

June 14, 1948

Honorable Mike Holm  
Secretary of State  
STATE CAPITOL

Dear Mr. Holm:

As stated in my opinion of March 31, 1944, the Secretary of State has no statutory authority to pass upon facts. He has no power to decide controversies unless authorized by statute. If on its face, any required affidavit complies with the law, it is the duty of the Secretary of State to accept it. The questions involved in any controversies that may arise as a result of the filing of the affidavit in question are for the courts to determine.

Very truly yours

J. A. A. BURNQUIST  
Attorney General

JAAB:MS

STATE OF MINNESOTA  
DEPARTMENT OF STATE  
FILED  
JUN 14 1948  
*Mike Holm*  
Secretary of State

COPY

10595

STATE OF MINNESOTA)

ISS

COUNTY OF HENNEPIN)

The undersigned hereby certify that on the 12th day of June, 1948, a State Convention of the Democratic-Farmer-Labor Party met at the City of Brainerd, County of Crow Wing, and State of Minnesota, pursuant to the call of Harold H. Barker, Chairman Democratic-Farmer-Labor State Central Committee of the State of Minnesota, dated March 5th, 1948, issued pursuant to the provision of Section 1, Article V of the Constitution of said party and in accordance with the orders, determinations and instructions of said State Central Committee of said party; that said State convention was called and held under the supervision of said State Central Committee of said Democratic-Farmer-Labor Party of Minnesota.

The undersigned hereby further certifies that upon the convening of said convention at said City of Brainerd in the State of Minnesota, the said convention by motion duly made, seconded and carried, voted to recess and remove its sittings to the Floyd B. Olson Memorial Hall at No. 117 Southeast Fourth Street, in the said City of Minneapolis, County of Hennepin and State of Minnesota, to reassemble and to reconvene at said latter place at 10:00 O'Clock P.M. on June 12th, 1948; and thereafter recessed from time to time until June 13, 1948, when, upon completing its labors, said convention recessed subject to the call of the State Chairman. The undersigned do hereby further certify that said convention accordingly, reconvened at said time and place last mentioned and proceeded to conduct its business including the nomination of presidential electors as hereinafter certified.

The undersigned do hereby further certify that they were elected by said convention as the permanent chairman and permanent secretary thereof respectively, and duly qualified and acted as such and are now acting as such pursuant to law.

hereby  
The undersigned do/further certify that said convention was held under the supervision of said State Central Committee of said Democratic-Farmer-Labor Party of Minnesota.

The undersigned do hereby further certify that the following are the names of the persons nominated by said convention of said Democratic-Farmer-Labor Party of Minnesota, as candidates of said party/for presidential electors for the State of Minnesota, to be elected at the next general election held in said state in the year preceeding the expiration of the term of the president of the United States, viz: the year A. D. 1948, to-wit:

NAME:

ADDRESS

Hon. Elmer A. Benson  
Frank Boyd  
Walter Johnson

Appleton, Minnesota.  
St. Paul, Minnesota.  
New York City, Minnesota.

(continued next page)

(Cont'd)

NAME

ADDRESS

(Continuation of list of)  
(Presidential Electors)

Joseph Paszak  
Orville E. Olson  
George Vikingstad,  
Ione Kleven,  
Axel T. Nyberg  
Francis M. Smith  
James Youngdale  
Carolyn Storlie

Duluth, Minnesota.  
Minneapolis, Minnesota.  
Elmore, Minnesota.  
Appleton, Minnesota.  
Malmo, Minnesota.  
St. Paul, Minnesota.  
Benson, Minnesota.  
Minneapolis, Minnesota.

The undersigned hereby further certify that said convention endorsed the Honorable Henry A. Wallace of New York for President of the United States of America and the Honorable Glen H. Taylor of Idaho for the office of Vice-President of the United States and that said convention, by motion duly made, seconded and carried, directed that underneath the name Democratic-Farmer-Labor Party on the ballot wherein the names of said candidates for Presidential Electors shall be printed, the names of "Wallace and Taylor" shall appear, all agreeable to the provision of section 204.03 Minnesota Statutes 1945.

The undersigned do hereby further certify that this certificate is made pursuant to the provisions of sections 204.01, 204.02 and 204.03 Minnesota Statutes 1945.  
Dated June 14th, 1948.

Francis M. Smith  
Chairman  
Cyrus P. Barnum, Jr.  
Secretary

STATE OF MINNESOTA)  
                                  )SS  
COUNTY OF HENNEPIN)

Francis M. Smith and Cyrus P. Barnum, Jr. having been first duly sworn on their oaths do depose and say that they are the persons who signed the foregoing certificate; that they have read the same and know the contents thereof and that the same is true of their own knowledge.

Subscribed and sworn to before me  
this 14th day of June, 1948.

Desmond J. Orbell  
Notary Public, Hennepin County, Minn.  
My commission expires Jan 8, 1952

Francis M. Smith  
Cyrus P. Barnum, Jr.

STATE OF MINNESOTA)

SS

COUNTY OF HENNEPIN)

On the 14th day of June, 1948, before me a Notary Public within and for

as aforesaid.

Ramsey

County and state, personally appeared

Francis M. Smith and Cyrus P. Barmum, Jr., to me known to be the persons

described in and who executed the foregoing certificate, and to be the permanent chairman and secretary, respectively, of the Democratic-Farmer-Labor State Convention of Minnesota, held on the 12th and 13th days of June, 1948, and said persons duly acknowledged to me that they executed the foregoing instrument as their own free act and deed and as the free act and deed of said convention of said political party, and its said State Convention.

Notary Public, Ramsey County, Minn.,  
My commission expires June 8, 1952.

1948X1949X1950X1951X1952X1953X1954X1955X1956X1957X1958X1959X1960X1961X1962X1963X1964X1965X1966X1967X1968X1969X1970X1971X1972X1973X1974X1975X1976X1977X1978X1979X1980X1981X1982X1983X1984X1985X1986X1987X1988X1989X1990X1991X1992X1993X1994X1995X1996X1997X1998X1999X2000X2001X2002X2003X2004X2005X2006X2007X2008X2009X2010X2011X2012X2013X2014X2015X2016X2017X2018X2019X2020X2021X2022X2023X2024X2025X2026X2027X2028X2029X2030X2031X2032X2033X2034X2035X2036X2037X2038X2039X2040X2041X2042X2043X2044X2045X2046X2047X2048X2049X2050X2051X2052X2053X2054X2055X2056X2057X2058X2059X2060X2061X2062X2063X2064X2065X2066X2067X2068X2069X2070X2071X2072X2073X2074X2075X2076X2077X2078X2079X2080X2081X2082X2083X2084X2085X2086X2087X2088X2089X2090X2091X2092X2093X2094X2095X2096X2097X2098X2099X2100X2101X2102X2103X2104X2105X2106X2107X2108X2109X2110X2111X2112X2113X2114X2115X2116X2117X2118X2119X2120X2121X2122X2123X2124X2125X2126X2127X2128X2129X2130X2131X2132X2133X2134X2135X2136X2137X2138X2139X2140X2141X2142X2143X2144X2145X2146X2147X2148X2149X2150X2151X2152X2153X2154X2155X2156X2157X2158X2159X2160X2161X2162X2163X2164X2165X2166X2167X2168X2169X2170X2171X2172X2173X2174X2175X2176X2177X2178X2179X2180X2181X2182X2183X2184X2185X2186X2187X2188X2189X2190X2191X2192X2193X2194X2195X2196X2197X2198X2199X2200X2201X2202X2203X2204X2205X2206X2207X2208X2209X2210X2211X2212X2213X2214X2215X2216X2217X2218X2219X2220X2221X2222X2223X2224X2225X2226X2227X2228X2229X2230X2231X2232X2233X2234X2235X2236X2237X2238X2239X2240X2241X2242X2243X2244X2245X2246X2247X2248X2249X2250X2251X2252X2253X2254X2255X2256X2257X2258X2259X2260X2261X2262X2263X2264X2265X2266X2267X2268X2269X2270X2271X2272X2273X2274X2275X2276X2277X2278X2279X2280X2281X2282X2283X2284X2285X2286X2287X2288X2289X2290X2291X2292X2293X2294X2295X2296X2297X2298X2299X2300X2301X2302X2303X2304X2305X2306X2307X2308X2309X2310X2311X2312X2313X2314X2315X2316X2317X2318X2319X2320X2321X2322X2323X2324X2325X2326X2327X2328X2329X2330X2331X2332X2333X2334X2335X2336X2337X2338X2339X2340X2341X2342X2343X2344X2345X2346X2347X2348X2349X2350X2351X2352X2353X2354X2355X2356X2357X2358X2359X2360X2361X2362X2363X2364X2365X2366X2367X2368X2369X2370X2371X2372X2373X2374X2375X2376X2377X2378X2379X2380X2381X2382X2383X2384X2385X2386X2387X2388X2389X2390X2391X2392X2393X2394X2395X2396X2397X2398X2399X2400X2401X2402X2403X2404X2405X2406X2407X2408X2409X2410X2411X2412X2413X2414X2415X2416X2417X2418X2419X2420X2421X2422X2423X2424X2425X2426X2427X2428X2429X2430X2431X2432X2433X2434X2435X2436X2437X2438X2439X2440X2441X2442X2443X2444X2445X2446X2447X2448X2449X2450X2451X2452X2453X2454X2455X2456X2457X2458X2459X2460X2461X2462X2463X2464X2465X2466X2467X2468X2469X2470X2471X2472X2473X2474X2475X2476X2477X2478X2479X2480X2481X2482X2483X2484X2485X2486X2487X2488X2489X2490X2491X2492X2493X2494X2495X2496X2497X2498X2499X2500X2501X2502X2503X2504X2505X2506X2507X2508X2509X2510X2511X2512X2513X2514X2515X2516X2517X2518X2519X2520X2521X2522X2523X2524X2525X2526X2527X2528X2529X2530X2531X2532X2533X2534X2535X2536X2537X2538X2539X2540X2541X2542X2543X2544X2545X2546X2547X2548X2549X2550X2551X2552X2553X2554X2555X2556X2557X2558X2559X2560X2561X2562X2563X2564X2565X2566X2567X2568X2569X2570X2571X2572X2573X2574X2575X2576X2577X2578X2579X2580X2581X2582X2583X2584X2585X2586X2587X2588X2589X2590X2591X2592X2593X2594X2595X2596X2597X2598X2599X2600X2601X2602X2603X2604X2605X2606X2607X2608X2609X2610X2611X2612X2613X2614X2615X2616X2617X2618X2619X2620X2621X2622X2623X2624X2625X2626X2627X2628X2629X2630X2631X2632X2633X2634X2635X2636X2637X2638X2639X2640X2641X2642X2643X2644X2645X2646X2647X2648X2649X2650X2651X2652X2653X2654X2655X2656X2657X2658X2659X2660X2661X2662X2663X2664X2665X2666X2667X2668X2669X2670X2671X2672X2673X2674X2675X2676X2677X2678X2679X2680X2681X2682X2683X2684X2685X2686X2687X2688X2689X2690X2691X2692X2693X2694X2695X2696X2697X2698X2699X2700X2701X2702X2703X2704X2705X2706X2707X2708X2709X2710X2711X2712X2713X2714X2715X2716X2717X2718X2719X2720X2721X2722X2723X2724X2725X2726X2727X2728X2729X2730X2731X2732X2733X2734X2735X2736X2737X2738X2739X2740X2741X2742X2743X2744X2745X2746X2747X2748X2749X2750X2751X2752X2753X2754X2755X2756X2757X2758X2759X2760X2761X2762X2763X2764X2765X2766

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STATE OF MINNESOTA  
DEPARTMENT OF STATE  
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JUN 14 1948

*Mark A. ...*  
Secretary of State

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Supreme Court

Loring, C. J.

Democratic-Farmer-Labor State  
Central Committee, Orville L. Freeman,  
Chairman of said Committee, and Curtiss  
Olson, Secretary of said Committee,

Took no Part: Peterson, J.,  
Thomas Gallagher, J.,  
and Frank Gallagher, J.

Petitioners,

Endorsed  
Filed September 2, 1948  
Grace Kaercher Davis, Clerk  
Minnesota Supreme Court

34815

vs.

Mike Holm, Secretary of State,  
Respondent,

Elmer A. Benson, Frank Boyd, Walter Johnson, Joseph Paszak,  
Orville E. Olson, George Vikingsstad, Ione Klove, Axel T.  
Nyberg, Francis M. Smith, James Youngdale, and Carolyn Sterlio,  
Interveners.

### S Y L L A B U S

1. The rule with regard to judicial review of the actions of political conventions is that in factional controversies within the party, where there is no controlling statute or clear right based on statute law, the courts will not assume jurisdiction, but will leave the matter for determination within the party organization.

2. Absent a controlling statute, a political convention is the judge of the election, qualifications, and returns of its own members. Such a convention is not a select body requiring the presence of a majority of all persons entitled to participate in order to constitute a quorum for the transaction of business. If that convention is regularly called, those who actually assemble constitute a quorum, and a majority of those voting is competent to transact business. The withdrawal of either a majority or minority does not affect the right of those remaining to proceed with the

business of the convention, and those withdrawing cannot claim to be the legal party convention.

3. Tested by the foregoing rules, the Democratic-Farmer-Labor convention, held at Brainerd on June 12 and 13, 1948, was the duly called and legally organized convention of that party and continued to be such during its session. The persons nominated for presidential electors by that convention are the party nominees.

4. Since the intervenors in their answer concede that the Brainerd convention was legally called and organized, it was the judge of the qualifications and right to seats of its members, and this court is without jurisdiction to pass upon the question as to whether it rightfully determined the contests of delegates for seats in that convention. Such being the law, there is no issue of fact made by the pleadings over which we have jurisdiction requiring a reference.

5. The petitioners are entitled to the order and writ of this court commanding the secretary of state, respondent herein, to reject the certificate of nomination of presidential electors filed with him June 14, 1948, by the intervenors herein and to accept and file the certificate of the petitioners, if that be in proper form.

Writ issued.

#### O P I N I O N

LOHME, Chief Justice.

This is a proceeding in this court under U.S.A. 205.78

initiated by petition by those purporting to be the chairman and the secretary of the state central committee of the Democratic-Farmer-Labor party, which, for the sake of convenience, will hereinafter be referred to as the DFL party, seeking an order or writ requiring the secretary of state to correct a claimed error or omission in the preparation of ballots for the general election to be held November 2, 1948, insofar as those ballots contain the names of presidential electors nominated by the convention of that party. There is no contention that the petitioners are not qualified to bring the proceeding. See, *State ex rel. Sauer v. District Court*, 74 Minn. 177, 77 N. W. 28. The question of whether electors may be nominated by petition is not before us.

It appears by the petition that the secretary of state has refused to accept the petitioners' certificate as to nominees for presidential electors for the reason that another certificate, fair on its face, also purporting to name presidential electors for that party, had previously been filed in his office on June 14, 1948.

The petition seeks an order requiring the secretary of state to reject the certificate previously filed and to receive and file a certificate naming the nominees for electors of the DFL party, which the petitioners propose to file. Following the filing of the petition in this court, the persons who filed the first certificate, who are intervenors herein, moved this court for an order discharging the petition and in the event the petition be not discharged they filed an answer and asked for the appointment of a referee to take testimony on issues of fact which they contend are tendered thereby.

The facts out of which the present controversy arose are

that the 1948 convention of the DFL party was legally called by the state chairman to convene in the armory at Brainerd, Minnesota, on June 12 and 13, 1948. The delegates to that convention assembled and organized the convention. The answer to the petition admits the legality of the call and that the convention was organized and proceeded to pass upon contested delegations, but in connection with such contests alleges that those delegates who voted in the convention "arbitrarily, capriciously, oppressively and unlawfully" excluded legally elected delegates who were under contest. As examples of such alleged "arbitrary, capricious, oppressive and unlawful" actions the answer alleges some eleven examples of conduct, all of which relate in some manner to such contests. The answer then charges that by such actions the theretofore legal convention ceased to be the legal convention of the party, and early in the afternoon of June 13 became a mere assemblage of citizens without authority to bind the party, whereupon certain delegates withdrew from the convention and met immediately in front of the armory, where the convention was being held, assumed to organize themselves into a convention under the original call, and adjourned to a hall in the city of Minneapolis to reassemble at 10 p.m. of that same day. It was at this reassembly in Minneapolis that the persons whose names appear on the certificate, first filed with the secretary of state, were nominated as electors, and it was by a certificate filed by the alleged officers of that assumed convention that the certificate of nominations was filed with the secretary of state on June 14, 1948.

It is the contention of the petitioners that the Brainerd convention was the duly called and organized party



convention and that it had the sole right to judge the qualifications and credentials of its own members; that its determinations thereof are not subject to judicial review; and, therefore, that the certificate already filed with the secretary of state is not the certificate of the duly authorized party or of its convention officers. On the other hand, the interveners, who are the officers of the Minneapolis convention, contend that the actions of the Brainerd convention with reference to the seating of contestants was so arbitrary, fraudulent, and unlawful as to justify the withdrawal of the delegates and the organization of a new convention under the original call which would have the authority to nominate electors.

1. The rule with regard to judicial review of the actions of political conventions is that in factional controversies within a political party, where there is involved no controlling statute or clear right based on statute law, the courts will not assume jurisdiction, but will leave the matter for determination within the party organization.

2. Absent a controlling statute, a political convention is the judge of the election, qualifications, and returns of its own members. Such a convention is not a select body requiring the presence of a majority of all persons entitled to participate in order to constitute a quorum for the transaction of business. If that convention is regularly called, those who actually assemble constitute a quorum, and a majority of those voting is competent to transact business. The withdrawal of either a majority or minority does not affect the right of those remaining to proceed with the business of the convention, and those withdrawing cannot

claim to be the legal party convention.

This court in *Phillips v. Gallagher*, 73 Minn. 528, 76 N. W. 285, in discussing a contention that the law relative to election contests applied to party convention nominations, said:

"But such rules have only a limited application to a political convention, which has control over its own proceedings and officers, in the absence of any statutory regulations, and may proceed according to party usages and customs. The questions which such a convention deals with are essentially political, and it would be a menace to the right of the members of a political party to select their own party nominees, and to the respect which should be entertained for judicial tribunals, for the courts to review and reverse the proceedings of a political convention, in the absence of fraud or oppression on its part or of its officers.

"The delegates in a nominating convention meet for the purpose of selecting and agreeing upon candidates for office, to be supported by the party. The discharge of this duty involves the exercise of judgment and discretion on the part of the members of the convention, and a majority of them have, in the absence of fraud or oppression, the right to control the action of the convention, and to correct or reverse any action taken by it. Such a convention is a deliberative body, and unless it acts arbitrarily, oppressively or fraudulently, its final determination as to candidates, or any other question of which it has jurisdiction, will be followed by the courts. See *State v. Kitchli*, 53 Minn. 147, 54 N. W. 1069; *Manston v. McIntosh*, 58 Minn. 525, 60 N. W. 672; *In re Fairchild*, 151 N. Y. 359, 45 N. E. 943. Any other rule would be intolerable, and permit the courts to impose upon a party a nominee contrary to the wishes of its members, as finally expressed by their representatives in convention."

The "fraud or oppression" referred to is, in our opinion, only such perversion of the purposes of the convention as may be effected after those purposes have been finally determined. It does not include the action of the convention in seating delegates involved in contests, because such a convention is the judge of the qualifications and right to seats of its own members. These qualifications

and rights are political, as distinguished from legal rights, unless based upon specific statute; and courts will not entertain jurisdiction of them. See, notes in 20 A.L.R. 1035 and 169 A.L.R. 1282.

The answer in this case sets up only conclusory words alleging fraud and oppression, without supporting facts as to the illegality of the delegates seated. If, upon such an allegation, we were given jurisdiction to inquire as to the regularity of the elections of delegates to the state convention, we, instead of the state political organization, would be confronted with the political task of organizing the convention. *Marcum v. Ballot Commissioners*, 42 W. Va. 263. In that case, in discussing the powers of a circuit's nominating convention and the limits of judicial review, the court said:

"\* \* \* That convention, like the two branches of the state legislature and congress, like all deliberative bodies having power to organize, is the judge of the election, qualification, and returns of its own members. If we go back of the circuit convention, how far shall we go? What shall limit our inquiry? Must we overlook every convention or primary election to say whether its members were old enough or of the politics to entitle them to participate? There must be a limit of reason to our powers. That is the convention whose nominations are in question before us. To hold otherwise would be for this Court to assume power to supervise and review the organization of political conventions - practically to organize them." (Italics supplied.)

The case of *State ex rel. Fossier v. Lavik*, 9 W. D. 461, 83 W. W. 914, is on all fours with the case at bar, although it involved a county convention instead of a state convention. In that case, as here, two certificates of nomination were presented to the county auditor, and he refused the second one. The court

said:

"\* \* \* It is clear that the one duty of the court in this case is to determine which faction, if either, constituted the de facto Republican convention. It is not our province to correct parliamentary errors, or to scrutinize the parliamentary methods by which an organization of a convention was secured, if only an organization of the Republican county convention was effected. A mass of affidavits has been presented to us, but we accept the statement of facts as found in defendant's brief, adding thereto only matters that are undisputed. The call for the convention was regular in all respects, and fixed the total number of delegates from the county at 19. The caucuses were duly held, and delegates properly elected from all the precincts except one. In that precinct one Dolan was elected, not by ballot, as required by section 497a, Rev. Codes, but by a viva voce vote of the electors present. On the day appointed for the convention the county Republican central committee met, in pursuance of usage, to determine what delegates were entitled to participate in the preliminary organization. That committee rejected Dolan's credential, - whether rightly or not, we must not inquire. [Italics supplied.] The delegates were called to order by the chairman of the central committee, and, on the nomination for temporary chairman, there was a tie vote of 9 to 9. The chairman of the central committee assumed the right to decide the tie, - whether rightly or not, we need not say, [Italics supplied.] because the election of the temporary chairman was immediately acquiesced in by the entire convention. A temporary secretary was then nominated and elected by the unanimous vote of all the delegates. It is clear at this point that a temporary organization of the convention had been effected. [Italics supplied.] The assembly was no longer an unorganized body of delegates. It was a convention. Whatever business that convention might transact must be transacted through the instrumentality of the organization thus effected, or of some organization that might by a vote of the convention as thus organized be substituted for the then existing organization. The convention, acting upon these self-evident propositions, at once proceeded with the appointment of the usual committees for such occasions. There was no contest, except as to the committee on credentials. Upon the motion that the chair appoint

such committee, the vote stood 9 to 9; and the chair, after having voted as a delegate, assumed the right, as chairman, to vote again, and decide the vote in favor of the motion. We need not waste a moment in condemning this course. This court is not interested in determining whether or not that convention was conducted according to strict parliamentary rules and usages. Such questions are foreign to the powers of judicial tribunals. [italics supplied.] They are political, [italics supplied] purely. We are interested only in determining whether or not such convention was the Republican county convention, and as to that there can be no doubt, upon conceded facts. The committee on credentials presented a report rejecting the credentials of Mr. Dolan, who had already been rejected by the central committee, and also rejecting the credentials of one McDonough. The motion to adopt this report was carried by a vote of 9 in the affirmative to 8 in the negative; the chair refusing to count the vote of McDonough in the negative. That convention was the exclusive judge of the qualifications of its own members, [italics supplied] and by that vote it conclusively determined that there were 17 qualified delegates elected to that convention, and no more, and that Dolan and McDonough were not delegates legally elected and qualified to sit in said convention. When this was definitely determined, the 8 delegates, who were thus left a minority faction, and all of whom had participated in the preliminary organization and in every move of the convention up to this point, without any motion to adjourn, or any public announcement of any intention to withdraw, quietly left the room, and, calling to them the 2 men who had been rejected by the convention, they proceeded to another room, and assumed to organize themselves into a convention, and nominated a full list of county officers; and the parties who acted as chairman and secretary of such assumed convention executed a certificate of nomination, fair on its face, and purporting to be the nominations made by the Republican county convention for the offices therein specified. The certificate was received and filed by the auditor. The 9 delegates remaining in the regular convention, and being a majority of the delegates entitled to seats in that convention, proceeded to nominate county officers; and a certificate of such nomination, fair on its face, and purporting to be the certificate of nominations made by the Republican county convention for said Pierce county, was presented to the auditor, who refused to receive or file the same, for the reason

that the certificate of nominations made by the Republican county convention was already on file in his office. True it is that the auditor could properly receive and place upon the official ballot but one list of Republican nominations for county offices, but he was bound to so receive and place upon the ballot the nominations made by the regular Republican county convention. [Italics supplied.] State v. Falley, 9 N. D. 450, 83 N. W. Rep. 860. This he has refused to do. Let the peremptory writ issue as prayed. All concur."

We regard the reasoning of that case as sound.

In the later case of State ex rel. Granvold v. Porter, 11 N. D. 309, 91 N. W. 944, involving a similar situation, the court said:

"\* \* \* the convention was not a select body, requiring the presence of a majority of all the persons entitled to participate in order to constitute a quorum for the transaction of business. The common-law rule as to assemblages of this character is that, where the meeting is regularly called, those who actually assemble constitute a quorum, and a majority of those voting is competent to transact business. Those who do not attend are presumed to assent to the action of the majority of those who do attend and vote. Field v. Field, 9 Wend. 395; Craig v. Presbyterian Church, 88 Pa. 42, 32 Am. Rep. 417; Ex parte Willcocks, 7 Cow. 401, 17 Am. Dec. 525; Everett v. Smith, 22 Minn. 53; Smith v. Proctor, (N.Y.) 29 N. E. Rep. 312, 14 L.R.A. 403; Lawrence v. Ingersoll, (Tenn.) 6 L.R.A. 308, and note (s.c. 12 S. W. Rep. 422, 17 Am. St. Rep. 870); Cass County v. Johnston, 95 U. S. 360, 24 L. Ed. 416. It follows, therefore, that, by withdrawing, the delegates merely waived their right to participate in the convention, and that their action in so doing did not affect its identity, or deprive those who were present of the right to proceed with the business of the convention. This we understand to be true in all cases, whether the withdrawing members constitute a majority or a minority. In this case the fact is established, however, that a majority of lawful delegates was present at all times in the Fox convention, and participated in its action. The convention which nominated the relator consisted of six regular delegates, - the relator, who held a proxy, and Stevens, whose right to participate had been



rejected by the regular convention. These facts bring the case fairly under the decision of this court in State v. Laviak, supra, wherein we held that a minority of the delegates to a political convention cannot withdraw therefrom, and join themselves with those whose credentials have been rejected, and successfully claim that they constitute the legal party convention. [italics supplied.]"

In the article on elections appearing in 18 Am. Jur. 267, §§ 136, 137, the rule governing the powers of political conventions and the judicial review of their actions is stated as follows:

"A convention has the inherent power incident to all deliberative bodies having the power to organize to judge of the election, qualifications, and returns of its own members, and its action in seating or rejecting delegates is not subject to judicial review. \* \* \* The convention, when assembled and organized, is, as has previously been shown, the depository of all party power, and it cannot be bound or limited in its action in any way by the permanent committee in the call issued for the convention. In the absence of statutory regulations, it has control over its own proceedings and affairs and may proceed according to party usages and customs. The discharge of the duties imposed on the convention involves the exercise of judgment and discretion on the part of its members, and a majority of them have, in the absence of fraud or oppression, the right to control the action of the convention and to correct or reverse any action taken by it, and its final determination as to candidates or any other question within its jurisdiction will be followed by the courts. \* \* \*

✓ "A convention regularly called and organized is not dissolved by the withdrawal of a minority of the delegates present, but remains, as before, a convention with full power to nominate the candidates to be voted for. Its nominees, and not those of the withdrawing minority, are entitled to be placed upon the ballot, \* \* \*."

In 29 C.J.S. 121, 122, § 188, of article on elections, the rule is stated as follows:

"Except to the extent that jurisdiction is conferred by statute or that the subject has been regulated by statute, the courts have no power to interfere with the judgments of the constituted authorities of established political parties in matters involving party government and discipline, to determine disputes within a political party as to the regularity of the election of its executive officers, or their removal, or to determine contests for the position of party committeemen or convention delegates. As elections belong to the political branch of the government, the courts will not be statute in seeking to find ground for interference, but will seek rather to maintain the integrity and independence of the several departments of the government by leaving questions as to party policy, the regularity of conventions, the nomination of candidates, and the constitution, powers, and proceedings of committees, to be determined by the tribunals of the party. Accordingly the courts will not assume jurisdiction of cases involving inquiry into the conventions of a political party. Thus the action of a state convention in deciding between two contesting delegations and the regularity of the state or district conventions or other meeting at which they were selected is regarded as conclusive." (Italics supplied.)

M.S.A. 204.02 provides:

"Presidential electors for the several political parties of this state shall hereafter be nominated by delegate conventions called and held under the supervision of the respective state central committees of the several parties of this state. The names of the persons nominated as presidential electors shall be certified to the secretary of state by the chairman of such convention for the office of presidential elector and shall be placed upon the general election ballot in the manner now provided by law." (Italics supplied.)

The provisions which now appear as M.S.A. 204.02 first appeared as L. 1919, Spec. Sess. c. 27, later appearing as L. 1923, c. 125, § 11. Theretofore the nomination of electors had been subject to the provisions of the direct primary law. There was also at one time a presidential preference primary,



L. 1913, c. 449, later amended by L. 1915, c. 372, but repealed by L. 1917, c. 133. After its repeal and the extension of the primary to all other state officers, the elaborate machinery of the primary law, no doubt, seemed to the legislature wholly unnecessary, as applied to presidential electors who, by party organization, usage, and custom, were bound to vote for the candidates nominated by the national convention. Consequently, L. 1919, Sp. Sess. c. 27, was enacted in time to apply to the 1920 presidential election. As we construe chapter 27 and its continuance in force as a separate section in all subsequent legislation, as in L. 1923, c. 125, § 11, it was clearly intended to lift the convention to nominate presidential electors out of the other provisions of the primary election law and place it in a separate class under the control of the state central committee. The language of chapter 27, now appearing as M.S.A. 204.02, is inconsistent with any other intent. We do not regard M.S.A. 202.11 et seq. as controlling this convention. Certainly, there is no intent evinced in those sections to confer jurisdiction on this court in controversies of this character. In Johnson v. Schmah, 119 Minn. 179, 137 N. W. 741, this court held that the primary election law repealed, as inconsistent with its terms, the law providing for nomination of state officers by conventions. We think it is just as clear that as to presidential electors, whose situation is unique and distinct from that of other officers, the legislative intent was to restore the convention completely to L. As originally enacted, the primary did not extend to state officers. L. 1899, c. 349.

party control. We so construe the section. Nothing in it indicates an intention to vest in the courts jurisdiction to pass upon the committee's decisions or on those of the convention so called, held, and supervised. The customs and usages of the party or its constitution were obviously sufficient protection to its members. No party constitution could confer jurisdiction upon the courts, and the statute authorizing such constitutions does not. M.S.A. 202.10.

3-4-5. We conclude that the courts have no jurisdiction of the issues attempted to be raised by the pleadings before us and that consequently there is no issue of fact upon which a reference should be ordered. We further conclude that the electors nominated by the regular convention at Brainerd are entitled to be placed upon the ballot; that those named on the certificate, filed June 14, 1948, have no such right; that that certificate should be rejected and purged from the files of the secretary of state and that of the petitioners received and filed when the same is in due form. Let a mandate to that effect issue to the secretary of state.

So ordered.

Justices Peterson, Thomas Gallagher, and Frank Gallagher took no part in this decision.

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STATE OF MINNESOTA  
DEPARTMENT OF STATE  
FILED  
SEP 2 - 1948  
*Mark A. Holm*  
Secretary of State

3:30 pm.

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