

## THE REMOVAL OF THE STATE CAPITAL

By Fred P. Branson\*

The subject of this article is the removal of the capital of the State of Oklahoma from the city of Guthrie to Oklahoma City. In order to be intelligible to new citizens of Oklahoma and to younger persons who are not familiar with this part of the history of the state, it is deemed advisable to recite certain preliminary matters for clarity.

On June 16, 1906, the Congress of the United States passed what is generally referred to as the Enabling Act. This act is set out in full in the federal statutes (34 Stat. at Large, Chap. 3335, page 267). This Enabling Act was passed by Congress in pursuance of its constitutional authority embraced in Sec. 3, Art. 4 of the Federal Constitution, which section authorizes the Congress of the United States to admit new territory into the Union of States on the same footing as the original states. At that time, and long prior thereto, Oklahoma Territory and the Indian Territory had existed as separate political entities, the former having a territorial form of government under the Organic Act passed by Congress in 1889; the latter, to-wit, the Indian Territory, being composed of the Five Civilized Tribes of Indians, each tribe having its tribal form of government which existed subject to the plenary power of the national Congress over Indians and their properties and tribal governments. The Indian Territory was a court governed area from 1889 until 1898, and thereafter until it became a part of the new State of Oklahoma (the power of the tribal governments having been abolished by Congress in 1898).

The terms and provisions of the Enabling Act of June 16, 1906, supra, made certain requirements of the proposed new state, which should be incorporated by ordinance irrevocable into the constitution of the proposed state, and the terms of the Enabling Act were so incorporated as found by a resolution of the Constitutional Convention and in the schedule to the state constitution. It is wholly unnecessary to go into details as to how the delegates to the constitutional convention were elected in pursuance of the terms of the said Enabling Act, but it met in the city of Guthrie and its work was completed in the Spring of 1907, and a resolution passed called for

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\*Judge Fred P. Branson wrote this story on "The Removal of the State Capital" for *The Chronicles* at the special request of Dr. Charles Evans who has long known of Judge Branson's first hand knowledge on this incident in Oklahoma history, an incident that has had many versions published in the press of the state since it occurred. The text of the story is presented here in *The Chronicles* as it appears in manuscript with the idea that its original style will be interesting to our readers. Judge Branson is a former Justice of the State Supreme Court (elected 1922), and now has law offices in Muskogee.—Ed.

a primary election to nominate national, state and county officers. The primary election was held on the 8th day of June 1907, and under said resolution the general election was held on the 17th day of September 1907, at which time Charles N. Haskell was elected as governor of the proposed new state, his taking office, of course, depending upon whether or not the statehood proclamation was issued admitting the two territories into the Union as the State of Oklahoma. This Proclamation was issued by Theodore Roosevelt, then President of the United States, on November 16, 1907, and to be exact, at 9:16 o'clock a.m. Charles N. Haskell immediately took the oath of office in the city of Guthrie before Leslie G. Niblack, a notary public of Logan County, Oklahoma Territory, and this qualified him as Governor of the then infant state.

The said Enabling Act to which reference in more detail will be hereafter made, among other things, provided in effect that the capital of the new state of Oklahoma should remain at the city of Guthrie until the year 1913 and thereafter until the people of the State should by vote change its location, and this provision brought about controversial questions to which references will be hereafter made.

Though reluctant to use the pronoun I, the writer will so designate himself hereafter.

I was elected Chairman of the State Democratic Committee of Oklahoma on the 19th day of March 1910, at a meeting held on the mezzanine floor of the Huckins Hotel in Oklahoma City, the said committee composed of one man from each county in the State. At said meeting, J. B. Thompson of Pauls Valley, who was elected chairman before statehood, tendered his resignation and I, therefore, became the first elected chairman of the state committee after the state was admitted into the Union. Reviewing the political situation from the standpoint of the Democratic organization of Oklahoma, I reached the conclusion that the Haskell administration, its work and efforts, was not thoroughly understood by the people of the State and much criticism levelled at it was due to the fact that the public did not have a direct statement from him in regard to the policy he had pursued and the legislative enactments to carry out his said policies. Realizing that, Democratic headquarters were established in the Huckins Hotel in April 1910 for preliminary organization purposes. Being made conscious that an effective organization of the Democratic party in the State, looking to the forthcoming election, depended largely upon his clarifying the first state administration's policies and legislative enactments before the people throughout the State, I visited the Governor in his executive offices in the Logan County court house at Guthrie, the latter part of April 1910, and the burden of my visit was that he go before the people throughout the State in meetings which I would cause to be advertised and discuss his administration. He agreed to go and

I arranged an extensive itinerary and advertised speaking dates that ran continuously from the 7th day of May 1910, until the evening of the 11th day of June 1910. The first speaking date was at Alva, in Woods County, May 7, 1910.

He and I and a large number of other persons connected with his administration left the city of Guthrie on the afternoon of the 6th day of May 1910, by train, to Kiowa, Kansas, where we made connection with the Southern Pacific train that went from Kiowa to Alva, Oklahoma, and on southwest and west. We arrived at Alva in the evening of the 6th day of May 1910 and he spoke to a large crowd of people who assembled there not only from Woods but from Alfalfa, Grant and Garfield counties, as well as many other counties. I billed him and advertised him for speeches in the following places: Woodward, Arnett, Cheyenne, Elk City, Cordell, Mangum, Hollis, Altus, Frederick, Duncan, Chickasha, Ardmore, Madill, Durant, Hugo, Atoka, McAlester, Muskogee and Tulsa. The last date of his said itinerary was at the Grand Opera House on Second Street in the City of Tulsa, the evening of the 11th day of June 1910.

Thus it will be seen that the Governor was on a continuous speaking itinerary from the afternoon of the 6th day of May 1910, to the evening of the 11th day of June 1910 (it must be noted that travel in those days was by train, sometimes with poor connections, and much longer time was taken than would now be taken by automobile).

This fact shows the fallacy of many articles that have been written about Governor Haskell leaving Guthrie for Oklahoma City, after the capital election, in the nighttime. In truth and in fact he had not been in Guthrie since the evening of the 6th day of May 1910, and he never did return in his official capacity as governor.

It will be hereinafter pointed out more in detail, but essentially at this point, that the capital election was held on Saturday, the 11th day of June 1910. The question was whether the permanent capital should be located at Guthrie, Oklahoma City or Shawnee. So when the governor completed his speech at the Opera House in Tulsa on the evening of the 11th day of June, 1910, the capital election was over but the returns were not known.

As it was the custom of Governor Haskell when in Tulsa he made the Tate Brady Hotel his headquarters. After his speech at the Opera House on the night of the 11th of June, I went to the Robinson Hotel (now an office building at the corner of Third and Main Streets in Tulsa). About two o'clock in the morning of the 12th day of June I was awakened by the ringing of the telephone in my room. I answered the phone and the Governor was on the other end of the line and he stated, "Fred I have been phoning over the State and find that Oklahoma City has won the capital election. Come over to the Tate Brady Hotel as a special train on

the Frisco is being made up for us to go to Oklahoma City." This special train was being financed by Tate Brady, Robert Galbraith (now living in Tulsa), John O. Mitchell who was then mayor of Tulsa and others. This train pulled out of Tulsa between 2:30 and 3:00 o'clock a.m., June 12, 1910, which was Sunday morning. On that train was the Governor, Mrs. Haskell, Tate Brady, Mrs. Brady, John O. Mitchell, Mrs. Mitchell, Robert Galbraith, myself, and others I do not now recall. The train arrived in Oklahoma City about 7:30 o'clock on Sunday morning, the 12th day of June 1910. Governor Haskell and the party, including myself, registered at the Huckins Hotel. The Governor and Mrs. Haskell were assigned to the mezzanine floor in the northwest corner two rooms. The word having gone ahead that this party was on its way from Tulsa to Oklahoma City a large number of prominent business men were at the hotel awaiting the arrival of the governor. Among them was Charles Colcord, C. G. Jones, former mayor of Oklahoma City, W. A. Ledbetter, Charles West, then Attorney General of Oklahoma, Judge Hainer, former Territorial Judge, Ed Vaught, now United States District Judge, and Dennis Flynn, formerly Territorial Representative in Congress, and a large number of other business and professional men of Oklahoma City. When Governor Haskell was located in his hotel suite surrounded as he was by these men, his first exclamation was, "Get me a stenographer!" The Honorable Dennis Flynn, who was never known to fail to meet an emergency, in double quick time secured a stenographer and the Governor then and there and in the presence of those assembled dictated a proclamation declaring Oklahoma City to be the capital of the State of Oklahoma. This created considerable comment among those present as none had anticipated that the capital would be moved immediately upon the heels of the election. This proclamation of Governor Haskell appeared on the streets of Oklahoma City and on the front page of the Daily Oklahoman "Extra" on Sunday about noon, the 12th day of June 1910.

Following this a furor arose throughout the State as to whether or not this was legal action or whether it was prudent action.

Many stories have appeared in various periodicals as to the seal of state being brought to Oklahoma City. Some have recited their individual version, either without knowledge of the actual facts or with an intended purpose of drawing on their imagination or undertaking to give someone a modest degree of glamor on the stage then set for an important historical act in the history of the new State of Oklahoma.

Adverting to the reference that Governor Haskell called me from the Brady Hotel by telephone at my room in the Robinson Hotel at 3rd and Main streets in Tulsa, and that a special train was going from Tulsa to Oklahoma City, when I got in the lobby of the Tate Brady Hotel I walked up the stairway to the mezzanine floor. Governor Haskell was standing inside his room on the mezzanine

floor at a wall telephone and was awaiting connection with his private secretary, W. B. Anthony. As I reached the top of the stair, the connection was completed and I heard Governor Haskell say to his secretary, W. B. Anthony, "Bill this is Haskell. I have been 'phoning over the state and find that Oklahoma City has won the capital fight. Get hold of Bill Cross, Secretary of State, go up to the Logan County Court House, get the seal of state and bring it to Oklahoma City and meet me there in the morning by 7:30 o'clock. Don't fail to get the seal, Bill, and bring it to Oklahoma City. We are leaving here on a special train on the Frisco and will be in Oklahoma City by 7:30 A.M."

Shortly after the Governor's party and myself reached the Huckins Hotel, Bill Cross, who was then Secretary of State, appeared in the lobby at the foot of the marble stairway that led up to the mezzanine floor (but has now been removed and an additional elevator installed where the stairway then was). He walked up the stairway to the mezzanine floor and addressed me, "I have the seal of state in this pasteboard box but I have no place to put it." To which I replied, "I have a roller top desk across here in the old dining room of the Huckins Hotel and you can put it in a drawer of my roller top desk and go back there and get the seal when you need to use it. He placed it in a drawer of my roller top desk where it remained for six weeks until a more advantageous place was located for its safe keeping.

This election of June 11, 1910, on the removal of the capital was held by virtue of a petition filed with the Secretary of State under the initiative provision of the Constitution of Oklahoma and was designated Initiative Petition No. 7, State Question No. 4. Oklahoma City was voted by the people under this Initiative Petition No. 7, State Question No. 4, as the permanent capital of the State.

But this election and proclamation of the Governor, *supra*, did not settle the capital issue. The city of Guthrie and its citizens had, by reason of the provision of the Enabling Act, expected that the capital would remain in Guthrie until 1913 and thereafter until the people of the State by a vote removed it. This provision of the Enabling Act of June 16, 1906, among others of its numerous provisions, contained this: "The capital of said state shall temporarily be at the city of Guthrie. . . . and shall not be changed therefrom previous to Anno Domini 1913. . . ."

At the instance of the city of Guthrie, a suit was brought in the District Court of Logan County, Oklahoma, entitled "State of Oklahoma, *ex rel*, Hepburn, County Attorney, *vs*. Smith, Secretary of State" (Thomas P. Smith of Muskogee had been appointed Secretary of State by Governor Haskell after Bill Cross, the first elected Secretary of State had died on the night of the 4th day of August 1910). That suit raised the question, among other questions, that the Initiative Petition No. 7, State Question No. 4 was defectively sub-

mitted in that the ballot title of the Initiative bill did not recite, "Shall it be adopted", and the Court held that since it was not properly submitted, the election was without force and effect as to any of the provisions contained therein. In other words, that the so-called capital election of June 11, 1910, was not effective to remove the capital or for any other purpose. This case is reported on appeal to the Supreme Court of Oklahoma case of "Smith, Secretary of State, vs. State, ex rel, Hepburn, County Attorney," filed November 15, 1910, and reported in 28 Okla. 235, 113 Pacific 932.

Although not effective in creating a legislative enactment the expression of the people of the State was controllingly effective as herein immediately related. The Governor, Charles N. Haskell, immediately and on November 20, 1910, convened the Legislature in extraordinary session (Session Acts Oklahoma 1910 & 1911, page 1), and the Legislature when it was so convened in extraordinary session, among other enactments passed a bill (House Bill No. 1), being "An Act providing for the permanent location of the seat of government and Capitol of the State of Oklahoma." This bill was approved on December 29, 1910 and it fixed the permanent location of the capital of the State of Oklahoma on:

"Fifteen acres of land surrounding a point on the half-section line running north and south between the north-east fourth and the northwest fourth of section twenty-seven (27), township twelve (12) north, range three (3) west of the Indian Meridian, otherwise known as the center of Lincoln boulevard at its intersection with the center of Twenty-second street, extending east from the right-of-way of the Atchison, Topeka and Santa Fe Railway Company; and the Executive Mansion shall be located in the vicinity of said capitol grounds on a site consisting of one-half block, the same to be selected by the Capitol Commission."

This enactment is found in the acts of the said extraordinary session of Oklahoma Legislature of 1910, Chapter 5, pages 4 to 7, inclusive.

So it will appear that though the Supreme Court of Oklahoma had by its judicial determination nullified the provisions of the capital removal act as contained in the said Initiative Petition No. 7, State Question No. 4, supra, the Legislature, in its said extraordinary session, by legislative enactment located the capital on the grounds herein designated and on which the present state capitol building was erected during the administrations of Lee Cruce and R. L. Williams as governors, and the present capitol building was occupied by the state offices in 1917.

But this act of the Legislature of December 29, 1910, did not end the capital fight. The books and records and offices of the officials, other than the governor and the secretary of state which were in Oklahoma City from the morning of the 12th day of June 1910, remained at Guthrie, by reason of another suit which was brought at the instance of the city of Guthrie and styled, "W. H. Coyle vs. Thomas P. Smith, Secretary of the State of Oklahoma." This suit sought permanent injunctive relief against the removal of the books and records of the State from the city of Guthrie to

Oklahoma City. It drew in question the proper enactment and validity of the said act of the legislature in extraordinary session approved December 29, 1910, as set out supra. This case found its way into the Supreme Court of the State entitled "Coyle vs. Smith, et al," 113 Pacific 944, in which the Supreme Court of Oklahoma held that the said legislative enactment of the said extraordinary session of the Legislature, fixing the permanent capital of the State at Oklahoma City, was not violative of any valid provision of the Enabling Act of June 16, 1906, and particularly not violative of that provision of the Enabling Act quoted supra to the effect that the capital should remain at Guthrie until 1913.

But this decision of the Supreme Court of the State of Oklahoma did not end the capital fight. But on the contrary, the said case of Coyle vs. Smith, et al, was filed in the Supreme Court of the United States by writ of error issued by that court to the Supreme Court of the State of Oklahoma to review the judgment of the Supreme Court of Oklahoma.

The Supreme Court of the United States in an exhaustive opinion written by Mr. Justice Lurton and filed in that court May 29, 1911, pivoted the decision of that court upon that part of the Enabling Act quoted hereinbefore, to-wit: "The capital of said State shall temporarily be at the City of Guthrie . . . and shall not be changed therefrom previous to Anno Domini Nineteen Hundred and Thirteen. . . ."

And turning the searchlight of his reasoning on that proposition Mr. Justice Lurton stated: "The only question for review by us is whether the provision of the Enabling act was a valid limitation upon the power of the State after its admission, which overrides any subsequent state legislation repugnant thereto." He reached his conclusion which was concurred in by the court based upon the language of the Federal Constitution in Section 3, Article 4, which provides that new states may be admitted into the Union on an equal footing with other sister states. After citing numerous cases and bringing to his support logic unanswerable that when a new State is admitted into the Union it is so admitted with all of the powers of sovereignty and jurisdiction which pertained to the original states and that such powers may not be constitutionally diminished, impaired or shorn away, by any conditions, compacts or stipulations embraced in the act under which the new state came into the Union, which would not be valid or effectual if the subject of congressional legislation after admission. (U. S. Supreme Court reports Vol. 221, p. 562-573, Law Ed. 55, p. 853)

This decision of the Supreme Court of the United States ended the capital fight and the capitol building was erected and now stands in Oklahoma City upon the land designated in the said act of the Oklahoma Legislature in extraordinary session assembled on December 29, 1910.