^{22}\)

The lack of major accomplishment by this Legislature led to its being referred to as "The Dove Law Session," it having passed a law regulating the hunting of doves in certain counties in the state.

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\(^{20}\) Constitution of Texas, Art. III, Sect. 51d.

\(^{21}\) Allred, op. cit., p. 226.

\(^{22}\) Ibid.
Thus, the legislators turned to the primary elections of 1938 with the following score against them: one regular session and five called sessions had failed to provide revenues sufficient to satisfy those qualifying for the old age pension; one regular and two called sessions had failed to provide for state matching of teacher retirement funds; and, one called session had failed to provide support for the programs designed to aid the blind and the dependent children.

It would be conjectural to attempt to state the reasons for the legislative failure to accomplish a satisfactory end to the social security program prior to 1938. In the democratic process, legislation should not be hurried roughshod over all whose sympathy it does not enjoy except in times of great public emergency. Time, deliberation and delay seem to be the necessary concomitants of a system in which each man enjoys an equality of privilege to be heard and in a legislative system of two houses, where opposing pressure groups capitalize in the merry game of arraying one house against the other. It may be assumed, almost as a matter of common knowledge, that those against whom taxes for social security purpose were to have been levied opposed such exactions and, in the numerous and sometimes mysterious ways by which pressure may be applied to legislators to thwart the expressed will of the people, these interests
succeeded in helping to defeat new or increased revenue
during the years 1935 through 1938.

It may be assumed, from the inability of the legislature
to solve the social security problems, that the electorate
of Texas and the public at large faced the elections of 1938
feeling somewhat out of humor with the elected representatives
of the people and with politicians in general. Many promises
had been made, but the actual results were negligible. It
was upon a field of dissatisfaction and suspicion that the
campaigns of 1938 were waged; the people were not completely
satisfied with the social security offerings contributed by
the combined efforts of the Forty-Fourth and Forty-Fifth
Legislatures.

The Governor's Race of 1938

For some time the lines had been drawn in the race for
the Governorship with popular William McCraw, Attorney
General, and Colonel E. O. Thompson, Chairman of the Rail-
road Commission, expected to furnish the chief interest and
competition.

In the early months of the campaign the candidates
followed the traditional methods of developing local campaign
organizations, and making personal appearances as frequently
as possible. The issues were not clearly defined. The
resentment of the people, if any, toward their office holders was not at once apparent. 23

Speaking at Gilmer on April 30, 1938, McCraw advocated more adequate pensions from savings in administration and warned against promises impossible of fulfillment. 24 As late as May 29 Thompson was centering his talks around the trite subject of a reduction of state expenditures through elimination of extravagant and wasteful spending. He spoke at Wortham and the crowd cheered his statement that he was opposed to any new taxes. 25

Tom Hunter, a veteran seeker-after the Governor's office, and Karl Crowley were the only other candidates of serious importance in the total field of twelve more or less hopefuls.

Prior to June 13, the campaign was attracting little attention from the public and was something of a drab affair. On that day, new life was injected in the race with the announcement and opening speech from Waco, Texas, of W. Lee O'Daniel, Fort Worth flour merchant and radio personality, who had announced earlier his intentions of becoming a candidate.

23 The observations made in this paragraph are from the writer's personal experiences during the campaign of 1938.

The O'Daniel Campaign Methods

Unknown to most of the state politicians, W. Lee O'Daniel had announced his intentions of becoming a candidate for Governor after he had been solicited to do so, he said, by 54,499 citizens of the state.26 This statement was at first believed to be a part of a publicity stunt, but attention was soon focussed on this unique campaigner after his Waco speech which attracted one of the largest crowds in the history of that Central Texas town. At that time, O'Daniel promised a business man's administration and charged the "professional politicians" had controlled the elections for years with money put up by the special interests.27 An article appearing in some Texas papers following his announcement read:

On old age pensions, the people voted for Texas to give everybody over 65 years $15.00 a month, and it is a debt he would pay, he said. He would get rid of the army of 'gumshoers' of the pension administration; and, if the plan to turn the administration over to the Counties got into politics, 'why I'd just pay everybody over 65 the pension; I'd pension the five millionaires to keep 95 widows from starving—it would be cheaper,' he exclaimed.28

That O'Daniel did not immediately become a serious possibility is evident from an article written by W. M. Thornton, one of the leading political writers in the State,

27 Ibid.
28 The Austin American, June 15, 1938, p. 2.
in which he said:

Some politicians have conceded that O'Daniel has created a furor in places where he has spoken but they minimize his results in the matter of getting votes. They contend the people come out to enjoy his showmanship on a program with his hillbilly orchestra but that only a small percentage of them will vote for him.29

The same article hinted at what was to come, saying, "reports from two places where O'Daniel recently has spoken are that crowds were so large and lingered so long that two hours or more were required to untangle the traffic snarls in the small towns and along the highways leading into them."30

The O'Daniel's troupe of entertainers included the radio personalities he had developed during his years of broadcasting hillbilly music: his singer, Leon; Texas Rose; Mickie Wickie, the candidate's son; another son, Pat; Molly, the O'Daniels' 16 year old daughter. All of this was something new in Texas politics. To a public disheartened with the efforts of politicians and staid campaign promises and methods, this somewhat freakish conglomeration of mountain music and homely philosophy, interspersed with attacks on the "professional politicians" and a promise to pay everyone over 65 years of age $30.00 per month, furnished a fresh viewpoint to what had theretofore been a slow campaign.31

Thousands who had followed his radio career came out

30 Ibid.
31 Personal observation of the writer.
to see O'Daniel wise-cracking in his new role as a candidate, some out of curiosity, others in earnest sincerity. Without any previous campaign experience, unknown except as a radio flour salesman, O'Daniel, in his campaign, presented an incredible picture of super-salesmanship in action. People liked him so well they not only forgave all of the faults charged him by his enemies, most of which he admitted, but they went away from his meetings partisans to his cause, having contributed a part of their money to the cause by dropping money in the small barrel distributed by Molly O'Daniel. 32

The other candidates in the race had begun by studiously ignoring O'Daniel's announcement. As his figure gained so imposing a position in the public mind, some changed tactics and began a subtle campaign of ridicule. In this O'Daniel was their equal. When accused of being an enemy of labor, he professed love for the man in overalls because "his father was buried in overalls." When his name was held up to ridicule and he was labeled a Kansas Republican, he responded with the statement that he was named after Robert E. Lee, the great Southern statesman. When it was charged he left Kansas under a cloud and under circumstances leading the public to believe he was but a few jumps ahead of the posse, he cleverly

32 The facts submitted in this paragraph are based on the writer's personal knowledge of the campaign of O'Daniel in 1938.
arranged a broadcast from Kingman, Kansas in which his former townsmen praised him for being an outstanding citizen. His platform was the Ten Commandments; his catch-word "More smokestacks and less politicians." 33

The movement toward O'Daniel continued unabated regardless of the activity of the other candidates. On June 30, he spoke at Alice where thousands heard him lambast the politicians and promise a new day for Texas with his businessman's administration of state affairs. In his radio broadcast on that day, his hillbillies introduced a song of his own composition, "My Darling Wife," dedicated to Mrs. O'Daniel in honor of their wedding anniversary. 34

At a giant rally in Austin, the O'Daniel pension plan was submitted in these words,

The people of Texas voted to pay those over 65 years of age $30.00 a month. That is a debt. I'd pay it. They say I'd pay some millionaires. But there are only about five wealthy persons out of a hundred that age. I'd rather pay pensions to five millionaires than to see 95 poor old widows starve. It'd be cheaper than to pay the enormous expense of the old-age assistance set-up, and the horde of gum-shoe inspectors they send around in squads all over the state. 35

In this same article, written by Raymond Brooks, a well-known commentator with a reputation for sagacity and astuteness in political circles, the following comment was made,

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33 These facts, likewise, are reported from personal knowledge and experience.
35 The Austin American, June 30, 1938, p. 7.
O'Daniel stated he could run the state, including paying pensions, without raising the taxes; and by bringing in the industries to use Texas materials, he could cut each man's taxes down.\textsuperscript{36}

The United Press, in reporting O'Daniel's Houston rally made the following statement,

He opposed the sales tax and increases in other forms of taxation but asserted 'there are good reasons to believe there is plenty of money to be found.' O'Daniel said that he believed enforcement of present tax laws and economy would finance the huge outlay of money for all persons over 65 years of age.\textsuperscript{37}

The result of O'Daniel's colorful campaign was highly successful. By July 4 he had, without doubt, risen from a place of obscurity in the campaign to the rank of serious contender for the State's highest office. This fact was the cause of considerable chagrin to the other candidates, and they responded with sharper thrusts at the O'Daniel's candidacy. On July 4, McCraw professed pride that he was a politician, and pointed out the wisdom of giving a political office to one experienced in politics just as one would prefer an experienced doctor for serious illness.\textsuperscript{38}

On the following day, it was reported McCraw speakers in several sections of the state opened up with a direct attack on the O'Daniel candidacy.\textsuperscript{39} On July 7, at Waxahachie

\textsuperscript{36}Ibid.

\textsuperscript{37}The Austin American and other United Press newspapers, July 4, 1938.

\textsuperscript{38}The Dallas News, July 5, 1938, Sect. I, p. 2.

\textsuperscript{39}Ibid., July 7, 1938, Sect. I, p. 3.
the Attorney General was bitter in his remarks.\textsuperscript{40} This opposition apparently had little effect on O'Daniel's ability to draw a crowd. One paper, reporting on his Taylor rally, said,

W. Lee O'Daniel backed by his hillbilly band, Monday addressed a throng of between 5,000 and 7,000 people here, reiterating his promise to 'oust the professional politicians' and his promise to pay $30.00 to everybody over 65 years as old age pension.\textsuperscript{41}

The same periodical said of his San Marcos speech, the following,

In his speech frequently punctuated with tunes from the boys, O'Daniel sang the political songs he's been humming all over the State—$30.00 pensions to the old folks, a business cabinet in the mansion, more industries, no new taxes.\textsuperscript{42}

The O'Daniel Promises

The promises made by W. Lee O'Daniel are important to this study. The campaign methods employed by a candidate are matters of personal choice and determination, and unless fraud or criminality is employed the public has no concern. The voters can approve or disapprove by giving or withholding their votes. The matter of a campaign promise, however, is in the nature of a trust relationship between the candidate and the public. A campaign vow is a covenant which, by all rights, the public expects either fulfillment or an earnest

\textsuperscript{40}\textit{Ibid.}, July 8, 1938, Sect. I, p. 9.

\textsuperscript{41}\textit{The Austin American}, July 12, 1938, p. 1.

\textsuperscript{42}\textit{Ibid.}, July 14, 1938, p. 2.
and sincere effort toward fulfillment. The degree of fulfillment or the degree of sincere effort expended toward fulfillment can rightfully be employed in evaluating the sincerity of purpose of the candidate.

O'Daniel made numerous promises. One of his promises was to pay everybody over 65 years of age a pension of $30.00 per month. At Smithville, on July 11, he said, "I am in favor as I have told you repeatedly of $30.00 per month for old age pensions, $15.00 from the State and $15.00 from the Federal Government." This is something of a modification of his statement made at other rallies. His pension plan is concisely reported by W. M. Thornton from the O'Daniel rally at San Marcos, as follows,

He also pledges maximum $30.00 per month pension to all persons over 65 years of age regardless of wealth and income, insisting it be better to pay a few millionaires than to permit 95 widows to starve to death. He promised to find a way for Texas to pay its part without new taxes.

The articles quoted above indicate that O'Daniel's main promises were: to provide a pension of $30.00 per month to all persons over 65 years of age regardless of income or wealth; to establish a "common citizens" council or cabinet out of which would originate the policies of his administration;


44 Supra, pp. 21-22, Articles quoting O'Daniel's pension plan.

45 The Dallas News, July 13, 1938, Sect. I, p. 3. Compare this article with report on same rally carried in Austin American, supra, p. 22.
to give a report to the people of Texas on the actual happenings in Austin; to drive professional politicians out of office; to industrialize Texas; to accomplish savings in expenditures; to carry out his program without new taxes; and, if his industrialization program were successful, to reduce taxes.

The appeal of such a platform was such as to continue the O'Daniel drive at a rapid pace. By July 13, one of the candidates, C. R. Miller, withdrew in favor of Thompson. On the same day, at Greenville, McCraw gave O'Daniel "both barrels," saying "you can't spread butter with mountain music." On the same date, O'Daniel was addressing a large crowd at Edinburgh. He was reported in this speech as follows: "He flatfootedly asserted his belief in pay of $30.00 monthly to qualified applicants, with age the only detaining factor as to whether they should receive it." By July 21, the O'Daniel boom had gained such momentum

The Dallas News reported,

A cheering, sweating crowd, choking WPAA's Baker Hotel Studio and the corridor leading thereto, fought to hear W. Lee O'Daniel tell of his love for traveling salesmen and the man in overalls. A few heard the candidate but the great majority were either unable to gain entrance or unable to stand the heat in the thronged space (in

48 Ibid.
spite of air conditioning) and waited outside for a
glimpse of the gubernatorial campaign's most colorful
figure.49

In the final week, it was obvious to most political
observers that the race had narrowed down to O'Daniel against
the field. The only question in the minds of most observers
was whether O'Daniel could win without a run-off, or if he
failed to receive a majority, would it be Thompson or McCraw
in the second primary with him.50

On election eve O'Daniel closed his campaign at Kilgore,
outlining his platform which called for a round table con-
ference of business leaders to map out a sound government
program, full payment of old age pensions to every qualified
person over 65 years of age, elimination of government waste
and the inauguration of an expansive industrial program.51

Thompson, in closing at Greenville, Texas, cited his
record as mayor of Amarillo and his successful fight for re-
duced gas rates. He advocated honest campaign promises,
honest government, honest administration, and honest business.
Said he, "I am supremely confident that practical Texans will
vote practically to sustain and preserve the aged, to in-
augurate a program of industrial development, for lower
utility rates and adequate utility regulation, for conserving
Texas soil."52

50Personal experience.
52Ibid.
McCraw closed at his home town, Dallas, before a large
crowd, while Tom Hunter closed his campaign at Fort Worth
with a prediction that he would receive 350,000 votes and
go into a run-off with O'Daniel. 53

Thus, the campaign of 1938 was brought to an end. As
eager Texans went to the polls to make a decision, the
following editorial aptly expressed the situation.

Texas has known few gubernatorial campaigns of
more bitterness than the current scramble for its
executive chair. In raising the salary for the office
from an inadequate $4000 to $12,000 the state had a
right to expect better qualifications and a decent
campaign presenting sound issues to the electorate.
Some issues are presented but in the twelve man con-
test most of the hopeful vote seekers regard vitu-
eration as the best means of winning them. Wild
promises have been made up and down the hustings--
promises that it is within the power of no Governor
to carry out. The spell binding device of promising
anything, chiefly pensions that only the Legislature
can bestow and that the state cannot afford to pay if
authorized, has been familiar throughout these heated
months of campaigning. Controversial issues have
been presented, it is true, but in view of the many
wild pledges that have been made, it is far more
probable that to-day's election will be decided on
illusory hope rather than constructive faith.

That this has happened before is true enough.
That it will happen again is highly probable. For
democracy at the business of choosing its governing
authority represents lovable, perplexed, well meaning
and frequently misguided humanity. The mistakes that
it makes are of the head not of the heart. So it is
part of the humanity in us, too, that the astute
should play upon our perennial gullibility. A fraud-
ulent stocks business running into billions and dis-
honesty and deceit that milk us of millions have been
built upon the characteristics of the mass of us. So
it would be amazing if politicians did not also take
advantage of it.

53 Ibid.
So here we have a Texas Governor's race resembling nothing so much as the ballyhoo for the old shell game. When you go to the polls to-day, it might smooth your feelings if you asked yourself as you weigh each candidate's worth. 'What does he promise?' 'How in Sam Hill can he make good on it?' and 'Am I voting for my state or for myself?'

Results of the Election

First returns to the Texas Election Bureau confirmed O'Daniel's popularity. He took an early lead in the balloting, and as the mid-night totals piled up he assumed a commanding lead, confirming first bulletin tendencies that he might achieve victory without a run-off. The election bureau bulletin issued at 1:30 A. M. gave O'Daniel a majority over eleven others, with Thompson second and Attorney General McCraw a poor third. His apparent victory without a run-off was a feat not duplicated by any candidate since the primary election system was started in 1920 except in instances where a candidate was running for a second term.

By Monday, July 26, the Texas Election Bureau's computation gave O'Daniel a clear majority of 17,963, and more than twice the vote for Thompson. At that time O'Daniel had better than 51 per cent of the votes, and by Wednesday his majority had reached 33,221.

The official canvass subsequently confirmed O'Daniel's

nomination as the Democratic candidate, tantamount to election, with the other candidates finishing in the following order: Thompson,McCraw,Hunter,Crowley, Renfro, Farmer, Ferguson, Self, Brogden, and King. Miller, who had withdrawn on July 15, received a scattered vote.57

57 Texas Almanac, 1939-40, p. 358.
CHAPTER III

LEGISLATIVE ACTION PRELIMINARY TO S. J. R. 12

The Forty-Sixth Legislature, convening in Austin on the 10th day of January, 1939, could not anticipate the program the new Governor-elect would recommend for enactment. In the months following his successful bid for office, W. Lee O'Daniel had made few public appearances and statements. At the State Democratic Convention, he attempted to explain why his hand picked committee on the platform had seen fit to recommend a pension plank much more restricted than he had advocated during his campaign, but his brief appearance before the convention was the occasion for booing and angry demonstrations by the delegates.¹

The pension plank of the Democratic Convention's platform of 1938 read,

The legislature should make immediate and adequate provisions for the social security program and immediately provide for the payment of the maximum amount of pensions over 65 years of age within the limits and provisions of the Constitution of this State and of the Constitution and laws of the United States.²

This platform is obviously not the liberal program advocated

²Ibid., Sect. I, p. 11.
by O'Daniel in his campaign, but it had his endorsement. Reporting on the convention, Raymond Brooks said,

O'Daniel's wishes prevailed in the wording of a party platform plank on old age pension. O'Daniel campaigned to a first primary nomination over eleven opponents—a record-maker in itself—on a platform to pay all old folks a full pension. The platform plank offered by his friends at Beaumont called for paying the maximum pension 'within the limitations of the Constitution of Texas and of the Constitution and laws of the United States.'

Scores of successful candidates for the legislature, who rode the O'Daniel tide and the big pension promises, found themselves face-to-face with the payoff and discovered they first—even before O'Daniel—would meet the frustration wrath of thousands of voters if they included this broad reservation. They and others fought to keep any restrictions off the party platform and make an unqualified order to legislators to write a maximum pension ticket.

The platform carried no commitment for new taxes for pensions or anything else. It carried no means to meet any increase in pensions.

One ironical feature to this convention fiasco was the fact that Representative Albert L. Derden, destined to become one of "the Fifty-Six" and receive the condemnation of O'Daniel for blocking the financing of social security program in the Forty-Sixth Legislature, was primarily responsible for the efforts to make the O'Daniel platform more clearly express the campaign promise of O'Daniel to pay $30.00 pensions to all over 65 years of age.

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3 Compare this platform expression with O'Daniel's statements made during his campaign, supra pp. 23, 26, 27, 28, 29.

4 The Austin American, Sept. 15, 1933, p. 3.

5 See infra., p. 74.

The United Press and the Associated Press, both highly reputable news reporting agencies, carried stories of the rough treatment accorded O'Daniel at this Beaumont convention, stating the reason why he was booted.7 O'Daniel's reply was a radio speech on Sept. 15, in which he accused the newspapers of the state with printing lies, and gave his own explanation of what had transpired at Beaumont.8 In this radio speech he took credit for the pension plank of the convention, saying, after giving an explanation of what had happened,

... finally we won out by almost two to one, and our plank on old-age pensions was adopted. Let me emphasize that the situation was tense. If that pension plank had lost, it would have been difficult to have got through the Legislature the necessary legislation to pay the old folks the pensions as advocated.9

This statement is important because O'Daniel assumes credit for the platform. One has only to read the plank and compare it with O'Daniel's promises to recognize that the platform modified the campaign statements.

The attitude of O'Daniel at the convention on the question of pensions gave some indication of the fact that he was beginning to modify his pension statements. Two


9 Ibid.
interviews just prior to the convention indicate that he recognized that he had made a definite promise to pay $30.00 per month to all over 65 years of age. In one of these interviews, he said,

There is just one thing I can be accused of with truth. That is fixity of purpose. It has been said that I ran on a platform of generalities aside from my advocacy of $30-a-month old-age pension. It may be true that the Ten Commandments are generalities, but I consider them pretty definite rules. There were three other things that were very definite.... The one thing sure about paying these old people their $30.00 a month is that we will have to go where the money is to get it.10

A few days later, O'Daniel said,

We have definitely announced many times that we expected to pay $30.00-a-month pensions, of which $15.00 would be provided by the State and $15.00 by the Federal Government. We will make an effort to obtain a modification of the Federal law, but if that fails it seems to me that the logical thing to do will be to accept the Government funds in cases where they are available and pay the entire $30.00. In cases where need to meet the requirement of the Federal law cannot be proved it may be necessary to pay only the State's $15.00.11

O'Daniel's First Legislative Message

Mr. Lee O'Daniel officially became Governor of Texas on the 17th of January, 1939. On the Wednesday immediately following his inauguration, O'Daniel addressed a joint session of both Houses. To those who had scoffed at his

10The Dallas News, article by T. A. Price, Sept. 4, 1938, Sect. I, p. II.

intentions and believed he would make no attempt to provide the tremendous amount of revenue necessary to provide his pension program of $30.00 per month to everyone over 65 years of age, his startling message was a distinct surprise.\textsuperscript{12} In his opening remarks the Governor assumed the responsibility of recommending to the Legislature how the old age pension obligation should be financed.\textsuperscript{13} He then said,

\begin{quote}
I am not unmindful of the fact that when these recommendations pass into your hands, under the Constitution of this State the responsibility then rests upon you to determine the merits of the plan which I have proposed and to submit a better plan if, in your judgment, a more workable plan for meeting the obligation of the State for the old people of Texas can be written into the law. I shall respect in every detail the rights and responsibilities of the legislative branch of this Government, and I pledge you now my full cooperation in dealing with this most important question. Please accept this statement as one made in all sincerity. Please accept it as meaning what it says.\textsuperscript{14}
\end{quote}

The Governor's recommendations were submitted in two proposals: In one he outlined a statutory measure for old age pensions to be financed by a transactions tax of 1.6 per cent; in the other he proposed a constitutional amendment authorizing the levying of a 1.6 per cent transactions tax, repealing the ad valorem tax for all state and school purposes and the ad valorem tax for the Confederate Pensions. His proposed amendment changed the definition of old age

\begin{thebibliography}{1}
\item \textsuperscript{12}Ibid., Jan. 19, 1939, Sect. I, p. 1.
\item \textsuperscript{13}House Journal, 46th Legislature, p. 105.
\item \textsuperscript{14}Ibid., p. 106.
\end{thebibliography}
assistance by adding "need" as a requirement for assistance; whereas the present amendment and the amendment O'Daniel was seeking to modify makes no reference to "need."

First legislative comment on these vast proposals was favorable. Some Legislators, however, looked on the O'Daniel's transactions tax as a comprehensive consumers' sales tax in disguise as evidenced by the remarks of one Senator, the Honorable Joe Hill, who said,

It is a victory for the predatory interests that for the past twenty years have been trying to put over a sales tax. During the last campaign, O'Daniel said he wouldn't try to impose a sales tax, or to levy any other new taxes. Now he wants a tax that, while known as a transactions tax, really is a most iniquitous form of sales tax. It taxes and retaxes until the consumer is smothered.

O'Daniel's Tax Plan

The Governor explained his tax bill in the following words:

I have made a diligent study of many suggested means of raising the necessary revenue to pay old age pensions, and I recommend that the money be raised by the levying of a 1.6% transactions tax, because I believe that this will give the broadest possible base from which to secure this revenue. A transactions tax, such as I recommend, is applied alike to every line of business and industry. It does not pick out manufacturing and levy a tax on

15 Ibid., p. 117. Compare Section 4 of O'Daniel's amendment with the present provision of our constitution, supra p. 10.


17 Ibid., p. 2.
that to the exclusion of wholesaling and retailing. It does not exempt the producing industries which are largely our natural resource industries. It does not centralize all of the tax raising within the retail industry as would be done by a retail sales tax. It is my opinion that the best interests of the State generally would be served if our producing or natural resource industries, our manufacturing, our wholesaling, our retailing, and our service industries all bear a part of this tax burden. 18 O'Daniel reiterated his opposition to a retail sales tax, saying, "I am definitely opposed to a retail sales tax." 19 He made a later concession by saying, "The Legislature may in its wisdom discover a better method of raising the revenue. If a better method can be found I am perfectly willing to accept it." 20 The insincerity of this statement can be tested by comparing the statement with the action taken by the Governor in insisting on a constitutional sales tax amendment as the only means of financing social security, and his refusal to lend any effort toward the passage of a statutory tax measure. 21

The Governor dismissed natural resource taxes with this statement: "I have not recommended this tax to the Legislature for the reason that I believe it would be unwise to attempt to raise this amount of money for this purpose from

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19 Ibid.
20 Ibid.
21 For details of O'Daniel's attitude on taxes see Chapters IV and V. Also infra p. 73.
our natural resource industries." He also expressed dis-
approval of gross receipts taxes and net income taxes.

Later in his message the Governor commented:

In my opinion, in levying the tax to meet these
obligations it is essential that the tax be most
widely distributed, to the end that all citizens of
Texas will be required to pay a part of this tax
and that they will know they are paying it. Such a
tax will then serve as a break against any fantastic
schemes which may be advanced in the future, and it
is for this reason that I deem it especially important
that this question of old age pensions now be solved:
first, by writing a definite plan in the constitution;
and second, that it be supported by every citizen of
this State.

In the allocation section the bill submitted by O'Daniel
provided that certain amounts be first set aside to meet
the obligations of the Confederate Pension Fund, the
Destitute Children, and the Teacher Retirement Fund. After
these allocations were made, the bill provided that if there
remained an amount insufficient to pay old age pensions in
full all pension grants should be reduced ratably.

The bill recommended by O'Daniel clearly encompasses
a pyramided consumers' sales tax. It provided that the
tax be collected at the time of the transaction from the
person acquiring the property or for whom the service or
transaction was performed. The utility companies,

\[\text{House Journal, 46th Legis., p. 109.}\]
\[\text{Ibid., p. 114.}\]
\[\text{Ibid., p. 135.}\]
telephone and gas companies, and other groups furnishing utility services would not pay the tax themselves. It would be collected from the consumers of these firms.

O’Daniel’s Constitutional Amendment

The Governor’s constitutional amendment, which subsequently became House Joint Resolution No. 16 by Fetsch, had the effect of changing the constitutional amendment first adopted by the people providing for a program of assistance for the old people in that the O’Daniel plan restricted pensions to those in need.27 His proposed amendment provided:

The term need as used in subsection 3 above is hereby defined to mean: A person who does not have an income of Thirty Dollars ($30.00) per month from the combined sources of his own labor, personal property and real property. And the amount of old age assistance granted by the State shall in each case be such an amount as when added to the income of the person from his own labor, from personal property and real property, together with any amount which may be granted by the Federal Government, will equal Thirty Dollars ($30.00) per month, provided, that in no case shall the amount to be paid out of state funds exceed Fifteen Dollars ($15.00) per month.28

In paragraph five (5) of the same section, the Governor’s amendment suggested that the provisions providing for old age assistance should not be construed as a vested right in the recipient of the grants.29

It can be pointed out that the taxing provisions of

27Ibid., p. 117. Compare this with Art. III, Sect. 51-b of Texas Constitution, supra p. 12.
28Ibid.
29Ibid.
the Governor's amendment added nothing to the authority of the Legislature. Under the general taxing power, the Legislature could have levied a transactions tax without the necessity of a constitutional amendment. The effective portions of the act were those which operated in a negative way to prohibit the legislature's power to finance social security. The provision repealing the ad valorem tax would also be effective.

As pointed out, the Governor's suggested pension plan was a modification of his promise to pay $30.00 a month to everyone over 65 years of age. What he advocated in his campaign was a pension of $30.00 to all persons over 65 years of age,\textsuperscript{30} and no mention was made of qualifying this to mean a mere supplementing of a person's income to the point of giving him an income of that amount from state, federal and personal resources. When one takes into account O'Daniel's campaign statement about paying the pension to a few millionaires rather than let 95 widows go without the pension,\textsuperscript{31} it seems logical to assume that the program advocated by O'Daniel in his first legislative message was a definite modification of his campaign promise.

In his message to the Legislature, O'Daniel explained the provisions of his bill as follows:

\textsuperscript{30} See supra pp. 23, 26, 27, 28, and 29.

\textsuperscript{31} See especially his statement at Austin, Texas, supra p. 26.
Under this bill a person 65 years of age, otherwise qualified, who has no income, would receive $15.00 from the state and $15.00 from the Federal Government; if he had an income of $10.00 he would receive $10.00 from the State and $10.00 from the Federal Government, leveling his income at $30.00; and if he had an income of $15.00 he would receive $7.50 from the State and $7.50 from the Federal Government, again leveling his income at $30.00.

Although some newspapers reported the immediate response to the O'Daniel proposals was favorable, it was not until January 25 that a member of the House assumed the sponsorship of the proposed bill and amendment. On that date, Petsch introduced House Joint Resolution, the constitutional amendment suggested by O'Daniel\(^\text{33}\) and House Bill 277, the Governor's suggested transactions tax-pension bill.\(^\text{34}\)

Five days later, on January 30, Representative G. C. Morris, who later became recognized as the unofficial leader of "the Fifty-Six," introduced House Bill 340 providing statutory assistance to the old age pension program.\(^\text{35}\) In this bill, Representative Morris was joined as co-authors by the following members of "the Fifty-Six;" Keith, Thornberry, Brown of Nacogdoches, Wells, Weldon, Skiles, Russell, London, Bell, Mays, Dowell, Cornett, Burney, Kern, Stoll, Newell, Boyd, Waggoner, Langdon, Kerr, King, Finer, Hamilton, Mohrmann, Coleman, Rosch, and Davis of Upshur.\(^\text{36}\) These men were part

\(^{32}\)\text{House Journal, 46th Legis., p. 106.}
\(^{33}\)\text{Ibid., p. 279.}
\(^{34}\)\text{Ibid., p. 275.}
\(^{35}\)\text{Ibid., p. 320.}
\(^{36}\)\text{Ibid.}
of the group later condemned by O'Daniel for the failure of his program in the Forty-Sixth Legislature. 37

The preliminary moves made by those who believed in a constitutional amendment as a method of solving the social security problem were not unusual. At a meeting of the Committee on Revenue and Taxation on February 2, 1939, Petsch, sponsoring both of the Governor's proposals, requested joint hearings with the Committee on Constitutional Amendments for the purpose of considering the various plans advanced for financing social security. This request was granted by a viva voce vote. 38

Joint hearings of these two committees were held on the following dates: February 15, 16, 20, 22, 27, 28, March 1, and March 6. 39 The following resolutions and bills, with others not related to this study, were presented in these hearings: H. J. R. 16, the Governor's sales tax amendment; House Bill 340, Morris' omnibus tax bill; House Bill 417, a natural resource tax bill by Representative Derden; House Bill 651, an income proposal by Cornett; and, House Joint Resolution 30, a substitute transactions measure by McDaniels. 40

37 The W. Lee O'Daniel News, April 8, 1940, p. 3.
38 "Minutes," House Committee on Revenue and Taxation, 46th Legis.
39 "Minutes," House Joint Committee—Revenue and Taxation—Constitutional Amendments, 46th Legis.
40 Ibid.
At the March 8 meeting, a sub-committee previously appointed reported back its recommendations, and the joint hearings were declared to be terminated. In a separate meeting, the Committee on Constitutional Amendments took under advisement a substitute for House Joint Resolution 16 as submitted by the Governor.\textsuperscript{41}

The substitute for House Joint Resolution 16 proposed an amendment to the constitution similar to O'Daniel's amendment. The amount of pension to be paid was the same in both proposals. The social security taxes provided were different in some respects. The substitute proposal called for the following taxes:

1. A one cent sales tax on each forty cent retail sale of tangible personal property;

2. A tax of one cent on each forty cent admission to places of amusement and athletic contests when the admission charge exceeded fifty cents;

3. A tax of one cent on each forty cent sale of electrical energy;

4. A tax of one cent on each forty cent sale of natural or artificial gas;

5. A tax of one cent on all telephone charges of forty cents or more;

6. Increased production tax on oil, being a 25\% increase on existing levies;

7. A 25\% increase in sulphur and natural gas taxes.\textsuperscript{42}

\textsuperscript{41} "Minutes," House Committee on Constitutional Amendments, 46th Legis.

\textsuperscript{42} House Journal, 46th Legis., pp. 1167-1168.
The ceiling on natural resources and the other taxes provided for was achieved by Section 16 of the amendment, reading as follows:

On or after January 1, 1940 Old Age Assistance, Destitute Children's Assistance, Teachers' Retirement Benefits and the State's portion of the administration thereof shall be paid exclusively from the revenue derived from the taxes herein levied and no appropriation shall thereafter be made out of any other state funds for any such purposes, nor shall the taxes herein levied ever be increased for the payment of Old Age Assistance, Destitute Children's Assistance or for Teachers' Retirement Benefits or the State's portion of the administration thereof.43

The Constitutional Amendments Committee favorably reported H. J. R. 16, as substituted, by the following vote:
YES--Little, Donaghey, Bradford, Harkamer, Heflin, Holland, Johnson of Tarrant, Nicholson, Fetsch, Shell, Taylor, Thornton, and Turner; NO--Hardeman and Kerr; PRESENT AND NOT VOTING--McDaniel and Weldon.44

The Controversy Over H. J. R. 16

The attitude of the House Committee on Revenue and Taxation and the refusal of this committee to take action on statutory tax measures had the effect of forcing the House to a consideration of House Joint Resolution 16 in advance of the consideration of any other method of financing social security.

43 Ibid., pp. 1169-1170.

44 "Minutes," House Committee on Constitutional Amendments, 48th Legis.
The preliminary move in the long and spirited battle was made on March 7 when Petsch, who had assumed sponsorship as a courtesy to the Chief Executive, moved to suspend the rules in order to set the resolution as a special order.\footnote{House Journal, 46th Legis., pp. 929-934.}

On the preceding day, the nucleus of the anti-sales tax bloc, destined to become the Fifty-Six, was formed in a caucus of those members who were opposed to the sales tax feature of the resolution.\footnote{The Dallas News, March 7, 1939, Sect. I, p. 14.}

From March 7 until March 30, when H. J. R. 16 was tabled, the proposition occupied the major attention of the House. The sponsors of the measure used every parliamentary and stratagetical device at hand in an attempt to secure the necessary two-thirds vote. The opponents of the resolution stood firm and adamant in successful opposition. The strategy of the proponents was to delay all statutory tax measures by keeping such bills in committee. This would lead, it was believed, to the forced adoption of the resolution. The opponents of the resolution had the opposite purpose--to force a statutory tax bill out of committee and to defeat H. J. R. 16. The following facts illustrate how this was attempted by both sides.

Pending in the Committee on Revenue and Taxation on March 7, were three tax bills, House Bill 340, Morris'
omnibus tax bill; House Bill 417, Derden's natural resource
tax bill; and, House Bill 651, an income tax proposal by
Cornett. In view of the apparent intentions of the Committee
on Revenue and Taxation to take no action on these bills
and thereby compel a House vote on H. J. R. 16, the sales
tax amendment, Representative Derden moved to instruct the
committee to report House Bill 417. This motion was defeated, as
was a similar motion by Hale to compel the committee to
report the Morris omnibus tax bill.

The purpose of these motions was to force a statutory
tax bill out of the Committee on Revenue and Taxation so
that the members of the House would have an opportunity to
vote on a statutory method of financing social security
rather than having the sales tax amendment forced on them.
Derden and Hale were both members of the anti-sales tax
group. It is interesting to note that only ten members
of the "Fifty-Six" voted against the motion by Hale and
thirteen of the group voted against Derden's motion. This
left forty-one members of the group, which O'Daniel later
praised for having done everything within its power to

47 House Journal, 46th Legis., p. 921.
48 Ibid., p. 920.
49 Hale later switched to support S. J. R. 12.
50 See record votes, pp. 920-921, House Journal, 46th
Legis.
finance social security, voting against the motion to instruct on Hale's motion and forty of the same group voting against Derden's motion.

A motion was made to instruct the committee to report House Bill 651, the income tax bill, but this was defeated. These three motions and the record votes on the motions are important as indicating that the "Fifty-Six" group was trying to get a statutory tax measure, while the proponents of the sales tax amendment, H. J. R. 16 were employing the strategy of keeping all statutory tax measures in the unfavorable Committee on Revenue and Taxation.

On March 14 the resolution came before the House and immediately became the subject of numerous amendments. The record reflects that during this amendatory process the members of the "Fifty-Six" were prominent in the move to delete the more objectionable features of the measure. Forty-three members of the group voted to increase the severance tax on gas 1/4 of one cent per 1000 cubic feet. Of the eighty votes cast in favor of the Cornett amendment, by which an income tax was substituted for the sales tax feature of H. J. R. 16, forty-five were by members of the "Fifty-Six." When the House reversed it's action on this particular matter, forty-one members of the "Fifty-Six"

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51 House Journal, 46th Legis., p. 922.
52 Ibid., p. 1172.
53 Ibid., p. 1212.
voted to abide by the previous action. Members of the group were leaders and active supporters of the Morris move to raise the natural resource levies provided in H. J. R. 16. The "Fifty-Six" also supported the unsuccessful Gablemoot amendment to exempt all sales of less than $100 from the sales tax provisions of the amendment.

Contrary to the Governor's statement that the "Fifty-Six" did not want to give the people of Texas a chance to vote on the question of how they wanted to provide money for pensions, this group offered an amendment which would have given the people a chance to express a three way preference as to the kind of tax program to be written in the constitution. This amendment would have provided an opportunity to vote a preference for either a net income tax on individuals and corporations, a two and one-half per cent sales tax, or a tax of four per cent on the value of natural resources. Although the amendment was defeated, there were forty-five members of the House who supported it, including twenty-nine members of the "Fifty-Six." This would indicate a majority of the "Fifty-Six" group believed in giving the people some choice in the matter if the

54 Ibid., p. 1224. 55 Ibid., p. 1227.
56 Ibid., p. 1331.
57 The W. Lee O'Daniel News, April 8, 1940, p. 2.
58 House Journal, 46th Legis., p. 1332.
people were to vote on the question of how to finance the social security program. Seventy-five members of the O'Daniel honor roll voted not to give the public this choice.

O'Daniel Enters the Fight

The Governor's entrance into the legislative fight over H. J. R. 16 came in his radio program on March 19. It was heralded by the following Associated Press story from Austin under date of March 19, 1933:

Governor W. Lee O'Daniel came out flatly Sunday for submission of a constitutional amendment under consideration in the House of Representatives and embodying a sales tax to finance liberalized old-age pensions. While he had long opposed a sales tax, the Governor said in his regular Sunday morning broadcast from the Governor's mansion it appeared the plan pending in the House was the best that could be obtained.59

This same article also quoted the Governor as calling on the citizens of Texas to write, wire or call their representatives asking them to support the sales tax resolution. He stated that since the House had defeated his transaction tax and a net income tax it was time for each side to give and take. He said that he was now willing to give and take because his plan had not been received favorably.60

By this move, O'Daniel violated his expressed promise to the Legislature of leaving to the Legislature the

59 See The Dallas News, March 20, 1933, and other A. P. newspapers.

60 Ibid.
determination of what would be the best method of financing social security. He had stated definitely in his first legislative message that it was the Governor's task to recommend and the Legislature's job to review and consider. He had promised to respect this relationship. 61

It is significant that the Governor made no mention of the bills in the Committee on Revenue and Taxation. He asked no citizen of Texas to write, wire or call his representative and secure passage of a statutory measure. Although nearly two months of the regular 120 days remained in the session, O'Daniel assumed to speak out in favor of a vicious constitutional sales tax to the exclusion of natural resource taxes against the large corporate owners of our vast storehouse of natural wealth. This open confession by the Governor that he was adopting the type of tax he had condemned during his campaign 62 put O'Daniel on record to the extent of recognizing H. J. R. 16 as being primarily a sales tax.

The week following the Governor's March 19th speech was filled with action. On the 21st of March, the following members of the "Fifty-Six," Bell, Morris, Thornberry, Derden, and Wells presented a resolution requesting the Committee on Revenue and Taxation to report, favorably or unfavorably,  

61 See his message to Legislature, Jan. 18, 1938, supra p. 39.

62 The Dallas News, October 3, 1938, Sect. I, p. 11; also his Houston rally, July 3, 1938, supra p. 27.
on House Bills 340, 417 and 651 by not later than March 23. The vote on adoption of this resolution showed only three members of the "Fifty-Six" voting against the proposition, and most of the prominent leaders of H. J. R. 16, including ten members of the stubborn Revenue and Taxation Committee.

The obliging Committee on Revenue and Taxation, which had ignored all major statutory measures, met on March 22, and with dispatch proceeded to give unfavorable reports to bills, Numbers 417, 340, and 651. The vote was identical, as follows: Voting to report unfavorably: Johnson, Bond, Boyer, Celaya, Colquitt, Dean, Donaghey, Fielden, Howard, Mays, McFarland, Nicholson, Petsch, and Pope. Voting against reporting unfavorably: Bradbury and Tarwater. The following members of the committee were absent, Leonard, Little, Lehman, Broadfoot, and Harper.

On the day following, March 23, an incensed House began to take cognizance of the fact that its Committee on Revenue and Taxation was in conspiracy with O'Daniel to pressure the House into acceptance of a sales tax-constitutional amendment. At least it appeared to the satisfaction of the

63 House Journal, 46th Legis., p. 1319.

64 "Minutes," House Committee on Revenue and Taxation, 46th Legis.

65 Ibid.
anti-sales tax group that the committee had no intentions of reporting favorably any of the major revenue bills.

The sponsors of House Bills 340, 417 and 651 had not received enough votes in the committee meeting for a minority report; the rules of the House requiring the signature to a minority report of four members who were present when the vote was taken and who voted on the losing side. 66 For this reason Morris, author of House Bill 340, sought to suspend the rules in order to print his bill notwithstanding the unfavorable committee report. 67 This motion failed to receive the necessary two-thirds, but it is significant that only three members of the "Fifty-Six" voted against it. A similar motion was made by Cornett on House Bill 651, the motion losing by a vote in which ten members of the "Fifty-Six" voted against Cornett.

Failing in the Cornett and Morris motions just described, the anti-sales tax group did succeed in re-referring House Bill 525, a sulphur tax measure, from the Committee on Revenue and Taxation to the Committee on Education. 68 In a final effort to secure some kind of statutory tax measure, House Bill 908 was introduced by a suspension of the rules. 69 This measure was House Joint Resolution 16 in a statutory

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66 Rules, House of Representatives, 46th Legis., Rule 9, Sect. 4.
67 House Journal, 46th Legis., p. 1368.
68 Ibid., p. 1363. 69 Ibid., p. 1397.
form. The Committee on Education met the same night, March 23, and over the violent protest of sulphur representatives voted a favorable report on House Bill 525.70

An avalanche of mail descended on the House as a consequence of the Governor's March 19th broadcast. On his program of March 26, O'Daniel admitted the sales tax amendment was bad, but said,

Some of the members are in favor of a sales tax and others are as strongly opposed to a sales tax as I am, and I am so strongly opposed to a sales tax that I would only want to accept it as last resort to keep the whole pension program from being wrecked. I am so strongly opposed to a sales tax that I think I would have to hold my nose while signing such a tax bill. These good Representatives who told you they are opposed to a sales tax, and that they are in favor of pensions may, in the final analysis, come to the same conclusion that I have that it is better to accept the constitutional amendment now before the House than to wreck the whole pension problem and do nothing this session.71

This speech had no noticeable effect on the membership. The Governor's statements concerning the evils of the sales tax are difficult to comprehend in the light of his advocacy of a disguised pyramided sales tax in his opening speech. Moreover, as will be more fully outlined in later chapters, O'Daniel continued to do all in his power to secure passage of the sales tax amendment despite his admission that it was so bad he would have to hold his nose while signing such a tax bill.

70"Minutes," House Committee on Education, 46th Legis.

Before the House administered the death blow to H. J. R. 16, the Committee on Revenue and Taxation gave a favorable report to House Bill 908.\textsuperscript{72} This was the one and only major revenue bill given a favorable report by this committee. All other tax bills of a major character and designed to finance old age pensions were either stifled in committee or given unfavorable reports. The House was compelled to send major revenue bills to the Committee on Education in order to get around the unfavorable attitude of the Committee on Revenue and Taxation. The Education Committee functioned as the real committee on tax measures, reporting favorably all revenue bills referred to it. It is significant that of the twenty-one members of the Committee on Revenue and Taxation, a committee which did everything possible to delay a statutory tax measure, only three were members of the "Fifty-Six." There were eighteen members of this same committee who voted consistently to report major revenue bills unfavorably.\textsuperscript{73} The majority of this group of eighteen men voted consistently against all revenue measures once one came before the House on a vote.\textsuperscript{74} All of these eighteen men were placed on O'Daniel's honor roll and given a diploma certifying they had done everything within their power to finance social security.

\textsuperscript{72}House Journal, 46th Legis., p. 1402.
\textsuperscript{73}"Minutes," House Committee on Revenue and Taxation, 46th Legis.
\textsuperscript{74}See record votes listed infra pp. 96, 97, and 98.
On March 30, with almost the entire membership of the House present and voting, House Joint Resolution 16 failed of passage. Only Daniel, Russell and Mays of the official "Fifty-Six" group voted for the resolution.

The defeat of the sales tax amendment was the inspiration for O'Daniel's Sunday morning diatribe on April 2 in which he arranged the Representatives for killing the amendment and charged opponents of H. J. R. 16 were enemies of the old folks.76

The criticism of the opponents of H. J. R. 16 made by Governor O'Daniel does not seem justified by the records. Of the seventy-three members voting against the resolution, a majority supported every important move made for the purpose of expediting passage of a statutory tax measure. On the vote to instruct the Revenue and Taxation Committee to report House Bill 340, the omnibus tax measure by Morris, there were forty-nine members of the group defeating H. J. R. 16 who voted favorably. On the motion to instruct the committee to report House Bill 417, an oil, gas and other resources tax, there were forty-six of the group voting favorably, and on the motion to instruct on House Bill 651, Cornett's income tax measure, there were forty-three votes from the group defeating H. J. R. 16 that voted favorably. On the adoption of the resolution by Bell, there were sixty-nine

75 House Journal, 46th Legis., pp. 1560-1561.
76 See The Dallas News, April 3, 1939, and other Associated Press newspapers of that date.
of the opponents of H. J. R. 16 voted for the proposition of requesting a report on three tax bills. On the motion to re-refer House Bill 525, a sulphur tax, from the unfavorable Revenue and Taxation Committee, where it was resting without chance of passage, to the Education Committee there were fifty-nine members who voted against H. J. R. 16 who voted for this motion.

Importance of H. J. R. 16 Battle

The legislative controversy over House Joint Resolution 16 presented many of the same issues as the later controversy over Senate Joint Resolution 12, although the former skirmish was not as significant as the latter. The importance of the H. J. R. 16 fight is as follows:

1. By endorsement of the measure which he openly admitted was a sales tax, O'Daniel violated his campaign promise of opposition to a sales tax.

2. The recommendations of the Governor, contained in his legislative message and in the amendment and bill which he recommended and urged passage of, were definitely limiting of the rights of old age assistance recipients, and a decided limitation on the program announced by the Governor during his campaign.

3. By entering the conflict by means of his Sunday morning radio programs and urging the application of pressure

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77 *House Journal*, 46th Legis., p. 1321.
to members of the House recalcitrant to his program, O'Daniel did not respect his statement to the Legislature in his first message that it was his task to recommend legislation and the task of the Legislature to pass on the merits of these recommendations.

4. In reporting to the people of Texas on the activity of the Legislature the Governor either wilfully or carelessly gave an unfair explanation of the activity and intentions of those who voted against the O'Daniel sales tax amendment.
CHAPTER IV

THE BATTLE OVER SENATE JOINT RESOLUTION 12

While the turmoil of House Joint Resolution 16 was raging in the House of Representatives, there was developing in the Senate a companion measure, similar in many respects, over which there was destined to be fought an epic battle, involving what reliable newspapers reported to be the greatest mass assault in Texas history by special interests lobbyists.¹ This measure was Senate Joint Resolution 12 by Weinert.

Senate History

Introduced on February 12,² the amendment was reported on March 13 while the House was bitterly engaged in the consideration of H. J. R. 16. The measure was before the Senate on March 27 when amendments were offered by Senator Aikin³ and Senator Van Zandt.⁴ The Van Zandt Amendment was adopted on March 28.⁵ On March 29 the Senate defeated

¹The Austin American, June 14, 1939, p. 1; also The El Paso Herald-Post, June 14, 1939, p. 1.
²Senate Journal, 46th Legis., p. 417.
³Ibid., p. 749. ⁴Ibid., p. 750.
⁵Ibid., p. 761.
an amendment to S. J. R. 12 offered by Senator Sulak. On March 30, the fatal day for H. J. R. 16 in the House of Representatives, and while the House was administering final rites to the sales tax amendment proposal, the Senate sponsors of S. J. R. 12 moved to postpone further action. On April 3 the amendment failed of engrossment, but on the following day the vote was reconsidered. Passage to engrossment was secured for the amendment on the 6th day of April, and on the 10th day of April the amendment was read third time and finally passed by a full vote of the Senate, 21 yeas and 10 nays.

While the Senate was passing S. J. R. 12 without too much ado, the House devotees of the statutory tax route achieved what appeared a major success. Taking House Bill 908, the statutory duplicate of House Joint Resolution 16, the House succeeded on April 11 in substituting a gross receipts tax for the committee recommended sales tax feature. The bill as amended passed by a vote of 92 to 39. This action placed the two Houses in this position: The House, as the constitutional source of all revenue raising measures, had complied with its constitutional duty and had sent the Senate a tax bill so designed that it could be amended if

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6 Ibid., p. 784.  
7 Ibid., p. 798.  
8 Ibid., p. 853.  
9 Ibid., p. 925.  
10 Ibid., pp. 959-960.  
not entirely satisfactory to the Senate; the Senate had acted within its constitutional power in sending the House a constitutional amendment, purportedly a revenue raising measure. The Senate's offering, like all other constitutional amendments, required a two-thirds vote of each house. It must then have been submitted to a vote of the people, and if the people had given approval, the amendment would have required enabling legislation approved by both Houses of the Legislature and signed by the Governor.

Senate Joint Resolution 12 in the House

This was the position the two Houses were in as of April 10, 1939. Both Houses stood at ease temporarily on the question of financing social security, but in his Sunday morning radio speech April 17, O'Daniel began a new assault on the House by giving his unreserved approval to the Senate's sales tax constitutional amendment, and pointing out that the gross receipts tax passed by the House carried such high exemptions it would not even approximately raise enough money to pay the social security bill. He again stated his original objection to a sales tax but said all true friends of social security should support the sales tax because the counties would get back $3.00 for every $1.00 paid out.12

No request was made of the Senate to amend House Bill 908, the gross receipts tax passed by the House and which was then

in the State Affairs Committee of the Senate. House Bill 908 could have been amended by the Senate if it did not provide enough revenue, but O'Daniel did not ask that this be done. The Governor, in fact, made no mention of the Senate but directed his remarks at the House in urging passage of the sales tax constitutional amendment. 13 In all of his broadcasts to the people, there is no record that O'Daniel at any time suggested that the Senate could amend the revenue bills passed by the House. He, likewise, did not ask the people at any time to write their Senators and urge some statutory action on the question of financing social security.

While the Senate continued to ignore House Bill 908 resting in the Committee on State Affairs, the House wrangled over the question of considering Senate Joint Resolution 12. It was two weeks before the Committee on Constitutional Amendments was instructed to report the amendment. 14 It required until May 2 before the amendment could be brought before the House on a motion to set for special order. 15 Some members voted to bring the matter to a vote so that it might be disposed of. This is evident from the reason-for-vote placed in the Journal by Representative Calbreath, "My reason for voting to bring S. J. R. 12 upon the floor was to kill it and get it out of the way. It was obstructing

13 Ibid.
14 House Journal, 46th Legis., p. 2581.
15 Ibid., p. 2773.
real tax measures and needed killing so dead it could never be recalled." Calbreath placed the following in the Journal: "Still voting to bring up S. J. K. 12 so as to kill it and get it out of the way so we can get busy on some real honest tax measures. This thing is a menace until it is killed and buried so deep it can never be revived."\(^{17}\)

House Amendments

The amendatory process in the House was marked by bitter and sharp debates. When, on May 2, the committee substitute was offered by Taylor and read, Representative Joe White secured the passage of an amendment adding a new section as follows:

Section 6-a. The taxes provided for herein in Sections 4, 5, and 6 of this resolution shall not be construed as repealing any taxes now being levied on the commodities and/or service specified in said Sections 4, 5, and 6, but shall be in addition to all taxes now being levied on said commodities and/or service mentioned in said Sections; and provided further that nothing in this resolution shall prohibit the Legislature from levying additional taxes on the commodities and/or services mentioned in said Sections 4, 5, and 6 of this resolution for any purpose whatsoever other than for financing the social security program as mentioned herein.\(^{18}\)

The next important amendment was that offered by Representative H. T. Brown. This amendment changed the sales

\(^{16}\) *House Journal*, 46th Legis., p. 2732.  
tax rate from one cent per each fifty cents or fractional part thereof to a flat two per cent of the sale price.

Brown's amendment also authorized the Legislature to make certain exemptions and to formulate sale price brackets.\(^{19}\)

On May 3, the House took up the controversial subject of the re-submission of the sales tax amendment in the event of its adoption by the people. Several proposals were submitted, the House finally adopting the proposal of Representative Courtney Hunt and others, reading as follows:

In the event this provision of the Constitution is reaffirmed at the general election in 1942 and remains in effect, then and in such case this entire amendment shall be re-submitted at the general election of 1946 in the same manner as it was submitted at the general election in 1942; and in the event the amendment is not readopted at the general election in 1946, then and in such case this entire amendment to the Constitution shall expire on September 1, 1947; and in the event that such amendment is readopted at the general election in 1946, then the same shall be automatically re-submitted to the qualified electors of the State at the general election every 10 years in the same manner as it was submitted in 1946; and in case the same fails at readoption at any such election then this entire amendment to the Constitution shall become inoperative on September 1 of the next succeeding year.\(^{20}\)

The proposal of Representative Joe Keith to disfranchise all applicants for old age assistance from voting in any election at which candidates for Governor or for the Legislature would be elected or nominated was defeated.\(^{21}\)

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\(^{19}\) *Ibid.*


The amendment exempting food and other articles and commodities was offered by Representative John Kerr, Representative James Boyd, and twelve other members of the "Fifty-Six." The vote by which this amendment was adopted was not a record vote, but a prior vote indicated the division of sentiment on this important issue. The vote on this point was 44 ayes to table the amendment against 92 nays. This particular amendment had the effect of lessening the effect of the sales tax. It was designed and promoted by the anti-sales tax group in an attempt to reduce the effect of S. J. R. 12 to a minimum in the event it should be adopted.

The activities on S. J. R. 12 for this particular legislative day, May 3, were concluded with an unsuccessful attempt by Hartzog to attach an amendment levying an occupation tax on marble machines.

O'Daniel Rejects Transaction Tax

Representative Abe Mays, of Atlanta, was responsible for bringing on another interesting development in the battle over S. J. R. 12 in the House. Mays had circulated an amendment which provided for substituting the O'Daniel transaction tax for the sale tax provisions of S. J. R. 12. On the morning of May 4, just as Mays presented his amendment, the

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22 Ibid., p. 2817.  
23 Ibid., p. 2819.  
24 Ibid., p. 2819.
Governor sent up a message in which he branded the move to substitute the transactions tax for the sales tax as a plan to defeat the whole pension program. The Governor said,

I believe the real friends of Old Age Pensions should support Senate Joint Resolution No. 12. . . . I think a vote to completely change the tax program at this late hour by substituting or amending Senate Joint Resolution No. 12 to include the transactions tax which I recommended almost four months ago and which the legislature had rejected or any altogether different plan is a vote to kill the whole old age pension and social security program.25

This strongly prejudicial statement, plus the fact that many members would have preferred a straight sales tax to a transactions tax and could not support a transactions tax even as a means of crippling S. J. R. 12, combined to defeat May's proposed move.

Except for corrective amendments and amendments not seriously contested, the only other important amendment was Representative Bell's amendment to legalize horse racing.26 Representative Bryan Bradbury, the able and forceful foe of race track gambling, immediately offered a substitute to Bell's amendment in which he proposed to put a constitutional prohibition on horse racing. His substitute lacked but 2 votes of passage.27 The adoption of the Bradbury amendment would have meant additional objectors to the sales tax amendment since the friends of the race track element would not

25 Ibid., p. 2835.
26 Ibid., p. 2845.
27 Ibid., p. 2848.
have wished a constitutional bar to their efforts to re-
legalize this sport. The closeness of the vote was suffi-
cient to induce Bell to make no further serious effort to
pass his amendment.

On this same day the House passed the resolution to
third reading by a vote of 90 yea's and 53 nays. 28 Eight
members voting "yes" on this vote later changed to oppo-
tion to S. J. R. 12, and ten members voting "no" later
supported the sales tax amendment. The eight who voted
"yes" and who later voted against the resolution were:
Bradbury, Hunt, Hefflin, Newell, Reader of Brath, Roach,
Russell, and White. 29

This temporary set-back to the hopes of those desiring
a constitutional sales tax was not the end of the fight.
Governor O'Daniel's two weeks' silence on the subject of
S. J. R. 12 was broken on May 7. In his regular broadcast
on that date, O'Daniel said, "I told you three weeks ago
that I believed S. J. R. 12 offered the only hope that was
left of raising the money to pay old age pensions and pro-
vide for the other social security services, and I want to
tell you to-day that I am certain that this is the only way
we are going to get this job done." 30

28 Ibid., p. 2353.
29 See official list of "Fifty-Six," infra p. 83.
30 The Dallas News, May 8, 1939, p. 3.
House Bill 340

On May 10 the House refused to pass S. J. R. 12 by a vote of 83 yeas and 61 nays.\textsuperscript{31} This was the first effort made to pass the resolution, although Keith had previously moved to suspend the rules and place the amendment on third reading and final passage.

Having indicated clearly the position of the House on the plan to submit a constitutional amendment, members next turned to House Bill 340, the Morris omnibus tax proposal. This bill had been reported unfavorably on March 23 by the Committee on Revenue and Taxation. On May 10, on motion by Holland, the House suspended the rules in order to sit as a Committee of the Whole for the purpose of considering House Bill 340. Of the anti-sales tax bloc, only Winfree and Anderson voted against this motion. On May 11 Hardin succeeded in re-referring the bill to the Committee on Education. This committee met on the night of May 11 and without a dissenting vote reported the bill favorably with amendments.\textsuperscript{32} On the same day an unsuccessful attempt was made to reconsider the vote by which S. J. R. 12 had failed of final passage. The vote on this move was 78 to 57.\textsuperscript{33}

Thornton, the able floor leader of Senate Joint Resolution 12,

\textsuperscript{31}House Journal, 46th Legis., p. 3202.

\textsuperscript{32}"Minutes," House Committee on Education, 46th Legis.

\textsuperscript{33}House Journal, 46th Legis., p. 3256.
then tabled the resolution subject to call. 34 Thornton promptly gave notice that he would call S. J. R. 12 from the table on the following day. 35

House Bill 340 was finally passed by the House on May 23 by a vote of 118 to 28. 36 As amended, it provided additional taxes on cigarettes, oil, gas, sulphur, inheritances, franchises, gross receipts on certain lines of business and a one per cent sales tax on the first sale of new motor vehicles. It provided some luxury sales taxes, such as jewelry and precious stones retailing for more than Five Dollars, furs, oil paintings, pianos, electrical appliances, playing cards, cosmetics, and other commodities not generally regarded as necessities.

The passage of this statutory tax measure gave the anti-sales tax group and members of the anti-constitutional amendment faction two statutory measures out of the House and awaiting action by the Senate. There was much hope that the Senate State Affairs Committee, scheduled to meet on May 30, would either pass both House Bill 908 and House Bill 340 or, if the bills were found to be insufficient in the amount of revenue they would raise, would amend the

34 Ibid., p. 3261. 35 Ibid., p. 3256.
36 Ibid., p. 3532.
37 Ibid., p. 3659. The Governor's full message was ordered printed in the House Journal of Monday, May 29, 1939.
bills to provide whatever amount of revenue the Senate committee believed was needed.

The Governor gave a characteristic surprise to his listeners on May 28 when he condemned both statutory measures passed by the House and awaiting action by the Senate. He said of House Bill 340, the Morris omnibus bill,

They call it an omnibus bill but they should call it a Dodge Brothers Coupe because it is a coup whereby so many of the brothers dodge the tax by the exemption detour that it will not produce half enough money to meet the state's necessary obligation even if the Senate were to pass it and I do not think there is a Chinamen's chance of the Senate passing any statutory bill for social security purposes.37

Devoting his entire program to a discussion of the current legislative fiasco, O'Daniel gave a scathing denunciation of professional politicians and their hirelings, crediting them with blocking his program. In this connection he said,

... if this Session of the Legislature ends without the money being raised to pay old age pensions, teacher retirement, care for dependent children and aid to the blind and provide money for out General Fund which must support our rural aid and our other institutions of higher learning, then I think the responsibility for the failure will rest squarely on the shoulders of the small minority group in the House of Representatives who are blocking the submission of this amendment.

They have had every chance to raise an adequate amount of money to finance these obligations by statutory enactment on two occasions and they have sent two bills to the Senate—a gross receipts tax on the merchants and business establishments of this State, and the other an omnibus tax bill, neither of which will do anything like raise the money to do the job even if they get the Senate to agree exactly as

37Ibid., p. 3059. The Governor's full message was ordered printed in the House Journal of Monday, May 29, 1939.
they passed the House. So I think now the time is here for the small minority bloc in the House who have failed when given an opportunity to use their plan now to join the 29 members of the House and 21, or possibly 23 members of the Senate and work out a satisfactory constitutional amendment. 38

Continuing, the Governor further condemned the statutory tax measures by saying, "if that small minority obstructionist bloc in the House thinks it can clear the record by claiming it tried to solve this most perplexing problem by voting for either one of the two flimsy statutory tax measures, neither will stand up with the citizens." 39 O'Daniel concluded with a threat, "I promise now that from every stump in Texas I expect to call the roll and there will be no hedging and dodging." 40

If the Senate State Affairs Committee had wanted any excuse to kill both the House Bills, it would have found this excuse in the Governor's speech. It is obvious that he not once suggested amending either of the bills in the Senate. His words left no doubt that he was committed to S. J. R. 12, the sales tax amendment. The logical attitude for the Senate committee to assume was that O'Daniel did not want any attempt made to correct the deficiencies of the statutory bills passed by the House.

On the afternoon of May 30, the Senate State Affairs Committee convened at 2:30 P. M. for the purpose of conducting

38 Ibid.
39 Ibid.
40 Ibid.
a hearing on House Bills 340 and 908. In a chamber over-
flowing with lobbyists, attorneys, and representatives of
the various business and industrial interests of the state,
the committee listened with apparently little interest to
G. C. Morris explain his bill. Morris was followed by
W. H. Gallagher, representing organized labor, who spoke in
favor of the bill and outlined the opposition of his group
to a sales tax. When Gallagher had concluded, and without
waiting to hear a single one of the vast lobby assembled
to speak against the two bills, Senator Will Pace moved that
the bills be reported unfavorably.\footnote{The \textit{Austin Statesman}, May 30, 1939, p. 1.} The vote was immediately
taken and Pace's motion carried by such a majority that not
enough negative votes could be found for the filing of a
minority report.

This brought to abrupt end the battle for a statutory
tax. It reduced the sources for financing social security
to but one measure--Senate Joint Resolution 12, itself not
a revenue raising measure but a constitutional amendment.
The Governor, the Senate and the Lobby had effectively
brought the House to the cross-roads, where the choice was
to take S. J. R. 12 unwillingly, or go home without a tax
program of any kind to face the various constituencies
aroused by the Governor's radio report of what had happened.

Pressure Groups Supporting S. J. R. 12
With the defeat in the Senate of the statutory tax
program, the pressure drive to pass the sales tax constitutional amendment in the House notwithstanding its previous rejection began in earnest. The interest of the natural resources lobbyists, the public utilities representatives and other groups protected by the amendment had been apparent for some time. Governor O'Daniel's insistence on this type of a program has been outlined in the preceding chapter. Added to these powerful influences were others which will be considered in this study. The story of how so strange a collection of influences became welded into one will probably never be fully understood. Some time before June 1, however, all those who found a community of interest in 3. J. R. 12 came to be united in one common cause—to override the minority of the House blocking submission of the amendment.

In addition to oil, gas and pipeline groups, public utilities, and some mercantile lobbyists, there is reported evidence the other groups were instrumental in the drive to break the minority's ranks and push over the amendment. Writing in the Austin American, Raymond Brooks said,

The principal lobby group active in this drive were the oil, gas and pipeline groups, public utilities, and some mercantile lobbyists who favored the sales tax on consumers as against the house bill for gross receipts taxes on themselves.

Tools of the pressure drive are many. They include especially the Texas State Teachers Association, regents, alumni and persons connected with the University of Texas; college presidents; department heads, old-age groups, business organizations and a wide ramification of the
representatives of industry and natural resources.\textsuperscript{42}

Brooks listed the following individuals as being instrumental in the drive to put pressure on the "Fifty-Six:" Governor W. Lee O'Daniel, Carr P. Collins, "and a battalion of lobbyists with C. A. Jay of Dallas its generalissimo,\textsuperscript{43} Hiram King of Sinclair Oil, Wallace Hughston and Charles Neville of Lone Star Gas and others.\textsuperscript{44}

The Scripps-Howard papers carried an analysis of the pressure group working in behalf of the submission of S. J. R. 12 written by its capital correspondent, Dick Vaughan. Vaughan said,

The biggest special interest lobby ever united in Texas on one single cause is fighting desperately for adoption of Senate Joint Resolution 12—the constitutional amendment levying taxes for social security. Oil, gas, sulphur and utility lobbyists have schemed and planned, argued and persuaded from the first of the session to line up legislators to vote to freeze social security taxes into the state constitution.

The lobby has gone into the final drive and now members who have been unapproachable to lobbyists are feeling a new kind of lobby-inspired pressure, the "heat" from back home. Rebuffed are getting telephone calls from banker friends and local oil, gas and utility agents; receiving messages from political leaders who have connections in the lobby and getting petitions which careful check-ups reveal started out from electric and gas utility offices.\textsuperscript{45}

Vaughan's article then listed the names of the lobbyists and the companies they were employed by, together with a reason

\textsuperscript{42} \textit{Ibid.}, June 14, 1939, p. 1.

\textsuperscript{43} \textit{Ibid.}

\textsuperscript{44} \textit{Ibid.}

\textsuperscript{45} See all Scripps-Howard's Texas papers, June 14, 1939, \textit{e. g.}, \textit{Fort Worth Press}, p. 1.
why each group was interested in the submission of J. J. R. 12. His list of lobbyists included: Charles Neville, Bailey Jones, F. L. Kuykendall, and Wallace Hughston for Lone Star Gas Company; J. M. Harris of the electric utilities; J. M. Melson of the Gulf Oil Company, who had apparently been more active than any other lobbyist; Ebb Berry of the Gulf; B. Kennedy of Magnolia; Jim Elkins of Pure Oil; and C. A. Jay, well-known advocate of a sales tax.46

The State Teachers Association's support of J. J. R. 12 was thought by many to be illogical and unwise. The leadership of the Association instrumental in throwing the weight of the group behind J. J. R. 12 included R. L. Mills, Henry W. Stillwell, G. B. Wilcox, J. E. Batson, and others.47 The support given J. J. R. 12 by the Teachers Association was not approved by all members. An outstanding example of the objection from some teachers to the action of the legislative representatives of the Association is found in the attitude of The Faculty of North Texas State Teachers College.

This group of teachers adopted a resolution on November 7, 1939 setting out objections to the alignment of the Teachers Association with the political controversy over the method of financing old age pensions.48 A full copy of this scholarly report is contained in Appendix A.

46 Ibid.
47 The Austin American, June 14, 1939, p. 6.
48 "Report of the Faculty of North Texas State Teachers College in re Teacher Retirement," unpublished, Nov. 7, 1939. See Appendix A.
In an article for The Austin American, Raymond Brooks pointed out,

School leaders who have joined the sales tax pressure group were offering to give up $7,500,000 a year for education of Texas children in exchange for $2,500,000 a year teacher retirement money, anti-sales taxers pointed out.

One of the main points of protest against the campaign for the sales tax constitutional amendment was the part played by the Texas State Teachers Association. The Constitutional amendment would exempt taxes levied by it from the present constitutional requirement that one-fourth all gross receipts, occupation and natural resources levies go to the public school fund.

The school leaders insisted that financing be provided so that the state catch up on nearly $5,000,000 it now owes in matching what the teachers themselves have paid in, and that it pay the $2,500,000 matching it is due the teacher retirement fund. Some of them said they did not care what form the financing took, but in recent days the school leaders have taken an open stand on behalf of the sales tax amendment.

By a statutory tax, the schools would continue to get their one-fourth, amounting to about $7,500,000 a year, which largely would go to the pay of teachers, it was pointed out, so that more teachers might be employed and better salaries paid. The state would still owe the same obligation to levy taxes to match the teacher retirement fund, even for the larger amount.\(^\text{49}\)

Pressure Methods

The devices of the pressure group seeking submission of S. J. R. 12 were numerous. O'Daniel's chief weapon was his position as Chief Executive with radio privileges on Sunday morning. O'Daniel was in a position to make whatever explanation of the Legislative situation he pleased with no opportunity provided for the Legislature to present it's

\(^{49}\text{The Austin American, June 15, 1939, p. 5.}\)
case. Moreover, as Governor he was in a position to wield tremendous influence over Representatives in personal contacts and relationships. On numerous occasions he sent for members during the fight on S. J. R. 12 and sought their support of the sales tax amendment.50

The special interests, such as oil, gas and utilities groups, were experienced in pressure methods, and with the combined influence of all these groups House members voting against S. J. R. 12 were the objects of an intense and powerful assault. The methods employed by the lobbyists of special interests included:

1. Personal contacts with members. This was done before the House convened or after it adjourned for the day, at the lunch or dinner hour, and at night.

2. Bringing pressure to bear from the home districts of members of the House. On this point, one newspaper reported,

Representative Joseph White, Jr. said the tactics have been to get close personal friends, and the school people to write and phone on behalf of the sales tax, and that intimations had been made that the $13,000,000

50 Ibid., June 14, 1939, p. 6. This article reports the following members of the House had admitted O'Daniel had called them to his office and asked them to support S. J. R. 12: Mrs. Gordon, Mr. White, Mr. Cockrell, and Representative Piner. As a member of the Forty-Sixth Legislature the writer was called to O'Daniel's office and at that time O'Daniel suggested S. J. R. 12 would provide adequate support for higher education in Texas. The following members of the House told the writer during the last three weeks of the Forty-Sixth Legislature that O'Daniel had called them to his office and asked their support of S. J. R. 12: Bradbury, Boyd, Bell, Brown of Nacogdoches, Hunt, King, Newell, and Roach.
rural aid bill would get hurt. ... M. O. Speir, Austin barber, and one of those active in the O'Daniel campaign group made a strong effort to persuade Representative Boyd to come around to the "yes" side this week on S. J. R. 12. ... Luther Raley, representative of the Louisiana Power and Light company at Valley Mills circulated several copies of a petition, bound with a blue cover, urging support of S. J. R. 12. These copies were signed by nearly 200 people, many of them farmers. ... Two persons connected with The University, said they were acting unofficially but 'had been asked' to consult Representatives Homer Thornberry and James R. Boyd on behalf of the resolution to say that their attitude possibly might hurt university appropriations.\footnote{51}{The \textit{Austin American}, June 14, 1939, p. 6.}

The activity of the special interests lobby was such that the County Attorney of Travis County, Paul Holt, issued subpoenas for a Grand Jury investigation of the activities of all groups working in support of S. J. R. 12.\footnote{52}{\textit{Tbid.}, June 19, 1939, p. 1.} This investigation did not materialize.

From June 1 until the Legislature adjourned sine die on the 21st day of June, members of the House voting against S. J. R. 12 were subjected to a daily and nightly barrage from the pressure phalanx seeking the adoption of the amendment. The petitioners—after S. J. R. 12 lined the hallway entrance to the House in the mornings, and kept receptionists busy summoning members for conferences in the reception hall of the House during the day. The mail of those voting against S. J. R. 12 was heavy with letters urging support of the sales tax, and telephone and telegraph were frequently resorted to in bringing pressure from back home to the members voting against the sales tax.
The "Fifty-Six"

The name "Fifty-Six" was a popular designation given those men who voted against Senate Joint Resolution 12. It was composed of anti-sales taxers and members who did not approve of the constitutional method of trying to finance social security. The name first came to be applied by Howard Marshall, Associated Press writer, and other Capitol correspondents, because of the frequency with which the number of negative votes on S. J. R. totaled 56.

The membership of the "Fifty-Six" showed some variance from vote to vote. A study of six important test votes on the question of either passing the Resolution or suspending the rules to reconsider the vote by which it failed of passage indicated that there were seventy-three members of the House who, at one time or another, cast a vote against S. J. R. 12. These record votes indicate that there were only forty-six members who voted "no" every time S. J. R. 12 was considered, five who voted "no" every time with one exception, and three who voted "no" each time with two exceptions. This totals fifty-four members. This is the official number of members in the so-called "Fifty-Six" group. Representative P. L. Anderson cast two votes against S. J. R. 12, but cast three votes in favor of suspending the

53 The six record votes employed in this comparison are found on the following pages of the House Journal of the 48th Legislature, pp. 3203, 3256, 3936, 4221, 4308, and 4367.
rules to reconsider the vote by which the amendment failed of final passage. He is not included, therefore, in the official list of the "Fifty-Six" given just following.

Based on the six record votes cited above, and the personal knowledge of the writer, the official "Fifty-Six" included the following members of the House of Representatives of the Forty-Sixth Legislature:

<table>
<thead>
<tr>
<th>Cecil Baker</th>
<th>Troy Kern</th>
</tr>
</thead>
<tbody>
<tr>
<td>John J. Bell</td>
<td>John A. Kerr</td>
</tr>
<tr>
<td>Dallas Blankenship</td>
<td>Delmar King</td>
</tr>
<tr>
<td>Paul Boetel</td>
<td>Jack Langdon</td>
</tr>
<tr>
<td>James R. Boyd</td>
<td>E. J. Leyendecker</td>
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<tr>
<td>Bryan Bradbury</td>
<td>Marvin R. London</td>
</tr>
<tr>
<td>W. W. Bridgers</td>
<td>Abe Mays</td>
</tr>
<tr>
<td>R. Lee Brown</td>
<td>John Mohrmann</td>
</tr>
<tr>
<td>Albert Gauthorn</td>
<td>G. C. Morris</td>
</tr>
<tr>
<td>Weldon Burney</td>
<td>Greene Newell</td>
</tr>
<tr>
<td>Ellis D. Cockrell</td>
<td>Dr. R. G. Piner</td>
</tr>
<tr>
<td>Wiley N. Coleman</td>
<td>R. H. Reaves</td>
</tr>
<tr>
<td>Leighton Cornett</td>
<td>Harvey Riviere</td>
</tr>
<tr>
<td>Price Daniel</td>
<td>T. R. Robinson</td>
</tr>
<tr>
<td>Mat Davis</td>
<td>Rev. John E. Roach</td>
</tr>
<tr>
<td>Albert L. Derden</td>
<td>John K. Russell</td>
</tr>
<tr>
<td>P. B. Dickison</td>
<td>Joe Skiles</td>
</tr>
<tr>
<td>Maurice Dowell</td>
<td>Robert Stoll</td>
</tr>
<tr>
<td>W. J. Galbreath</td>
<td>Eugene Talbert</td>
</tr>
<tr>
<td>Mrs. Margaret H. Gordon</td>
<td>Homer Thornberry</td>
</tr>
<tr>
<td>E. B. Hamilton</td>
<td>Edward L. Vint</td>
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<tr>
<td>Dorsey B. Hardeman</td>
<td>J. H. Waggoner</td>
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<tr>
<td>C. L. Harris</td>
<td>Odis Weldon</td>
</tr>
<tr>
<td>James Heflin</td>
<td>T. D. Wells</td>
</tr>
<tr>
<td>Courtney B. Hunt</td>
<td>Joseph White</td>
</tr>
<tr>
<td>S. J. Isaacks</td>
<td>Colonel J. E. Winfree</td>
</tr>
<tr>
<td>Joe Keith</td>
<td>Bob Wood</td>
</tr>
</tbody>
</table>

Of the official "Fifty-Six" the following members voted for Senate Joint Resolution 12 on one occasion: Bridgers, Hunt, King, Talbert and Roach.54 The following members of

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54Ibid.

The so-called "Fifty-Six" originated in a meeting of anti-sales taxers during the fight on House Joint Resolution 16. It functioned as a purely voluntary group united only in a common purpose, without elected leaders, and with no purpose to gain save to vote their convictions on the question of a sales tax amendment. During the closing days of the session, when pressure was at the greatest point, some ten members of the group under the direction of Morris, Keith, and Derden undertook to keep a running account of how the members were holding out against the pressure from the group urging passage of S. J. R. 12. This check-up was made by the simple expedient of contacting members of the "Fifty-Six" from day to day and giving encouragement to those expressing a weakening of purpose.

The question of which member should speak against S. J. R. 12 and what should be said was mapped out at informal meetings. These meetings were open to all members of the

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55 Ibid. 56 Ibid. 57 Supra, p. 49.
"Fifty-Six." The nature of the "Fifty-Six" group was more of a spontaneous organization of a group of men with identical purpose and convictions.

The Amendment Fails Again

Thornton had regularly given his notice that he would move to call S. J. R. 12 from the table. After allowing a reasonable time for the pressure which had been applied to have effect and weaken the resistance of the "Fifty-Six," Thornton moved on June 8 to call the resolution from the table.\(^58\) The resolution was amended by adding several corrective changes, and then failed of final passage by a vote of 91 to 56.\(^59\)

The defeat of the amendment again was the sign for increased pressure. Governor O'Daniel adopted a new pattern. He prepared and had his secretary deliver to each member voting for the submission of S. J. R. 12 a letter in which he thanked the member for supporting the Governor's program and stating that the member had done all in his power to finance the social security program. He concluded the letter with a statement that if the social security program were not financed that it would not be the fault of those who had supported S. J. R. 12. This letter was referred to by observers as "O'Daniel's Diploma." It was designed to attract

\(^{58}\) House Journal, 46th Legis., p. 3827.

\(^{59}\) Ibid., p. 3936.
errant "Fifty-Six" members to the fold, by making them realize again that O'Daniel intended to blame the anti-sales foes with the entire defeat of the social security program.

The lobby responded with increased solicitation of the members. The demand from home that the sales tax amendment be submitted was increased under the stimulant of the Austin lobby which was pressuring the House minority group.

On June 15 Thornton again made his motion and again the vote was 91 to 56. Teachers' Association Representatives had been particularly active before the vote on this motion. Several members had been contacted by letter, wire, and in person and earnestly solicited to change from opposition to support of 3. J. R. 12. The floor leaders of the "Fifty-Six" had checked their lists carefully and found six members of the group of a mind to change their votes. The gallery was packed for the occasion, the lobbyists sensing the nearness of victory. When the final vote was tabulated it was found that Anderson, King, Loggins, Hewell, and Talbert had changed from opposition to support of 3. J. R. 12, but that Bailey, Brown of Racogdoches, Fielden, Holland, Kersey, and Reader of Erath had switched to opposition to the measure.

Governor O'Daniel's Final Charge

Obviously nettled over his inability, combined with all the other forces working for 3. J. R. 12, to break the will

60 Ibid., p. 4220.
of the House minority, Governor O'Daniel went to the extreme limits on June 18, in his Sunday broadcast. A leading Texas newspaper carried the following story:

"In a final drive for House approval of the sales natural resource tax constitutional amendment, Governor W. Lee O'Daniel charged Sunday the special interests were fighting it just as they would fight any measure boosting their taxes."61

O'Daniel was quoted as saying, "I do not know of any special interests who are in favor of S. J. R. 12. The public will not believe anybody who says the special interests want S. J. R. 12 passed. This is too ridiculous."62 The Governor then went on to show that it was a favorite stunt of the special interests to go about making out they supported or wanted a certain measure so that the honest Representatives would be duped into opposing the measures. He intimated that this was what had happened in the fight over S. J. R. 12, and that the lobbyists wanted to defeat S. J. R. 12 and had led the "Fifty-Six" to believe that special interests wanted the amendment submitted. This was an admission that the "Fifty-Six" were prompted by good motives; but, in the same speech O'Daniel lambasted the anti-sales tax members as being the hirelings of special interests and left the impression with his listeners that the "Fifty-Six" were immoral.63

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62 Ibid.
63 Ibid.
Of all the contradictions and inconstancies present in the Governor's attitude and action on S. J. R. 12, this is the most amazing. The announcement occasioned a great guffaw from every reliable newspaperman, observer, and lobbyist in Austin because of its obvious absurdities. Everyone knew that the lobbyists of practically every special interest in Texas were not only supporting S. J. R. 12 but working tooth and toe-nail to secure its passage. Reliable Texas newspapers had published the names of lobbyists working for the amendment and the companies which employed them. The lobby made no attempt to conceal the interest of the group in the passage of S. J. R. 12, and it was well known by every member of the House and the Senate. Those members most active for S. J. R. 12 knew it to be a fact that the lobbyists were working for the submission of S. J. R. 12. It would have been, in fact, a difficult task for Governor O'Daniel to have found one single lobbyist representing a major industry, gas, oil, pipelines, utilities, sulphur, who was not working for the submission of Senate Joint Resolution 12.

This statement by O'Daniel was intended to associate the opposition to S. J. R. 12 with the lobbyists and the big special interests. It was part of a well designed scheme of things to use every device at hand in order to win over the necessary two-thirds vote in the House for the submission of the constitutional sales tax. It is almost unbelievable that O'Daniel could have been so mis-informed that he honestly
believed his statements to be true. He could not have been so well advised on S. J. R. 12 in every other respect and so interested in it as to not have known that the amendment had the active support of the lobbyists of the special interests.64 If he did know, there is but one other conclusion and that is that the incorrect statements were made with the intentions of misleading the people of Texas.

The Final Move

With adjournment but 24 hours off, Thornton made two moves on June 20 to bring the Resolution up. His motions to suspend the rules were defeated, the first by a vote of 90 to 5965 and the second by a vote of 95 to 54.66

On the final day of the session, June 21, Taylor moved to suspend the rules so that the vote by which S. J. R. 12 failed to pass could be reconsidered. Again the move was unsuccessful, the vote being 95 to 56.67 Representative Greene Newell rejoined the "Fifty-Six" on this vote and one new recruit was picked up in the person of Representative Crossley.

The occasions of the last votes on S. J. R. 12 were the highlights of the Forty-Sixth Session. Attracted by the drama of the scene, hundreds packed the gallery and in the excitement

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64 This was the view of D. E. Hardeman, writing for The Dallas Journal, June 20, 1939.
65 House Journal, 46th Legislature, p. 4308.
66 Ibid., p. 4309.
67 Ibid., p. 4367.
of the scene on the floor of the House, the visitors shouted and applauded the ringing speeches made by both proponents and opponents. Until the very last minute there was a possibility that the amendment would be submitted. One of the surprising things about the last few days of the fight is that many members supporting 3. J. R. 12 came to the conclusion it should not be submitted and although it was too late for their votes to be changed, having committed themselves to support of 3. J. R. 12, these members secretly urged the "Fifty-Six" to continue to vote against submission. On the last day of the session, June 21, when Taylor's motion to suspend the rules failed, the Speaker of the House announced he would recognize no further motions on 3. J. R. 12. The bitter fight on the submission of a sales tax amendment by the Forty-Sixth Legislature was ended in victory for the "Fifty-Six" group of anti-sales taxers.

The Fate of the "Fifty-Six"

The members of the "Fifty-Six" were not so soon to be forgotten. O'Daniel made good on his promise to report to the people and to give the "Fifty-Six" the blame for blocking the financing of social security. He lost no time. In his broadcast of June 25, on Sunday following adjournment of the Legislature, O'Daniel devoted his entire thirty minute

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It was the experience of the writer to have at least five members of the group supporting 3. J. R. 12 to encourage the "Fifty-Six" to continue to fight submission of the resolution.
program to a scathing denunciation of the "Fifty-Six." He branded them obstructionists, and credited them with the failure of his program; he charged the "Fifty-Six" failed to adopt his plan or one of their own and then refused to let the people have an opportunity to vote on the question; he read his long promised honor roll and added a testimonial in behalf of the 94 members voting to submit S. J. R. 12 by saying this group did everything within it's power to finance old age pensions. 69

The sequel to the valiant fight waged by the "Fifty-Six" in defeating the vicious sales tax amendment was portrayed in the campaign of 1940 in which the Governor lambasted the "Fifty-Six" by radio and from the platform. In this campaign he asked for a new legislature, and especially urged the defeat of the "Fifty-Six." Again the overwhelming majority of Texans responded to his amazing radio appeal. He was re-elected without run-off against an exceptionally strong field and by an even larger vote than he had received in 1938. His pleas for a new legislature was granted as well by Texas citizens who believed he had been done an injustice by the Forty-Sixth Legislature. As a consequence, ninety-two new members were elected to the House of Representatives and ten new members of the Senate were elected.

The "Fifty-Six" group did not fare so successfully in

the elections of 1940. Fifteen of the fifty-four members of the official group did not seek re-election, including: Boyd, Cauthorn, Coleman, Davis of Upshur, Derden, Keith, Kern, Kerr, King, London, Mays, Russell, Weldon, Wells, and Tarwater.

Eight members of the official "Fifty-Six" group sought election to a different office with the following results: T. R. Robinson was defeated for county office in Galveston County; Cecil Baker, of Fort Bend County, lost a close race for County Attorney; J. Bryan Bradbury lost in a bid for County Attorney of Taylor County; C. L. Harris of Spur, was defeated in a race for Congress; Jack Langdon lost a race for Congress; Eugene Talbert was defeated in a close race for district attorney of his county; and, Homer Thornberry won his race for the district attorney's office in Travis County. P. E. Dickison was elected tax assessor-collector in Bexar County.

The following members of the "Fifty-Six" were defeated: Boetel, Burney, Cockrell, Cornett, Dowell, Calbreath, Gordon, Hamilton, Hunt, Morning, Newell, Finer, Reeves, Riviere, Roach, Stoll, Vint, Waggoner, White, and Wood.

Of the official "Fifty-Six," the following were re-elected: John J. Bell, Dallas Blankenship, W. W. Bridgers, Price Daniel, D. B. Hardeman, Jim Heflin, S. J. Isaacks, B. J. Leyendecker, G. C. Morris, Joe Skiles, and J. E. Winfree.

Out of a total membership of fifty-four, there were
fifteen members of the "Fifty-Six" who did not run for re-election; eight ran for some other office, two elected and six defeated; twenty defeated for re-election; and, eleven re-elected.

The Record of the "Fifty-Six"

O'Daniel's attack against the "Fifty-Six" was unwarranted and unjustified from the record established by this group in support of really financing the social security program. The record reflects that this group included the authors of four major revenue bills for financing social security. Representative G. C. Morris and twenty-seven other "Fifty-Sixers" authored House Bill 340 and secured passage of the measure through the House. Representative Joseph White and four other "Fifty-Sixers" authored House Bill 525, a tax on sulphur. Representative Albert Derden, joined by others, sponsored House Bill 417. Representative Cornett, author of the income tax bill, was joined by twenty-three other members of the "Fifty-Six." 71

Members of the "Fifty-Six" group took the lead in the following moves, all designed to expedite some kind of pension financing other than a sales tax amendment:

1. To instruct the Committee on Revenue and Taxation to report House Bills 417, 340 and 651. 72

70 House Journal, 46th Legis., p. 533.
71 Ibid., p. 658.
72 Ibid., pp. 920-922.
2. To amend H. J. R. 16 so as to delete the sales tax features and substitute in lieu thereof taxes on natural resources, incomes, etc. 73

3. To give the people some preference in the kind of a tax to be enacted for social security financing. 74

4. To request either a favorable or unfavorable report on House Bills 340, 417 and 651 by a certain date. 75

5. To print House Bill 340 notwithstanding the unfavorable report by the Committee on Revenue and Taxation. 76

6. To re-refer House Bills 525 and 451 from the unfriendly Taxation Committee to the Education Committee. 77

7. To suspend certain rules in order that the House might sit as a committee of the Whole to consider House Bill 340. 78

8. To pass House Bill 340 through the House. 79

9. To pass House Bill 908 through the House. 80

In addition to the foregoing, the "Fifty-Six" group was represented by eleven members on the Committee on Education which acted favorably on the major revenue bills of the House.

73 Supra, Chapter III.

74 House Journal, 46th Legis., p. 1332.

75 Ibid., p. 1319. 76 Ibid., p. 1338.

77 Ibid., pp. 1363 and 1381. 78 Ibid., p. 3225.

79 Ibid., p. 3532. 80 Ibid., p. 1945.
The Record of the Honor Roll

In his opening announcement for a second term as Governor of Texas, O'Daniel said,

"Right here I want to take occasion to say that the records of the 46th Legislature reflect the fact that you had ninety-four House members and twenty-one Senators who did everything they could to aid in solving this social security problem. I think they are entitled to commendation for a service well rendered." 81

The members of the House and Senate referred to constitute the O'Daniel honor roll. The ninety-four House members referred to are those to whom O'Daniel issued a "diploma" certifying that they had done all within their power to finance social security and if the program failed of financing during the Forty-Sixth it would not be the fault of this group.

It becomes important to examine the record of this group, not for the purpose of impeaching their integrity of purpose but to determine how the group actually did work in behalf of social security. The record does not reflect, as stated by O'Daniel, that this group in its entirety did everything to aid in solving the social security problem. The opposite is quite true with most of the group. Almost a majority of the ninety-four House members, including all of the prominent floor leaders of the group, did everything possible to defeat all social security financing except by constitutional amendment-sales tax. The twenty-one names called on O'Daniel's honor roll and credited in the O'Daniel News with being the

81 The W. Lee O'Daniel News, April 8, 1940, p. 2.
names of the Senators who had done everything in their power for social security included the members of the Senate State Affairs Committee which killed both of the House's statutory tax measures.

The first indictment against O'Daniel's honor roll group, and definite proof that the statements in the O'Daniel News are incorrect, is that eighteen of the honor roll members were on the House Committee on Revenue and Taxation. These eighteen members voted unfavorable committee reports on all major revenue bills for the financing of social security with the exception of one.

The House records reflect that on the numerous moves made by the "Fifty-Six" group in an effort to secure a statutory tax measure the honor roll group voted as follows:

1. On the motion to instruct the Committee on Revenue and Taxation to report House Bills 340, there were forty-one members of the honor roll who voted "no." A vote of this kind was a vote to leave this bill in committee where it had no chance of receiving a favorable report.

2. On a similar motion made by Derden, there were forty members of the O'Daniel honor roll voting to leave the bill in an unfavorable committee.

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82 "Minutes," House Committee on Revenue and Taxation, 46th Legis.
83 House Journal, 46th Legis., p. 921.
84 Ibid.
3. On the same motion made by the sponsors of the income tax bill, thirty-three honor rollees voted "no." \(^{85}\)

4. Twenty-four of O'Daniel's favored list voted against Bell's motion to compel some kind of a report on three tax bills. \(^{86}\)

5. On Morris' suspension, seeking to print the omnibus tax bill notwithstanding the unfavorable report given by the Revenue Committee, there were forty-five members of the honor roll who voted against the bill. \(^{87}\) On the same motion by Cornett on his income tax bill, there were fifty-six of the honor roll voting "no." \(^{88}\) These two motions had but one purpose—to force some kind of a statutory measure out of the Revenue Committee. It seems reasonable to assume that those who voted not to force this committee action could not justly deserve the statement by O'Daniel that this group had done everything in its power for social security.

6. When White moved to get his tax on sulphur out of the unfriendly Committee on Revenue and Taxation, he was opposed by forty-six men who, according to O'Daniel, did everything in their power for financing social security. \(^{89}\)

7. On the motion to re-refer House Bill 451 from the Committee on Revenue to the Education Committee, thirty-six

\(^{85}\) Ibid., p. 222.  \(^{86}\) Ibid., p. 1319.

\(^{87}\) Ibid., p. 1369.  \(^{88}\) Ibid., p. 1370.

\(^{89}\) Ibid., p. 1362.
members of the honor roll voted to leave the bill in the 
unfriendly Revenue Committee. 90

8. Of the thirty-nine votes cast against the final 
passage of House Bill 908, the gross receipts bill, twenty-
four were by men who earned the O'Daniel praise for doing 
everything in their power for social security. 91

9. When House Bill 340 passed with only twenty-eight 
votes cast against it, twenty-five of these votes were by 
members of O'Daniel's approved list—the men who did every-
thing, so O'Daniel said, in their power for social security. 
These twenty-five were voting against taxing oil, sulphur, 
gas, utilities, and others. They were the same members who 
did everything within their power to force the House to 
adopt a sales tax. Of these members who preferred to put a 
pyramided sales tax in the Constitution of Texas, a tax to 
be paid by the poor and the humble to the exclusion of taxes 
on large natural resources industries, O'Daniel said, "I think 
they are entitled to commendation for a service well rendered." 92

Four members who were given the O'Daniel certificate and 
who were praised for doing everything within their power for 
the cause of social security, Colquitt, Hankamer, McFarland 
and Thornton, voted to disfranchise all applicants for the 
pension. 93

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90 Ibid., p. 1381.  
91 Ibid., p. 1945.  
92 See his statement in O'Daniel News, supra, p. 95.  
93 See Keith Amendment, House Journal, p. 2815.
CHAPTER V

SENATE JOINT RESOLUTION 12 ANALYZED

In the analysis of Senate Joint Resolution 12, three stages of the amendment are considered, first, as passed by the Senate; second, as substituted by the House committee on Constitutional Amendments; third, as finally amended by the House.

S. J. R. 12 as Passed by the Senate

In its final form as passed by the Senate, S. J. R. 12 proposed to amend Article 3 of the Constitution of Texas by adding a new section to be known as "Section 51-E."¹ This new section provided that the legislature "shall provide for the collection of taxes levied by this section." The revenues derived from the taxes levied were to be used for payment of the social security program, to supplement the Available School Fund and to supplement the equalization school fund.

Section 2 of the Senate approved resolution provided a tax of one cent on each fifty cents of the sale price of the following transactions: all retail sales; sales of electric energy and gas, except on sales for industrial purposes;

¹All references to the Senate approved sales tax amendment are taken from a copy furnished by the Texas Legislative Reference Bureau, a copy of which is included in Appendix B.
telephone service; admissions to places of amusement or athletic contests in excess of twenty-five cents; advertising; the service of parking automobiles; hotel services; and all services performed by commission merchants, agents, brokers and factors.

Section 3 of the Senate amendment provided,

The taxes levied under Sub-section one to ten inclusive of Section 2 aforesaid, shall be collected from the purchaser by the seller in every case, and the seller shall pay the tax to the comptroller as herein provided quarterly. The Legislature in its first session following the adoption of this amendment, shall enact suitable laws to enforce the collection of such taxes. The Legislature shall allow the collector of the taxes above levied in Sub-section one to ten inclusive, to deduct from the taxes collected not less than three (3%) nor more than five (5%) per cent to cover the collection and remittance costs.

The taxes on sulphur, gas and oil were slightly increased. The oil tax for social security was fixed at 3/4 cents per barrel of oil.

The amount of money which the legislature could appropriate in any one year was fixed for the various social security programs as follows: not more than Twenty Millions for old age pensions; One and One-half Millions for destitute children; $500,000 for the blind; One and One-half Millions for the Confederate Pensions, and an additional $5000,000 to retire the deficit in the Confederate Pension Fund.

The amendment provided the following for Teacher Retirement,

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2 Section 3, S. J. R. 12, Appendix B.
During the biennium beginning September 1, 1939, the Legislature shall appropriate from revenue derived from the sources herein created, sufficient money to meet the Constitutional obligation of the State of Texas to the Teachers' Retirement Fund, and such money as may be needed to place said fund in balance on September 1, 1941, and after said biennium the Legislature may appropriate as much as but not in excess of Two and One-half Million ($2,500,000) Dollars per annum to supply the State's contribution to said Teachers' Retirement Fund.  

This section further provided that,

The Legislature is hereby prohibited from resorting to other sources of revenue and from making any appropriation for the support or assistance to the aged, assistance to the blind, assistance to destitute children, or for Confederate pensions, and for Teacher Retirement.  

Section 8 of the amendment approved by the Senate also provided that any balance remaining after the allocations theretofore made had been satisfied should go to supplement the available school fund "to the extent required to provide a per capita apportionment of Twenty-two and 50/100 ($22.50) Dollars for each scholastic on the census roll." Any money remaining after this would be credited to the school equalization fund to be appropriated by the Legislature.

Section 10 of the Senate approved S. J. R. 12 provided that the ad valorem tax for Confederate pensions should be repealed, and Section 13 provided for the submission of the amendment at a special election to be held on the third
Saturday in July, 1939, at which time all voters favoring the proposition would have ballots marked with these words,

For the Amendment to the State Constitution providing a system of Old Age Assistance, levying Social Security taxes for the payment of such Old Age Assistance and providing a source of revenue for the payment of Destitute Children's Assistance, Teachers' Retirement Benefits, Confederate Pensions, Assistance to the Blind, and Aid for Schools.

Those opposing the proposal would have the contrary printed on their ballots.

Section 14 provided for resubmission of the issue at the general election in 1942 and for the automatic expiration of the taxes levied unless said amendment should be re-affirmed at this general election in 1942.

General Criticisms

The Constitution of Texas provides that "all bills for raising revenue shall originate in the House of Representatives, but the Senate may amend or reject them as other bills." This would make it obvious that S. J. R. 12 could not raise a single penny for the payment of social security, because it did not originate in the House of Representatives where the Constitution of Texas says revenue measures must originate. S. J. R. 12 was a constitutional provision and such provisions operate on the agents of government, either limiting or broadening the authority of such agents. An

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5 *Constitution of Texas, Article III, Section 33.*
effective tax law must operate on private persons, but constitutional law can not operate on private persons.

To have provided money for social security financing, S. J. R. 12 would have needed supplementary action, including the approval of the people at the special election and enabling legislation enacted by both Houses of the Legislature and signed by the Governor.

The negative provisions of the amendment would have become effective immediately, and after the adoption by the people of the provisions of S. J. R. 12 the legislature would not have had constitutional authority to make provision for social security in excess of the amounts provided for in the amendment. The positive provisions of the amendment were merely advice which the Legislature might follow or refuse to follow.

The Legislature would have been restricted by negative provisions of S. J. R. 12 in the following manner:

First, the Legislature could levy no other taxes nor make any other appropriation for old age pensions and the other social security purposes.

Second, the Legislature could not continue to meet Federal matching on these programs if S. J. R. 12 had been adopted because the amendment set a limit to the amount which might be utilized for these various social security programs. When the legislature attempted to provide more than these amounts a constitutional objection would be
sustained that S. J. R. 12's provisos prohibited taxes beyond the amounts set out in S. J. R. 12. This is an example of the negative provisions of the amendment operating to limit legislative action.

Tax Discrimination Features

The real and almost patent objection to S. J. R. 12 is found in the manner in which its tax provisions discriminated between various economic and social groups. This discrimination in favor of certain special interest furnishes some explanation as to why the special interests wanted S. J. R. 12 adopted.

It is obvious that sub-section 1 of Section 2 of the amendment provides a tax which would discriminate between the small purchaser and the larger purchaser with the burden falling on the former. The tax provided is one cent on each fifty cents or fractional part of the sale price in excess of four cents. A purchaser of a fifty cent article would pay one cent, a purchaser of a five cent loaf of bread would pay one cent. One dollar spent for two large purchases of fifty cents would be taxed two cents, while one dollar spent for twenty five cents purchases would be taxed twenty cents. Chain stores handling varities, notions and small items would have profited from the type of sales tax provided in S. J. R. 12 as approved by the Senate. Firms of this kind would have collected twenty cents on each one dollar of small
purchases of not more than five cents, but could have remitted two cents on each one dollar of purchases in satisfaction of the tax collector. In addition, the amendment permitted the person collecting the tax to retain from 3 per cent to 5 per cent of the amount collected to cover expenses of collection and remittance.

The sales tax levied on the sales of telephone, light utilities and gas companies was a tax on the consumers' of such services, and in many instances companies of this kind would have made a profit amounting to several thousand dollars from the collection of the tax. Under S. J. R. 12 for example it was pointed out that gas companies, paying about $12,000 severance tax on one-and-a-half million dollars worth of gas purchased in 1937, would sell this gas for approximately thirty million dollars. 6 Texas consumers would pay on this amount of gas a tax of nearly six hundred thousand dollars, and the gas companies could retain under S. J. R. 12 a maximum of 5 per cent of this amount, or about thirty thousand dollars, for collection expense. 7

This feature which permitted profit making to utilities companies accounted for some of the support given S. J. R. 12 by the lobbyists groups. By comparison with the sales tax levied on Texas consumers, the tax on oil, gas and

6 Jack Langdon, Member 48th Legislature, Radio Speech, WBAP, Fort Worth, Texas, October 29, 1939.

7 Ibid.
sulphur was infinitesimal. For example, the tax levied in sub-section 1 of Section 2 would have resulted in a tax of one cent on a bottle of milk costing five cents, while the tax provided on oil in Section 3 amounted to only 3/4 of one cent per barrel. In other words, the consumer of a bottle of five cent milk would pay more on a single bottle than an oil company would pay on a forty-two gallon barrel of oil.

Other Objections

S. J. R. 12 as approved by the Senate had many other defects. Under the present Teacher Retirement amendment the Senate is required to match teachers' contributions to the fund, but under S. J. R. 12 as approved by the Senate and recommended by the Governor, the matching provision was abolished by the provision of the amendment putting a limit of Two-and-one-half Million dollars on the amount the Legislature could appropriate for the purposes of paying the State's part of Teacher Retirement.\(^8\)

The provisions of the amendment relating to supplementing the available School Fund and the school equalization fund had little possibilities for the cause of education. The provision fixing a limit of twenty-two and 50/100 (\$22.50) dollars on the per capita would have added a constitutional limit to the amount of money the Legislature could appropriate

\(^8\) Compare provisions of S. J. R. 12 with Section 48-a, Article III, Constitution of Texas.
for that purpose. At the present time the per capita limit is set at twenty-two and 50/100 ($22.50) dollars, but this is a statutory limitation and can be removed by the Legislature at any time. A constitutional limit of that amount, however, would have made it impossible for the per capita to be raised without a constitutional amendment.

The provisions of S. J. R. 12 as approved by the Senate and endorsed by the Governor relating to the school funds would have had the effect of helping the ad valorem taxpayers. The present law requires the Automatic Tax Board of Texas to set such a state ad valorem tax rate as will, together with the other revenues accruing to the Available School Fund, supply a per capita of not to exceed Twenty-two and 50/100 ($22.50) dollars. Any money coming to the school funds by reason of S. J. R. 12 supplying an excess over that needed for the social security program would have resulted in relieving the large real estate owners of the state from paying a higher ad valorem property tax. These same property owners were benefitted by the provisions of the amendment which repealed the ad valorem tax for Confederate Pensions.9

The manner in which S. J. R. 12 would be submitted to the voters was objected to by many Representatives. The wording of the ballot was provided for in such a way that it gave no indication of the kind of taxes provided in the

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9 Section 10, S. J. R. 12, see Appendix B.
amendment. None of the far-reaching implications, the restrictions, the limitations and the complexities of the amendment were explained. The voter merely had before him the proposition of voting for or against "the amendment to the State Constitution providing a system of Old Age Assistance, levying Social Security Taxes and for the payment of such . . . " These were all matters on which almost everyone agreed and on which most people would be expected to vote favorably with no more indication of the content of S. J. R. 12 than contained in the words on the ballot. This was a subterfuge to the real purposes of S. J. R. 12. As expressed by one Texas writer,

The amendment is so stated that the average voter won't know what he's voting on unless one and one-half million of them get copies and have the training to digest what they read. The voter will have the privilege of voting "yes" or "no" to a statement which provides for 'the levying of Social Security Taxes', for the payment of pensions, Teachers' Retirement, and destitute children. What these 'Social Security Taxes' are he'll discover when he buys groceries, uses the telephone, pays his light bill, takes care, in short, of the necessities of life.10

Involved in the question of a complicated constitutional amendment such as S. J. R. 12 were many other objections. Some Legislators objected to passing the responsibility of financing social security back to the people, especially in view of the fact that the Legislature had sufficient power to act without additional constitutional authority. The

adoption of S. J. R. 12, it was believed, would create an inflexible system of taxation in the constitutional framework of the Texas government and such a system could not be materially changed without the submission of another constitutional amendment. Corrective amendments to the system of taxation provided in S. J. R. 12 would be controlled by eleven Senators or fifty-one members of the House because that number in either branch could block the submission of any future amendment seeking to modify the terms of S. J. R. 12. One writer expressed this point in this manner:

The insignificant taxes on natural resources will be frozen into the Constitution and will be maintained at the low percentages now provided for in the joint resolution. The high percentage of sales taxes will also be frozen into the Constitution. Once it's passed by the people, the matter will require two-thirds of the votes by both to bring it again to the voters. Eleven Senators can block that two-thirds vote. The powers that control state legislation and others opponents of taxing those who can afford to pay taxes will manage those eleven Senators.\[11\]

Another Texas newspaper, speaking editorially, said,

There is hazard that a great many persons, viewing the defeat of the sales-resource tax amendment proposal, will conclude that it constitutes a refusal to provide revenues for pensions. This actually is far from the truth. The issue was that of locking up in the state constitution, against any likelihood of change, a decree that Texas consumers forever must pay a sales tax; that forever, natural resources shall be exempt from any added responsibility in meeting a fair share of pension requirements; and that in eleven Senators be reposed the responsibility for future referendum . . . The measure which has just been defeated proposed a violation of the inalterable democratic tenet of representative government. It proposed taking away from lawmakers charged with

\[11\] Ibid.
specific responsibilities any voice, or action, that would enable them to meet the constitutional provision of representation. It speciously proposed that a departure be made from the tents of Texas democracy. It provided that the people, who elected our lawmakers and charged them with certain responsibilities, instead be the lawmakers. It contemplated playing upon the credulity of the electorate with a false assurance. It provided a limit beyond which taxes for pensions could not be levied against our depleting natural resources. It fitted the yoke of a sales tax in perpetuity upon the necks of Texas consumers.\(^\text{12}\)

The House Substitute for S. J. R. 12

The House substitute for the Senate version of S. J. R. 12 was offered by Taylor on May 2.\(^\text{13}\) The substitute provided identical taxes on retail sales, sales of electric energy, gas and sales of service to telephone subscribers as were provided in the Senate resolution, the tax being one cent for each fifty cents or fractional part of the sale price.\(^\text{14}\) The House substitute provided the seller could refrain from collecting the tax on sales of less than twenty-five cents, and provided the seller should send the comptroller 2 per cent of his total gross cash sales each month.\(^\text{15}\) This provision would enable the seller to realize a profit on the collection of the tax, although not to the extent permitted in the Senate approved plan.

\(^{12}\) *Austin American*, June 16, 1939, Editorial Page.

\(^{13}\) *House Journal*, 46th Legis., pp. 2795-2799.


Sections 4, 5, 6, and 7 of the House substitute were identical with the same sections of the Senate resolution. Section 8 of the House proposal changed the allocated provisions and provided that all money accruing by virtue of the taxes levied therein should constitute a Social Security Fund out of which the Legislature "may appropriate" annually the following sums: not to exceed $1,500,000 to finance Assistance to Destitute Children; $500,000 for the needy blind; not to exceed $2,500,000 for Teacher Retirement, plus enough for a six year period beginning September 1, 1942 to bring this fund in balance not later than September 1, 1947. After the payment of these sums, the balance of the money realized from the levies provided should be used for the payment of Old Age Assistance.

The same section authorized the Legislature to reduce ratably the taxes levied if it should be found that the amounts being collected were more than sufficient to meet the needs of the Social Security program, and subsequent Legislatures to the 47th Legislature could restore ratably any reductions made by a prior Legislature. It was expressly provided, however, that the "Legislature shall never increase the taxes herein to a rate higher than the rates fixed by the respective tax levies in this amendment, provided that nothing

\[16\text{Ibid. Compare with Senate Substitute, Appendix B.}\]
\[17\text{Ibid., p. 2737.}\]
herein shall be construed as preventing any Legislature from levying additional taxes for other State purposes on the sources herein taxed."^{18}

In the light of Governor O'Daniel's insistence that S. J. R. 12 was the best plan for the payment of old age assistance, the last paragraph of Section 8 has a particular significance. It reads,

If at any time the revenues derived from the taxes herein levied are inadequate to meet in full all of the obligations of the State or pay Old Age Assistance, then in that event the payments for Old Age Assistance shall be ratably reduced so as to avoid a deficit occurring in the Social Security Fund.^{19}

When this provision is compared with the provisions of Section 8 of the House substitute, it is obvious the old folks were given a position inferior to all the other social security recipients, because Section 8 provides for the payment of certain amounts to Teacher Retirement, the Blind, the Destitute Children and then reads,

After meeting out of the "Social Security Fund" each year the appropriations herein authorized for Dependent Children, Needy Blind and Teacher Retirement, all of the remainder or so much thereof as may be necessary shall be used for the purpose of paying Old Age Assistance as authorized in Section 51b of the Constitution of this State.^{20}

The old folks would receive what was left after paying the other obligations, and if there were then not enough money

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18 Ibid.
19 Ibid.
20 Ibid., pp. 2798-2797.
in the fund to meet these obligations and "all the obligation of the State to pay Old Age Assistance" the old age pensions would be reduced. The amendment did not provide for ratably reducing all the social security benefits—only the pensions would be reduced.

**Criticism of House Substitute**

This substitute offered in the House is open to the same general objections as the Senate plan. It did, however, possess less drastic provisions containing some merit contrasted with the Senate's program. The sales tax was reduced to three categories, eliminating the tax from seven fields to which it had been applied by the Senate. While the rate remained the same, the House substitute provided for some exemption, notably sales of twenty-five cents or less. Under the House substitute, as heretofore pointed out, it would still be possible for a merchant to profit from the collection of the tax, inasmuch as he could collect one cent on each purchase of more than twenty-six cents but was required to remit only 2 per cent of his gross sales in settlement of the tax. It is obvious also that this type of tax would continue to discriminate against the small purchaser.

The allocation provisions, in using the word "may" in referring to how much the Legislature could appropriate for the various phases of the social security program, did not improve on the Senate version. This wordage added no additional authority to the Legislature. The provisions,
however, which provided a limit to the amount of money which could be used for the various purposes, would be effective in restricting legislative action. The Legislature would be prohibited from appropriating in excess of the limits fixed in Section 8 of the House substitute.

The House substitute for S. J. R. 12 did not contain the same provision as the Senate's plan abolishing the ad valorem tax for Confederate pensions and made no mention of supplementing the Available School Fund or the equalization school fund.

The House plan, as substituted for the Senate's draft, called for submission at a special election to be held on the third Saturday in August, 1939, with re-submission at the general election in 1942. The taxes levied should be invalid as of September 1, 1944, unless the voters should re-adopt the amendment in 1942.21

S. J. R. 12 as Amended in the House

The final draft of S. J. R. 12 appeared as it was amended in House debates. The House amendments are important because they had the effect of reducing the injustices of S. J. R. 12 by providing certain modifications over the plan approved by the Senate and endorsed by Governor O'Daniel. The most important of these House amendments were sponsored by members of the "Fifty-Six" group as the following study will show.

21Ibid., p. 2798.
The first amendment added by the House of Representatives to the House substitute for S. J. R. 12 was by Representative Joseph White, a member of the "Fifty-Six." 22 White's amendment made it clear that the levying of the taxes in Sections 4, 5, and 6 against sulphur, gas and oil did not repeal any other taxes levied against these resources. His proposition re-emphasized the fact that the limitations on increased resources taxes on certain industries applied only to increased taxes on these industries for social security purposes. While White's amendment was an improvement over the wording of this section, it did not obviate the fact that a ceiling had been placed on taxes on these industries for further financing of the social security program.

The amendment by H. T. Brown was an important modification of the substitute amendment. His proposition provided for a sales tax of a flat 2 per cent of the sales price of articles to which the tax was applied and authorized the Legislature to provide for exemptions and sales price brackets. Brown's amendment was supported by all of the "Fifty-Six" except five. 23

Representative Courtney Hunt, a member of the "Fifty-Six", succeeded in passing an amendment which called for re-submission of the amendment in 1946 if approved in 1942. If rejected in 1946 the taxes levied would expire September 1, 1947,

22 Ibid., p. 2800. 23 Ibid., pp. 2800-2801.
but if adopted again in 1943 the matter would thereafter be submitted at a general election every ten years. If the proposition failed at any general election at which it was voted on the taxes levied would become inoperative on September 1 of the next succeeding year.\textsuperscript{24} Hunt's amendment was designed to provide some method of automatically modifying the constitutional taxes contained in S. J. R. 12, and by his amendment the question of keeping the complicated tax program in the constitution could not be kept from a vote of the people by a minority of the House and/or Senate.

The most important modification of the House substitute for S. J. R. 12 was the food exemption. This modification was obtained through an amendment by John A. Kerr, joined by twelve members of the "Fifty-Six." Kerr's amendment exempted the sale of food products for human consumption, including cereals, milk, meat, fish, eggs, vegetables, fruit, spices, salt, sugar, coffee, tea and cocoa, all medical supplies prescribed by a licensed physician, and all clothing under five dollars.\textsuperscript{25} Only two members of the "Fifty-Six" group voted against the food exemption while forty-two of the O'Daniel's honor roll voted against taking the necessities of life from the provisions of sales tax amendment.\textsuperscript{26}

\textsuperscript{24}\textit{Ibid.}, p. 2812.
\textsuperscript{25}\textit{Ibid.}, p. 2817.
\textsuperscript{26}\textit{Ibid.}, p. 2818.
As finally amended in the House, S. J. R. 12 contained the following salient features:

1. It was a 2 per cent sales tax with food, medicine and ice exempted.
2. It provided a consumers' use tax on the sales of gas, electric lights and telephone services.
3. It levied an infinitesimal tax on gas, sulphur, and oil and placed a ceiling against further taxes on these resources for social security purposes.
4. It abolished the matching provisions of the Teacher Retirement Fund.
5. It gave the old age pensions an unpreferred position and provided that the other social security phases should be provided before the Old Age Pension recipients would be paid in full.
6. It placed a constitutional limit on the amount which could be appropriated for all social security purposes except old age pensions.

S. J. R. 12 as Endorsed by O'Daniel

The facts presented in this analysis indicate that the amendment as passed by the Senate contained more severe sales tax provisions and other economic injustices than the plan as recommended by the House Committee on Constitutional Amendments. The House amended plan eliminated most of the severe injustices of the Senate approved plan. The House amendments were largely the work of the "Fifty-Six."
It now becomes pertinent to determine which version of the plan received O'Daniel's endorsement. The Senate passed S. J. R. 12 on April 10, 1939, in the form as contained in Appendix B. 27 This is the form of the Resolution containing the most severe sales tax provisions and other injustices heretofore pointed out in this chapter. On April 17, 1939, Governor O'Daniel gave a state-wide Sunday Morning radio broadcast from Austin in which he definitely approved the Senate draft of Senate Joint Resolution 12. 28 The copy of S. J. R. 12 contained in Appendix B is therefore the version of the plan as first recommended by O'Daniel. 29

27 Senate Journal, 46th Legislature, pp. 959-960.


29 The draft of S. J. R. 12 as approved by the Senate is the same as the draft of an amendment offered to the resolution in the Senate by Redditt printed on pages 815-818 of the Senate Journal and adopted by the Senate by record vote shown on page 822 of the Senate Journal.
CHAPTER VI

SUMMARY AND CONCLUSIONS

After stating the problem and plan of work, this study traces the development of the social security program in Texas, showing that legislative sessions prior to the Forty-Sixth Session inaugurated a program of social security by submitting to the people of Texas constitutional amendments authorizing aid to the aged, destitute children, the needy blind, and for teacher retirement. Following the adoption of these amendments, it has been shown that subsequent legislative sessions failed to provide adequate revenues for the financing of the program of assistance authorized by these constitutional changes. Old age pensions were financed in part, but for the other phases of social security no provisions were made.

The failure of the Legislature to provide revenues for these social security obligations justifies the conclusion that candidates in the gubernatorial primary of 1938 struck a responsive chord with the Texas electorate with promises of liberal support for pensions and the other phases of social security. The campaign promises of W. Lee O'Daniel have been presented, showing that he swept to an amazing first primary victory over twelve opponents on a platform
advocating pensions of $30.00 per month to everyone over 65 years of age, opposition to a sales tax, and a "business man's administration" of state affairs centered around a "common citizen's council." That O'Daniel clearly promised a pension of $30.00 per month to all over 65 years of age notwithstanding federal requirements of need as a condition of eligibility is clearly indicated in Chapter II of this study.

The facts presented in Chapter III lead to no other conclusion except that O'Daniel immediately and completely repudiated the platform for financing pensions on which he was elected. His recommendations to the legislature called for a transactions tax on consumers which amounted to a pyramided sales tax. O'Daniel demanded passage of a pension plan which would have restricted pensions to those in need, basing eligibility on a consideration of a person's income and providing an income from federal grants, state assistance and personal resources of $30.00 per month. This evidence makes it obvious that O'Daniel sought to discriminate against the great mass of people to whom his election was due by placing on their shoulders the responsibility of paying the bill for social security. Furthermore, the analysis of his complete recommendations to the legislature reveals that O'Daniel proposed to relieve ad valorem tax-payers of the state, including the owners of large holdings of real estate, from paying the ad valorem property tax. This plan implied
he wanted to shift the burden of taxation from the wealthy to the entire body of Texas citizenry.

The indictment against O'Daniel is further substantiated by his recommendation that his restricted pension plan and his consumers' sales tax be placed in the state constitution where it would likely remain as a harsh injustice against the people of Texas, saddling on them a sales tax on their everyday commodities of use and necessity and foisting upon them a constitutional inhibition against the future increasing of taxes for social security on all the vast wealth of the state.

It is obvious from the data presented relating to O'Daniel's pension program that he was not only contradictory as to the method by which he wanted pensions financed and the amount he wanted to pay, but that he was quite as inconsistent in asking for a constitutional definition of eligibility which would include "need", a condition not included in the original pension amendment. The O'Daniel plan for pensions limited the amount of money which could be expended for financing old age pensions, and placed the recipients of this social security grant in a deferred position by providing that definite amounts, first, should be paid to the other phases of the social security program and that pensions should be ratably reduced if there remained in the social security account an amount insufficient to meet all of the pension grants in full.
The entrance of O'Daniel into the legislative controversy over the advisability of submitting his sales tax constitutional amendment is further evidence of his vacillating policy. Having promised in his first message to the Legislature to leave the determination of such questions to the Legislature, O'Daniel gave just cause for questioning his sincerity of purpose and his honesty of a spoken promise. The truth of the record as reported in these pages point to no other logical conclusion except that O'Daniel broke faith with the people and with the legislature in aligning himself with the legislative group seeking to defeat all attempts at statutory financing and forcing the adoption of a plan of sales taxation fraught with economic injustices to the great body of Texas' consumers.

The O'Daniel record for consistency and honesty of purpose after the defeat of his original plan for a sales tax amendment is even more illusory. Instead of joining his influence with the group of House members which successfully passed two statutory tax bills, providing taxes on natural resources, O'Daniel adopted the vicious Senate Joint Resolution 12 and lent his support to destroying the last vestige of hope for statutory financing by condemning the two House bills pending in the Senate. The data on this particular incident justify the conclusion that O'Daniel did not want taxes to be levied against oil, gas, sulphur, utilities, and other powerful industrial and business groups, but preferred
to help in the fight to place a constitutional yoke on the people of Texas in the form of a sales tax amendment, which like his original plan provided a discriminatory consumers' tax and constitutional immunity against increased taxes to certain wealthy groups such as oil, gas, sulphur, utilities, and other companies.

A clear picture of the pressure drive by O'Daniel, the special interests lobbyists, and members of the Legislature opposed to statutory financing for the adoption of S. J. R. 12 is presented in this study, and these data establish again O'Daniel's alignment with a predatory economic group seeking to impose a vicious plan of taxation on the consuming public. The facts on this point lead to the conclusion that O'Daniel condemned in his arraignment of the "Fifty-Six" the group which did more than any other for the cause of social security. O'Daniel's charge that this group blocked all efforts to finance social security is repudiated by the reported facts in this study which clearly indicate the "Fifty-Six" authored and supported numerous house revenue bills and succeeded in securing the passage of two of these bills to the Senate where the measures met death in committee after having been deprecated by O'Daniel.

The record shows that while O'Daniel was declaring over the radio that Senate Joint Resolution 12 was not supported by the special interests almost every lobbyist of a major industry was fighting for the submission of the amendment. It
can be concluded from this statement that O'Daniel was either juvenile in not knowing of this support, or, if he knew of the support of the lobbyist in behalf of S. J. R. 12, that he acted with the purpose in mind to deceive the people into believing S. J. R. 12 was not in fact a lobby-inspired lobby-supported measure.

It is the further conclusion of this study that the combined lobbyists of all interests protected by Senate Joint Resolution 12 united in a great pressure drive to put over the submission of the amendment, not because these economic groups wanted to provide additional taxes for social security purposes, but because the adoption of the amendment would be to their advantage. O'Daniel apparently acted in concert with this group knowing of the effects upon the people of Texas of the plan he endorsed. In doing this, O'Daniel exhibited a calloused attitude for the welfare of the thousands of low-income individuals in Texas.

The analysis of Senate Joint Resolution 12 presented in Chapter V is conclusive of the more important economic implications of this constitutional proposal. This analysis establishes the following:

1. S. J. R. 12 was a carefully planned scheme of the special interests to freeze into the Constitution of Texas a provision which would relieve certain wealthy industries from the responsibility of paying social security taxes needed in the future;
2. S. J. R. 12 was unjust in its economic effect, placing a greater burden on persons of small income and exempting the great concentrations of wealth represented by oil, gas, sulphur and utilities firms;

3. S. J. R. 12 would have restricted the authority of the Legislature to provide for future financing of social security by limiting the amount which could be provided for certain phases of the program and by providing that no other taxes could be levied to provide social security revenues except those provided in S. J. R. 12;

4. The legislative controversy over the submission of S. J. R. 12 presents a picture of economic pressure groups at work in an attempt to secure economic benefits and privileges at the expense of other less fortunate groups.

5. The defeat of S. J. R. 12 prevented grave economic injustices being foisted on the people of Texas.

The broad view of the entire legislative and political controversy over S. J. R. 12 drawn from the facts presented here, the personal experience of the writer, and common logic, is that W. Lee O'Daniel acted in an insincere, vacillating and impious manner by aligning himself with the special interests and advocating a vicious plan of taxation; furthermore, O'Daniel misrepresented the activities of the minority group which had the courage of convictions and the steadfastness of purpose to defeat the diabolic plan contained in S. J. R. 12; and, finally, that the inaccuracies of the O’Daniel record
have come to be preserved for all times in the sources cited in this study. The O'Daniel record has been preserved because of the masterful job of reporting performed by the staff of The Associated Press, headed by Howard Marshall; the United Press, including Gordon Shearer and Richard Morehea; and the individual newspaper representatives including W. M. Thornton and Dawson Duncan of the Dallas News, Richard Vaughn of Scripps-Howard, Raymond Brooks of The Austin American, and others.
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APPENDIX A

STATEMENT OF FACULTY OF N.T.S.T.C. in re TEACHER RETIREMENT

The Faculty of North Texas State Teachers College met Tuesday, November 7, 1939, in response to a call by President W. J. McConnell to discuss and take action on a communication from the President and Chairman of the Legislative Committee of the Texas State Teachers Association. The gist of the letter is contained in the following statement and questions: "It now seems to these committees that teacher retirement is irrevocably tied to old age assistance and that a sales tax is likely to be involved in every effort to raise the tax by which the social security obligations of the state will be met. The committees also take full note of every objection that can be raised to a sales tax, but some members of the committees are convinced that the question at issue finally resolves itself to this: Shall we abandon the Teacher Retirement System altogether or shall we accept and work for a sales tax in some form for financing it?"

Questions

"1. Do you favor accepting the tie-up of the Teacher Retirement system with the old age assistance plan and throwing all of our influence into the scale for financing the whole social security program? Yes_____; No_____.

"2. Do you favor accepting and working for a sales tax as one of the means of financing the social security program of the state? Yes ______; No ______.

"3. Do you favor financing social security including teacher retirement, through statutory or constitutional provisions? Statutory ______; Constitutional Provisions ______."

After a careful consideration of the letter and the questions it raised, the Faculty adopted the following statement:

The Faculty of the North Texas State Teachers College believe that the tie-up of the Teacher Retirement System with the old age assistance plan and the throwing of all of the influence of the Texas State Teachers Association organization into the scale for financing the whole social security program have been and are unwise. The reasons for this belief are:
(1) The union of the Teacher Retirement with the old age assistance program has produced in the minds of the rank and file of the people of Texas the idea that Teacher Retirement is a form of old age assistance or teacher pensions. Since the Teacher Retirement System is wholly unlike the other forms of security with which it is tied, and since so many Texans are looking on the teachers as a group of pension seekers in a way that is tending to discredit the profession in the public mind, and since the tie-up of the Teacher Retirement System with the old age assistance program has undoubtedly contributed to, and is now contributing to the formation and spreading of this belief, it is thought best that the tie-up should be broken as soon and as completely as possible.

(2) It is believed that the members of the Texas Legislature are in almost complete unanimity in their belief that the State should match the contributions paid in by the Teachers to the Retirement Fund. Practically every member, if not every member, has gone on record as indicating that he would support a plan to raise the State's part of the money for the Retirement System. It would seem that the influence of the Texas State Teachers Association would be more effective if it were concentrated on the financing of the one simple type of retirement, already partly financed by teacher contributions, than it would be if scattered over a broad field of State activity involving the expenditure of millions of dollars.

(3) The union of Teacher Retirement with old age assistance has joined the Retirement System and the Texas State Teachers Association with the most uncertain, the most dangerous, the most elusive, the most politically-used and politically-dominated question with which the State has had to cope since the days when the Prohibition question was at its height. The Texas State Teachers Association, being a professional organization, is not organized for and should not be used in taking part in political questions which lie outside the field of the public schools. The question of old age assistance is outside this field. Therefore, the Texas State Teachers Association as an organization should keep itself free from the political question of old age assistance, and from all other political entanglements where the interests of the public schools are not affected.

(4) The Texas State Teachers Association can not ally itself with the supporters of old age assistance without becoming involved in the group struggles and political maneuvers of those who desire the fifteen or twenty million dollars from the State treasury on the one hand, and the
various types of taxpayers who would be required to pay these great sums on the other. It is next to impossible for the Texas State Teachers Association to take sides with any of these groups without losing the good will and the influences of other groups. This loss of good will and influence would be a direct loss to the Texas State Teachers Association and public schools, since these would receive no benefits regardless of which group won on those matters which lay outside the field of the public schools. Already many people and many of the newspapers of Texas are accusing the Texas State Teachers Association of aligning itself with the interests of certain special groups whose interests are operated contrary to the general interests of the masses of the people.

The Faculty of North Texas State Teachers College further expressed itself as being unfavorable to any plan whereby the Texas State Teachers Association as an organization should accept and work for the sales tax or any other tax as a means of financing Teacher Retirement. The reasons for believing that such an action is unwise are:

(1) The question of determining the source from which the money is to come for financing the State's part of the Teacher Retirement System is one that by law is left to the discretion of the State Legislature. It should make no difference to the Texas State Teachers Association as an organization from what source the Legislature raises the State's part of the Retirement Fund, so long as it raises it. A dollar raised from one source will be as effective after it is placed in the fund as a dollar raised from any other source. Individual teachers may have preferences as to the best type of tax to be used, but they should influence the Legislature as individuals; the Texas State Teachers Association as an organization would not be affected adversely by any tax source which the Legislature might adopt. Hence it should not be an organization show preference for any one type of tax over any other type. It should concentrate its efforts on seeing that a tax is levied. The situation here would be somewhat analogous to the head of a State department appearing before the Legislature and asking for an appropriation for his Department; then telling the Legislature it must raise the money for his Department from some specified tax.

(2) The Faculty of North Texas State Teachers College has confidence in the abilities and good judgment of the legislative and executive branches of government of the State to place a tax on the proper source, or sources, for the revenue needed to finance the State's part of the Retirement System. These agents of government have at their
disposal or they can secure such facts as they may need
to enable them to plan wisely the proper tax for the Re-
tirement fund.

(3) The Texas State Teachers Association was not
organized as an agency to determine the types of taxes the
State should levy; such a function lies wholly without the
scope of its functions. The question of determining the
tax structure of the State is one of the highest acts of
sovereignty and is therefore placed in the hands of the
lawmakers. Individuals affected by the tax structure should
work to influence the Legislature in establishing the tax
systems. Groups organized for the purpose of conducting
tax lobbies might also properly seek to influence the
Legislature in its efforts to create new tax sources, but
an organization set up entirely for different purposes
operates outside its jurisdiction when it seeks to determine
the source of tax money to be used for its own members.

The Faculty was somewhat at a loss to know what the
authors had in mind in framing the third question, since
no state function can be financed through constitutional
provisions.

(1) Constitutional law is always directed toward the
agents of government, and never toward the individual.
Constitutional law, being non-private, can never operate on
private persons. All tax laws must operate on private per-
sons or groups of persons. In other words, all tax laws must
be statutory.

(2) Since constitutional law works only in a negative
manner by limiting the agents of government, its positive
provisions serve merely as advice, and under no conditions
are enforceable by the courts. Only the negative provisions
can be forced in courts. For example, Article VII Section
3 of the Texas Constitution has for many years provided that
"there shall be levied and collected an ad valorem State
tax of such an amount not to exceed thirty-five cents on
the one hundred dollar valuation" as with the other sources
of the available school fund will operate the public schools
for a minimum period of six months each year. This provision
has never been enforced, and there is no way to enforce it.
Since there are no penalty provisions in constitutional
law, it is useless to ask the people to pay a tax based
on such a law.
(3) Since further constitutional amendment could add only limitation to the existing Teacher Retirement tax systems, or remove some limitations which now exist, and since we know of no limitations in either system that should be either added or removed as an aid to the financing of Teacher Retirement, we deem it unwise for the Texas State Teachers Association to urge the adoption of any further Teacher Retirement or tax limitations in our Constitution.

Therefore the third question can be answered only by indicating the financing of Teacher Retirement by statutory provision.
APPENDIX B

TEXAS STATE LIBRARY

LEGISLATIVE REFERENCE DIVISION

The following shows the text of S. J. R. No. 12 as it was passed by the Senate.

By Weinert

S. J. R. No. 12
AS ENGROSSED

A JOINT RESOLUTION

(CAPTION)

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. That Article 3 of the Constitution of the State of Texas is hereby amended by adding thereto a section to be known as "Section 51-E", as follows:

Section 51-E. 1. The Legislature shall provide for the collection of the taxes levied by this section of the Constitution and the revenue derived therefrom shall be used by it for the purpose of financing the following governmental functions, viz:

(1) Old Age Assistance as authorized by the provisions of Section 51-B of Article 3 of this Constitution.

(2) For Assistance of needy individuals who are blind, as authorized in Section 51-C of Article 3 of this Constitution.

(3) For assistance of destitute children, as authorized in Section 51-D of Article 3 of this Constitution.

(4) For the payment of the State's contribution to the Teachers Retirement Fund as authorized by Section 48-A of Article 3 of this Constitution.

(5) For the payment of pensions to disabled and indigent Confederate soldiers and sailors and their widows as authorized in Section 51 of Article 3 of this Constitution.

* The original of this document has been filed with the Reference Librarian.
(6) For supplementing the Available School Fund of the State of Texas.

(7) For supplementing equalization school fund.

Section 2. In order to provide the revenues for the purposes set out in this amendment, taxes to be known and designated as Social Security Taxes are hereby levied upon transactions, services, activities and natural resources as follows:

(1) Upon every retail sales transaction of tangible personal property in this State the tax shall be One (1¢) Cent on each Fifty (50¢) Cents or fractional part thereof of the sale price in excess of Four (4¢) Cents.

(2) Upon every sale in this State of Electrical energy, and gas (natural or artificial) by private utilities, municipalities, and governmental agencies, except on sale for industrial purposes, the tax shall be One (1¢) Cent on each Fifty (50¢) Cents, or fractional part thereof of the sale price.

(3) Upon all sales of service to telephone subscribers and to others through equipment of telephone subscribers for the transmission of messages and conversations, both local and long distance, and upon the sale, rental or leasing of all equipment or services pertaining or incidental thereto in this State the tax shall be One (1¢) Cent of each Fifty (50¢) Cents or fractional part thereof of the sale price.

(4) Upon all charges for admission to places of amusement or athletic contests, the tax shall be One (1¢) Cent for each Fifty (50¢) Cents or fractional part thereof of the admission price in excess of Twenty-five (25¢) Cents.

(5) Upon consideration charged for advertising, regardless of the means by which such advertising may be accomplished the tax shall be One (1¢) Cent for each Fifty (50¢) Cents or fractional part thereof.

(6) The service of storing and parking automobiles, the tax shall be One (1¢) Cent for each Fifty (50¢) Cents or fractional part thereof.

(7) The service performed and the use granted by the keepers of hotels, rooming houses, apartment houses, apartment hotels and tourist camps, or lodges, in furnishing and renting rooms, apartments and living accommodations, the tax shall be One (1¢) Cent for each Fifty (50¢) Cents or fractional part thereof.
(8) The service of advertising or giving publicity to any property, real or personal, or to any commodity, person or service, regardless of the means by which the same is accomplished, the tax shall be One (1%) Cent for each Fifty (50%) Cents or fractional part thereof.

(9) The service and privilege furnished by each club maintained for the convenience, entertainment or amusement of its members, the tax shall be One (1%) Cent for each Fifth (50%) Cents or fractional part thereof.

(10) All services performed by commission merchants, commission agents, brokers and factors as such, the tax shall be One (1%) Cent for each Fifty (50%) Cents or fractional part thereof.

Section 3. The taxes levied under Sub-sections one (1) to ten (10) inclusive, of Section 2 aforesaid, shall be collected from the purchaser by the seller in every case, and the seller shall pay the tax to the Comptroller as herein provided quarterly. The Legislature in its first session following the adoption of this amendment, shall enact suitable laws to enforce the collection of such taxes. The Legislature shall allow the collector of the taxes above levied in Sub-sections one (1) to ten (10) inclusive, to deduct from the taxes collected not less than three (3%) per cent nor more than five (5%) per cent to cover the collection and remittance costs.

Section 4. Each person who owns, controls, manages, leases or operates, any sulphur mine, or mines, well or shafts, or who produces sulphur by any method, system, or manner within this State shall pay a severance tax of Twenty-five (25%) Cents per long ton, or fraction thereof, of all sulphur so produced within the State.

Section 5. A severance tax equivalent to three-fourths (3/4) of one (1%) per cent of the market value of the total amount of gas produced and saved within this State is hereby levied.

Section 6. There is hereby levied a severance tax on all oil produced within this State of Three-fourths (3/4) Cents per barrel of forty-two (42) standard gallons, said tax shall be computed upon the total barrels of oil produced or salvaged from the earth or waters of this State without any reductions; provided, however, that the severance tax herein levied on oil shall be three-fourths (3/4) of one (1%) per cent of the market value of said oil whenever the market value thereof is in excess of one ($1.00) Dollar per barrel of forty-two (42) standard gallons.
Section 7. Severance taxes herein imposed shall be paid to the Comptroller of this State; said taxes shall be the liability of the producer and such taxes shall be borne ratably by all interested parties including royalty owners. The Legislature shall enact laws prescribing the method or reporting and collecting all severance taxes and may require the purveyor of oil, gas and sulphur to deduct the tax on all oil, gas and sulphur purchased and pay same to the Comptroller of this State. Until the Legislature shall otherwise provide, the provisions of the existing law providing for an occupation tax on oil, gas and sulphur with reference to paying such occupation tax, the records to be kept and reports to be made in regard thereto, and all other administrative provisions of said law, insofar as they may be given application consistent herewith, shall apply and be followed in the enforcement and collection of the severance taxes herein levied.

Section 8. Out of the revenues accruing to the State from the sources herein created, the Legislature may appropriate for the fiscal year beginning September 1, 1939, and for each fiscal year thereafter as much as, but not more than Twenty Million ($20,000,000) Dollars per annum to finance Old Age Assistance; as much as but not in excess of One and One-half Million ($1,500,000) Dollars annually to finance assistance for destitute children; not to exceed Five Hundred Thousand ($500,000) Dollars per annum to finance assistance to needy persons who are blind; and so long as necessary, as much as, not in excess of One and One-half Million ($1,500,000) Dollars annually to provide for Confederate soldiers and sailors, and in addition thereto, not to exceed Five Hundred Thousand ($500,000) Dollars per annum to be used in retiring the deficit in the Confederate Pension Fund. During the biennium beginning September 1, 1939, the Legislature shall appropriate from revenue derived from the sources herein created, sufficient money to meet the Constitutional obligation of the State of Texas to the Teachers' Retirement Fund, and such money as may be necessary to place said fund in balance on September 1, 1941, and after said biennium the Legislature may appropriate as much as but not in excess of Two and One-half Million ($2,500,000) Million Dollars per annum to supply the State's contribution to said Teachers' Retirement Fund. The Legislature is hereby prohibited from resorting to other sources of revenue and from making any other appropriation for the support or assistance to the aged, assistance to the blind, assistance to destitute children, for Confederate pensions, and for Teacher Retirement. After the appropriations herein authorized have been made and satisfied out of money collected by the taxes herein levied, so much of the remaining revenue collected from the sources herein created to the available school fund as may
be necessary to supplement said fund to the extent re-
quired to provide a per capita apportionment of Twenty-
two and 50/100 ($22.50) Dollars for each scholastic on
the census roll approved for such fiscal year, and after
so crediting the available school fund, any money remaining
shall be credited to school equalization fund to be
appropriated by the Legislature.

Section 9. The Legislature shall not abate, amend or
repeal any existing law which imposes taxes to supply
revenue now allocated to the Texas Old Age Assistance Fund
until such time as said taxes supply revenue which is allo-
cated to said fund shall have produced to the sum of
Twenty Million ($20,000,000) Dollars after September 1,
1939. All such revenue collected up to October 1, 1939,
shall be credited to said Texas Old Age Assistance Fund,
and the revenue accruing during the month of September,
1939, shall constitute an operating balance for the payment
of Old Age Assistance. On and after October 1, 1939, that
portion of existing taxes which now provides revenue for
the payment of Old Age Assistance shall be used exclusively
for retiring the deficit now existing in the General Revenue
Fund, and the Legislature shall provide for the collection
of such taxes and the impounding of the revenue therefrom
for the payment of said deficit, until such time as Twenty
Million ($20,000,000) Dollars accrues after September 1,
1939. When said sum of Twenty Million ($20,000,000) Dollars
shall have accrued, the Legislature may repeal said tax
laws or use the revenue therefrom as it sees proper.

Section 10. So much of Article 3, Section 51, of the
Constitution as levies a State ad valorem tax for the pur-
pose of creating a special fund for the payment of pensions
to the Confederate soldiers and sailors is hereby repealed.

Section 11. The provisions hereof providing for Old
Age assistance shall not be construed as a vested right in
the recipients of such old age assistance. The taxes
levied in this amendment shall become effective September 1,
1939, and shall be in addition to all other taxes now or
hereafter levied by law.

Section 12. The term "retail sale" shall include all
transactions whereby the ultimate consumer or user, for a
valuable consideration (a) acquires title to tangible
personal property, (b) acquires possession and the right
to consume or use tangible personal property, (c) acquires
the use of electric energy or the use of natural gas and
(d) acquires food, beer, liquor, confections and beverages,
and the service thereof. The term shall not include the
following transactions, viz: (a) isolated or occasional
sales of property and the service thereof, (b) the first
sale by the producer of garden, orchard, dairy, or agricult-
ural products or of livestock, poultry and the products
thereof, (c) all sales involving the acquisition of tangible personal property for resale as a component part or ingredient of other tangible personal property, or for use in processing or treating other tangible personal property for sale to the ultimate consumer, and (d) transactions involving the acquisition of gasoline, motor fuel and cigarettes.

Section 15. Said proposed Constitutional Amendment shall be submitted to a vote of the qualified electors of this State at a special election to be held throughout the State on the third Saturday in July, 1939, at which election all voters favoring such proposed Amendment shall write or have printed on their ballots the words:

"For the Amendment to the State Constitution providing a system of Old Age Assistance, levying Social Security taxes for the payment of such Old Age Assistance and providing a source of revenue for the payment of Destitute Children's Assistance, Teachers' Retirement Benefits, Confederate Pensions, Assistance to the Blind, and Aid for Schools."

And all those opposed shall write or have printed on their ballots the words:

"Against the Amendment to the State Constitution providing a system of Old Age Assistance, levying Social Security taxes for the payment of such Old Age Assistance and providing a source of revenue for the payment of Destitute Children's Assistance and Teachers' Retirement Benefits, Confederate Pensions, Assistance to the Blind, and Aid for Schools."

Section 14. The taxes levied by the adoption of this Resolution shall automatically expire on January 1, 1943, unless the qualified electors shall re-adopt the Constitutional Amendment at the General Election in the year 1942. At said General Election the question of repealing the amendment to the Constitution shall be submitted in the following manner:

"For repeal of Section 51-B of Article 3 of the Constitution as adopted in the year 1939."

"Against repeal of Section 51-B of Article 3 of the Constitution as adopted in the year 1939."

In the event the majority of the votes cast at said election favor repeal, the amendment to the Constitution shall be eliminated therefrom. In the event the majority of the votes cast are opposed to repeal, then the amendment as adopted in 1939 shall for all purposes be and remain in effect.
Section 15. The Governor of the State of Texas is hereby directed to issue the necessary proclamation for said election and have same published as required by the Constitution and laws of this State.

The sum of Twenty Thousand ($20,000) Dollars or so much thereof as may be necessary is hereby appropriated out of any funds in the Treasury of this State not otherwise appropriated to pay the expense of such publication and election.
By Petch. H. J. R. No. 16.

[In the House.—January 25, 1939, read first time and referred to Committee on Constitutional Amendments; March 6, 1939, reported favorably, with committee amendments substituted to be printed in lieu of original bill; March 7, 1939, sent to printer.]

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COMMITTEE AMENDMENT NO. 1

Amend H. J. R. No. 16 by striking out all below the enacting clause and inserting in lieu thereof the following:

SECTION 1. That Section 51b of Article III of the Constitution of the State of Texas be amended so as to hereafter read as follows:

"Section 51b. The Legislature shall have the power by General Law to provide for the payment of old age assistance to citizens of the United States who are actual bona fide citizens of Texas, subject, however, to the following provisions and limitations:

(1) No one shall be eligible to receive old age assistance who is (a) an habitual criminal or habitual drunkard; (b) who is an inmate of a State institution; (c) who has not been an actual resident of the State of Texas for at least five (5) years during the nine (9) years immediately preceding the application for old age assistance and continuously for one (1) year immediately preceding such application; (d) nor shall any person be eligible for old age assistance unless such person be sixty-five (65) years of age or older.

(2) The amount of the assistance granted by the State to be paid out of State Funds shall never exceed Fifteen ($15) Dollars per month to any person who is otherwise qualified to receive such assistance.

(3) Old age assistance shall never be paid except to a person who is in need and who is otherwise qualified to receive such assistance.

(4) The term "person who is in need" as used in subsection 3 above is hereby defined to mean: a person who does not have a net income of Thirty ($30) Dollars per month. The amount of the old age assistance granted by the State shall in each case be such an amount as when added to the net income of the person, together with any amount which

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may be granted by the Federal Government, will equal Thirty
($30) Dollars per month, provided that in no case shall the
amount to be paid out of State Funds exceed Fifteen ($15)
Dollars per month. In determining need the ability of chil-
dren, or other relatives, to assist in supporting applicants for
assistance shall never be taken into consideration.

(4a) The term "net income" as used in subsection four
(4) above is hereby defined to mean the total amount received
in money or its equivalent from personal labor, wages, sal-
aries, interest, dividends, rentals and bequests, less actual
business expense incurred in earning such income and taxes
actually paid thereon; but "net income" shall not include the
rental value of the home of the recipient where said rental
value does not exceed Fifteen ($15) Dollars per month, nor
shall it include the value of agricultural, livestock, dairy and
poultry products produced and consumed by the recipient on
the premises; provided, however, that as to real property
the income therefrom shall be the net rents received and
which shall remain after deducting all taxes paid on such
real property for the same period covered by such rents, all
insurance premiums paid thereon but prorated for the same
period covered by such rents, and the amount actually paid
for repairs made to such real property during the same period
covered by such rents; provided further that in determining
income from real property no deductions shall be made on
account of depreciation of the value of such real property.

(5) The Legislature shall have the authority to accept
from the Government of the United States such financial aid
for old age assistance as that Government may offer not in-
consistent with the limitations and provisions of this amend-
ment.

(6) In order to provide the revenues for the purposes
set out in this amendment, taxes to be known and design-
nated as Social Security Taxes are hereby levied upon trans-
actions, services, activities and natural resources as follows:
(a) Upon every retail sales transaction of tangible per-
sonal property in this State the tax shall be one (1c) cent
upon each forty (40c) cents or fractional part thereof of the
sale price.
(b) Upon every sale in this State of electric energy, and
gas (natural or artificial) by private utilities, municipalities
and governmental agencies, except on sales for industrial pur-
poses, the tax shall be one (1c) cent on each forty (40c)
cents, or fractional part thereof of the sale price.
(c) Upon all sales of service to telephone subscribers and
to others through equipment of telephone subscribers for the
transmission of messages and conversations, both local and
long distance, and upon the sale, rental or leasing of all equip-
ment or services pertaining or incidental thereto in this State
the tax shall be one (1c) cent for each forty (40c) cents or
fractional part thereof of the sale price.
(d) Upon all charges for admission to places of amuse-
ment or athletic contests, the tax shall be one (1c) cent for
each forty (40c) cents or fractional part thereof of the ad-
mission price in excess of fifty (50c) cents.
(e) The taxes levied under (a) (b) (c) and (d) shall be
collected from the purchaser by the seller, provided that the
seller may at his option refrain from collecting the tax on
sales of fifteen (15c) cents or less, but in such case the seller
shall pay the tax to the Comptroller as herein provided; and,
except as herein otherwise exempted, on or before the tenth
(10) day of each month every such seller shall compute the
amount of his total cash gross receipts for the preceding
month from all transactions described in paragraphs (a) (b)
(c) and (d) and in settlement of the taxes thereon, he shall
pay to the Comptroller of this State two and one-half
(2½%) per cent on the amount of such total gross cash
receipts. The Legislature shall enact suitable laws to enforce
the collection of such taxes.
(f) Each person who owns, controls, manages, leases or
operates, any sulphur mine, or mines, well or shafts, or who
produces sulphur by any method, system, or manner within
this State shall pay a severance tax of twenty-five (25c) cents
per long ton, or fraction thereof, of all sulphur so produced
within the State.
(g) A severance tax equivalent to three-fourths (3/4) of
one (1%) per cent of the market value of the total amount
of gas produced and saved within this State is hereby levied.
(h) There is hereby levied a severance tax on all oil pro-
duced within this State of three-fourths (3/4c) cent per
barrel of forty-two (42) standard gallons, said tax shall be
computed upon the total barrels of oil produced or salvaged
from the earth or waters of this State without any deduc-
tions; provided, however, that the severance tax herein levied
on oil shall be three-fourths (3/4) of one (1%) per cent
of the market value of said oil whenever the market value
thereof is in excess of One ($1) Dollar per barrel of forty-
two (42) standard gallons.

(i) Severance taxes herein imposed shall be paid to the
Comptroller of this State; said taxes shall be the liability
of the producer and such taxes shall be borne ratably by all
interested parties including royalty owners. The Legislature
shall enact laws prescribing the method of reporting and col-
lecting all severance taxes and may require the purchaser of
oil, gas and sulphur to deduct the tax on all oil, gas and
sulphur purchased and pay same to the Comptroller of this
State. Until the Legislature shall otherwise provide, the pri-
visions of the existing law providing for an occupation tax
on oil, gas and sulphur with reference to paying such occu-
pation tax, the records to be kept and reports to be made in
regard thereto, and all other administrative provisions of said
law, insofar as they may be given application consistent here-
with, shall apply and be followed in the enforcement and col-
lection of the severance taxes herein levied.

(7) There is hereby exempted from the provisions of this
amendment and from the computation of the taxes levied,
assessed and payable under this amendment the first sale by
the producer of all horticultural, agricultural, live stock, poul-
try and dairy products; all admissions to places of amusement
and athletic contests where the admission price is fifty (50c)
cents or less; all sales of newspapers and magazines; all sales
of gasoline and cigarettes; all sales of beverages having an
alcoholic content of more than one-half (1/2) of one (1%) per cent by volume; all sales in interstate commerce to the
extent, and to the extent only, that the State of Texas is
prohibited by the Constitution of the United States of Amer-
ica from taxing such sales.

(8) The term "person" as used herein shall mean and
include any person, firm, concern, receiver, trustee, executor,
administrator, agent, institution, association, partnership, com-
pany, corporation and persons acting under declaration of
trust, as well as the trustees acting under such declarations
of trust, or any other group or combination acting as a unit,
and the plural as well as the singular number unless the
intention to give it a more limited meaning is clearly disclosed
by the context.

(9) "Sale" means any transfer of title or possession or
both, conditional or otherwise, in any manner or by any
means whatsoever of tangible personal property, for a con-
sideration; and, a transaction whereby the possession of prop-
erty is transferred but the seller retains title as security for
the payment of the price shall be deemed a sale. A "retail
sale," or a "sale at retail," or a "retail sales transaction"
means a sale to a consumer or to any person for any pur-
pose other than for resale in the form of tangible personal
property, and shall include all such transactions as the State
Comptroller, upon investigation, finds to be in lieu of such
sales; provided, however, "sale at retail" shall not include
an isolated or occasional sale of tangible personal property
by a person not engaged in such business.

(10) The term "tangible personal property" means per-
sonal property which may be seen, weighed, measured, felt,
touched or is in any other manner perceptible to the senses.

(11) The term "sale for industrial purposes" as used in
connection with the sale of gas and electric energy, means
and included all sales made for industrial uses or purposes and
all sales made for the purpose of resale.

(12) The Comptroller of Public Accounts of this State
shall collect all taxes levied herein and pay the same to the
State Treasurer and the State Treasurer shall open and main-
tain in his office three (3) special funds as follows: (a)
Destitute Children's Assistance Fund; (b) Teachers' Retire-
ment Fund; and (c) Texas Old Age Assistance Fund. All
the proceeds of the taxes herein levied shall be received by
the State Treasurer from the Comptroller of Public Accounts
and credited to the Texas Old Age Assistance Fund.

(13) Between January 1, 1940, and July 1, 1940, the State
Treasurer shall transfer from the Texas Old Age Assistance
Fund to the said Destitute Children's Assistance Fund, the
sum of One Million Five Hundred Thousand ($1,500,000.00)
Dollars to meet the obligations of this State as authorized
by Section 51d of Article III of the Constitution of this State,
and annually thereafter said Treasurer shall during the first
six (6) months of each year transfer from said Texas Old
Age Assistance Fund to said Destitute Children's Assistance
Fund such an amount, not to exceed One Million Five Hun-
dred Thousand ($1,500,000.00) Dollars, as may be necessary,
together with any monies, or funds, remaining in such Des-
titute Children's Assistance Fund to meet Legislative Approp-
riations authorized for such purposes. Such fund, or so
much thereof as may be necessary, shall be used exclusively
for the payment of assistance to destitute children and the
State's portion of the cost of administering said fund.

(14) Between January 1, 1940, and July 1, 1940, the State
Treasurer shall transfer from the Texas Old Age Assistance
Fund to the said Teachers' Retirement Fund, an amount ade-
quate to meet the obligations of this State which will accrue
during the period beginning January 1, 1940, and ending Jan-
uary 1, 1941, as provided for in Section 48a of Article III
of the Constitution of this State, and annually thereafter said
State Treasurer shall, during the first six (6) months of
each year, transfer from said Texas Old Age Assistance Fund
to said Teachers' Retirement Fund such an amount as may
be necessary to meet the obligations of the State as provided
for in said Section 48a of Article III of the Constitution of
this State. Such fund, or so much thereof as may be neces-
sary, shall be used exclusively for the payment of Teachers'
Retirement Benefits and the State's portion of the cost of
administering such fund. It is provided, however, that dur-
ing the calendar year 1942, the State Treasurer shall trans-
fer from the Old Age Assistance Fund to the Teachers' Re-
tirement Fund an additional amount equivalent to one-fifth
(1/5th) of the undischarged obligation of the State to the
Teachers' Retirement Fund which has accumulated prior to
the first day of January, 1940, and during each of the suc-
ceeding four years a like amount shall be so transferred to
the Teachers' Retirement Fund.

(15) All of the proceeds of the taxes herein levied, save
and except such of said proceeds as shall be credited to the
Destitute Children's Assistance Fund, as provided in subsec-
tion (13) of this section and to the Teachers’ Retirement Fund
as provided in subsection (14) of this section, shall be used
exclusively for the payment of Old Age Assistance and the
cost of collecting said tax and administering of Old Age As-
sistance; provided that at least thirty (30) days prior to the
convening of each regular biennial session of the Legislature,
beginning with the regular biennial session in the year 1941,
the State Treasurer shall examine the condition of the Texas
Old Age Assistance Fund and when, after meeting all obli-
gations for the preceding biennium, it is found by him that
a surplus of as much as twenty-five (25%) per cent of the
cost of meeting such obligations during the previous biennium
has accumulated, then, in that event, the Legislature shall
ratably reduce the rates of taxation herein levied so as to
provide as nearly as possible only so much revenue as is
necessary to meet the actual requirements under this amend-
ment.

(16) On and after January 1, 1940, Old Age Assistance,
Destitute Children’s Assistance, Teachers’ Retirement Ben-
efits and the State’s portion of the administration thereof shall
be paid exclusively from the revenue derived from the taxes
herein levied and no appropriation shall thereafter be made
out of any other State funds for any such purposes, nor
shall any other taxes be levied, or collected, nor
shall the taxes herein levied ever be increased for the pay-
ment of Old Age Assistance, Destitute Children's Assistance
or for Teachers' Retirement Benefits or the State's portion
of the administration thereof.

(17) If after the State Treasurer has transferred and
credited to the Destitute Children's Assistance Fund and Teach-
ers' Retirement Fund the respective amounts required to be
transferred and credited to such respective funds, it appears
that the revenue remaining will not be adequate to pay in
full all grants made to recipients of old age assistance, then,
and in that event, the revenue remaining shall be paid pro
rata to such recipients of old age assistance based on the
amount granted to each recipient, and neither the State nor
any of its agencies shall be liable in any way to any recipient
for any deficit. The provisions hereof providing for old age
assistance shall not be construed as a vested right in the recipi-
(18) The taxes herein levied are in addition to all other taxes that are now or may hereafter be levied by law.

(19) No city or other political subdivision of the State, by virtue of its taxing power, police power, or otherwise, shall impose an occupation tax or charge of any sort, whether measured by gross receipts or otherwise, for the privilege of doing business, upon any person engaged in a business in which the sales or service transactions are taxed under this amendment, provided that this amendment shall not limit the right of any city to collect any special taxes which are now or may hereafter be provided for in a franchise, or which are payable under any agreement now in existence or hereafter made between a city and the holder of a franchise.

(20) The Legislature shall have the power by General Law to grant to the Comptroller of Public Accounts such powers and authority to promulgate and issue rules and regulations covering the collection of the taxes levied herein as the Legislature may deem necessary, and the Legislature shall have the power by General Law to provide for the administration of all of the provisions contained in this Amendment and for the collection of all taxes herein levied.

SEC. 2. The taxes levied in this Amendment shall become effective September 1, 1939.

SEC. 3. Said proposed Constitutional Amendment shall be submitted to a vote of the qualified electors of this State at a special election to be held throughout the State on the first Saturday in June, 1939, at which election all voters favoring such proposed Amendment shall write or have printed on their ballots the words:

“For the Amendment to the State Constitution providing a system of old age assistance, levying Social Security taxes for the payment of such old age assistance and providing a source of revenue for the payment of Destitute Children’s Assistance and Teachers’ Retirement Benefits.”

And all those opposed shall write or have printed on their ballots the words:

“Against the Amendment to the State Constitution providing a system of old age assistance, levying Social Security taxes for the payment of such old age assistance and pro-
viding a source of revenue for the payment of Destitute Children's Assistance and Teachers' Retirement Benefits."

SEC. 4. The Governor of the State of Texas is hereby directed to issue the necessary proclamation for said election and have same published as required by the Constitution and laws of this State.

The sum of Ten Thousand ($10,000.00) Dollars or so much thereof as may be necessary is hereby appropriated out of any funds in the Treasury of this State not otherwise appropriated to pay the expenses of such publication and election.

COMMITTEE AMENDMENT NO. 2

Amend H. J. R. No. 16 by striking out all above the enacting clause and substituting in lieu thereof the following:

A JOINT RESOLUTION

Proposing an amendment to Section 51b of Article III of the Constitution of the State of Texas, giving the Legislature power by General Law to provide for the payment of old age assistance subject to certain limitations, and fixing the qualifications of recipients of old age assistance and fixing the maximum amount which may be granted by the State to each recipient, and providing that old age assistance shall not be paid except to persons who are in need and otherwise qualified to receive such assistance, defining the term "person who is in need"; and the term "net income"; providing that old age assistance shall not be construed as a vested right in recipients; providing for authority to accept aid from the Government of the United States for old age assistance; defining the terms "retail sales transaction", "retail sale", "sale at retail", "sale", "tangible personal property", "industrial purposes", and "person", as used in such amendment; levying Social Security taxes on retail sales of tangible personal property, electric, gas and telephone service, and upon all admissions to places of amusement and athletic contests, with certain exemptions, and severance taxes upon the production of oil, natural gas and sulphur, and methods of collection until otherwise provided for by law; and providing exemptions from the taxes imposed and levied
in such amendment; providing and determining liability for such taxes; providing for collection of such taxes by the Comptroller of Public Accounts and payment thereof to the State Treasurer; providing that such tax funds shall be credited to the Texas Old Age Assistance Fund; and requiring the transfer of certain of such funds to the Destitute Children's Assistance Fund and Teachers' Retirement Fund; and fixing the amount and time of such transfers; providing for the exclusive use which shall be made of such funds, and providing that no other tax shall be levied and that the taxes herein levied shall never be increased for the payment of Old Age Assistance, Destitute Children's Assistance and Teachers' Retirement Benefits; authorizing the Legislature to reduce the rate of taxes herein imposed upon the happening or the contingency described in this amendment; allocating such tax funds in case the total sum available be inadequate to pay assistance as provided for in this amendment; prohibiting counties, cities and other political subdivisions from levying certain taxes or other special taxes on services and activities taxed by this amendment; giving the Legislature power by General Law to provide for administration of the provisions contained herein and for the collection of all taxes herein levied; and giving the Legislature power by General Law to grant to the Comptroller of Public Accounts such powers and authority to promulgate and issue rules and regulations covering the collection of the taxes levied herein, as the Legislature may deem necessary; providing for the effective date for the taxes levied herein; providing that the taxes levied herein shall be in addition to all other taxes that are now or may hereafter be levied; prescribing the form of the ballot; providing for the necessary proclamation and making an appropriation to defray the expenses of proclamation, publication and election.

Be it enacted by the Legislature of the State of Texas:
COMMITTEE REPORT.

COMMITTEE ROOM,

Austin, Texas, March 6, 1939.

Hon. R. Emmett Morse, Speaker of the House of Representatives.

SIR: We, your Committee on Constitutional Amendments, to whom was referred H. J. R. No. 16, have had same under consideration and beg to report back with recommendation that it do pass, and be printed.

Committee amendments were adopted as substitutes to be printed in lieu of the original bill.

DONAGHEY, Vice-Chairman.